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Unsubmitted Sexual Assault Kits in West Virginia

Karin Thomas, M.S., and Douglas H. Spence, Ph.D.

EXECUTIVE SUMMARY

Sexual assault kits (SAKs) play a vital role in the successful investigation and prosecution of sexual assault cases. These kits are used by medical professionals (ideally, a specially-trained sexual assault nurse examiner, or SANE) to collect evidence from sexual assault victims during a forensic medical exam. After the exam is completed, the SAK is then typically sent to a local law enforcement agency, who logs it into evidence before sending it on to an authorized crime lab for analysis. The evidence gathered from the analysis of these kits may then be used in the investigation of the sexual assaults to help identify, convict, or exonerate suspects. In addition, the analysis of SAKs can also provide DNA information for entry into national databases which are used to track and identify repeat offenders.

However, despite the importance of the evidence derived from SAKs, research estimates that between 18 and 41 percent of sexual assault kits are not submitted to a laboratory for testing (Ritter, 2011). Recent inventories of evidence lockers and other places where SAKs are stored have revealed tens of thousands of unsubmitted kits in many major U.S. cities. For example, a stockpile of approximately 16,000 kits was discovered in New York City (Mindel & Caudell, 2000), while roughly 13,000 kits were found in Los Angeles (Peterson, Johnson, Herz, Graziano, & Oehler, 2012), and around 8,000 were found in Detroit (Campbell, Fehler-Cabral, Pierce, Sharma, Bybee, Shaw, Horsford, & Feeney, 2015). Similar stockpiles of unsubmitted kits have been discovered in a number of smaller cities as well, suggesting the number of unsubmitted SAKs is likely to be a national problem (Campbell et al., 2015). This issue creates significant challenges for investigators, and is one of the reasons why, nationally, only about 7 out of every 1,000 rapes results in a conviction (“The Criminal Justice System: Statistics,” n.d.).

Although there has yet to be a complete statewide inventory of unsubmitted SAKs in West Virginia, the available evidence suggests there is likely to be a significant number of kits not submitted to the crime lab in the state. Preliminary results from an ongoing, initial inventory of 16 West Virginia counties has uncovered approximately 1,000 SAKs in police custody. Furthermore, it is estimated that of the roughly 600 SAKs sent to hospitals each year in West Virginia, only about 200 ultimately arrive at the West Virginia State Police crime lab for analysis. Approximately 400 kits are unaccounted for each year.

The state of West Virginia has taken several steps in recent years to enhance the investigation of sexual assault cases. In 2014, the Sexual Assault Forensic Examination (SAFE) Commission was created with the goal of establishing evidence quality protocols and creating a statewide regulatory system for sexual assault forensic examinations. The SAFE Commission was also given the ability to propose new rules for legislative approval in order to reduce the number of unsubmitted kits and improve the recruitment and retention of qualified examiners. These activities complement the work of the Sexual Assault Nurse Examiner (SANE) Advisory Board, which seeks to improve collection of forensic evidence in West Virginia.

In addition, in 2015 the WV Division of Justice and Community Services (DJCS) received a grant from the Bureau of Justice Assistance (BJA) as part of the federal government's Sexual Assault Kit Initiative (SAKI). This program provides funding to states in order to address the issue of large numbers of unsubmitted SAKs. As part of its responsibilities as a SAKI grant recipient, the DJCS is currently working with several in-state partners to create an inventory of unsubmitted SAKs in West Virginia and promote the testing of those SAKs. It is expected that approximately 1,100 previously unsubmitted SAKs will be tested under the current grant.

As part of the agency's responsibilities as a SAKI grant recipient, researchers working with the DJCS's Office of Research and Strategic Planning (ORSP) have begun several research efforts aimed at identifying ways for effectively reducing the number of unsubmitted SAKs. These include analysis of data gathered from the statewide SAK inventory, survey research to investigate how sexual assault cases and SAKs are handled by local law enforcement agencies, and the development of a new database which will track the progress of all new SAKs sent to hospitals across the state. As a result of these efforts, the ORSP seeks to provide state planners and policy makers with a better understanding of why SAKs sometimes are not submitted, and to develop performance measures and other analytical tools which can be used to improve the processing of SAKs in the future.

This brief provides a review of extant national research on the reasons why SAKs go untested and describes the planned initiatives for solving this problem in West Virginia.

Why Some Sexual Assault Kits Go Untested or Unsubmitted: Findings from Current Research

There are several reasons why sexual assault kits go untested. First, research indicates that many jurisdictions simply lack the resources required to test all SAKs (Sacco & James, 2015). Recent reports from the National Institute of Justice show that, nationally, forensic laboratories have been unable to keep up with the dramatic growth in demand for DNA testing resulting in significant numbers of SAKs that are unsubmitted or that have been submitted to the lab but have not yet been tested (LaPorte, Waltke, & Heurich, 2016; Nelson, Chase, & DePalma, 2013). Consequently, increasing the capacity of crime labs to process DNA evidence has become a national priority.

A critical reason why SAKs may not be submitted is that law enforcement agencies often choose to prioritize certain cases over others when deciding when to submit DNA evidence to the lab. Like crime labs, law enforcement agencies often do not have the resources necessary to fully investigate all cases, and it is common for agencies to prioritize those cases where it is believed that DNA evidence will be most useful for the investigation (Sacco & James, 2015). In this regard, a recent national survey of law enforcement agencies found that 44% of agencies reported that they did not send evidence to the lab when there was no suspect in the case, and 15% stated that they did not submit SAKs unless asked to do so by the prosecutor (Ritter, 2011). In addition, studies have also shown that police are less likely to submit SAKs when they had concerns about the victim's credibility or their willingness to cooperate with the investigation (Campbell et al., 2015).

Finally, another factor contributing to the number of untested kits is a lack of shared understanding about the

proper procedures for processing SAKs and the potential value of DNA evidence for some cases (Campbell et al, 2015; Harrell, Castaneda, Adelson, Gaillot, Lynch, & Pomeroy, 2009). Internal procedures for processing SAKs can vary significantly from one jurisdiction to another and many jurisdictions do not have a system in place for tracking the progress of SAKs at each step in the process. Consequently, SAKs are often held at law enforcement agencies because of misunderstandings about when they should be sent to the lab or where the kit is in the process. Furthermore, some SAKs also fail to be analyzed because they arrive at the lab incomplete (Sacco & James, 2015). In some cases, these kits are sent back to law enforcement, but in others they remain backlogged at the lab until the rest of the evidence is submitted.

Reducing the Number of Unsubmitted Sexual Assault Kits in West Virginia

The West Virginia Division of Justice and Community Services (DJCS) is partnering with the WV State Police Forensic Laboratory, the Marshall University Forensic Science Center, the WV Foundation for Rape Information and Services, and the WV Prosecuting Attorney's Institute to implement the SAKI grant. This grant seeks to assist the state in reducing the SAK backlog by providing funding to accomplish five goals:

- **Create an inventory of unsubmitted SAKs:** The first deliverable for this grant is an inventory of all unsubmitted SAKs in 16 counties.¹ This inventory was conducted in 2016, and in September, the BJA provided funding to expand the inventory and testing to all other counties in the state. Once all unsubmitted kits are accounted for, they will then be screened for DNA evidence. Any present DNA will be tested and eligible DNA profiles will be uploaded into the Federal Bureau of Investigation's Combined DNA Index System (CODIS). This will enable the identification of offenders who may have committed crimes in other jurisdictions and had their DNA profile entered into the system.

- **Develop an electronic data system to track SAKs:** The DJCS is developing and implementing a secure web-based data exchange system called The Sexual Assault Evidence Collection Kit Information System (SAECKIS). The SAECKIS is designed to be a comprehensive system for tracking all SAKs sent to hospitals across the state and recording the quality of the evidence contained in each kit. The database will contain a broad array of information pertaining to case identifiers and characteristics provided by law enforcement agencies, the West Virginia State Police Forensics Laboratory, and hospitals.
- **Develop victim notification protocol:** A SAKI victim services coordinator will be housed at the West Virginia Foundation for Rape Information and Services (FRIS). The SAKI coordinator will provide training and technical assistance to advocates at the rape crisis centers. The coordinator will also develop materials for these training processes and will participate in policy development for victim notification.
- **Facilitate investigation and prosecution of cases resulting from hits on unsubmitted SAKs:** The West Virginia State Police Forensics Laboratory will notify local law enforcement if their kits returned a CODIS hit². This will enable local agencies to investigate new leads and provide additional information to prosecutors. Law enforcement agencies will also use this information to work with victim advocates in the victim notification process.
- **Develop new protocols and trainings to improve the processing of SAKs:** The initial goal of the SAKI grant is to create an inventory of unsubmitted SAKs, test the kits, and investigate any new leads. In the long term, however, the DJCS envisions that kits will be tracked at all points of the evidence-gathering process. The DJCS will be working with other grant partners to develop new procedures which will ensure that this process provides investigators and prosecutors with high-quality evidence that can be used to secure convictions. In addition, it is anticipated that the process should

become more victim-centered through the development of victim notification protocol standards and potential additional training for SANEs.

In support of these goals, the ORSP has begun two new research initiatives designed to further investigate the issues that may be impeding the timely analysis of SAKs in West Virginia:

- **The West Virginia Sexual Assault Kit Processing Survey:** Research staff from the ORSP are developing a survey which will be used to investigate common challenges faced by medical professionals, law enforcement officers, laboratory technicians, and others involved in the collection and analysis of SAKs in WV.
- **SAECKIS Database Analysis:** Tracking data on all kits leaving the lab and being sent to hospitals will now be available in the new system. Quality of evidence will continue to be assessed.

ENDNOTES

1. Berkeley, Brooke, Fayette, Greenbrier, Harrison, Jefferson, Kanawha, Marion, Marshall, Mason, Mercer, Ohio, Raleigh, Randolph, Upshur, and Wood.
2. The FBI's Combined DNA Index System (CODIS) consists of DNA profiles from federal, state, and local crime laboratories ("Frequently Asked," n.d.). When a crime analyst processes a DNA sample from law enforcement and it reaches certain standards, they may upload the DNA sample into the database and compare it to other samples. This may lead to identification of the offender.

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Jeffrey D. Estep, DJCS Chief Deputy Director
Dr. Douglas H. Spence, ORSP Acting Director
Leslie Boggess, DJCS Deputy Director



1124 Smith Street, Suite 3100
Charleston, WV 25301
(304) 558-8814 phone
(304) 558-0391 fax
www.djcs.wv.gov

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