



*Training and Technical Assistance
Policy Guide*

THE FORENSIC MEDICAL EXAM

Untested Sexual Assault Kits

Issue 2 of 3 part series

These materials were developed
by FCASV staff for the purpose of providing
advanced technical assistance to
certified rape crisis centers in Florida.

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On June 23, Governor Scott approved Florida's 2015-16 budget which included \$300,000 for the Florida Department of Law Enforcement to conduct a statewide audit of untested sexual assault kits (SAKs). FDLE shall submit a report of its findings, including reasons for delays or deferment of analysis, to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2016. Additionally, the Senate Appropriations Committee in Washington approved \$41 million for sexual assault response reform, including monies for forensic exam programs; the House approved \$45 million for the same project. The funds would go toward testing kits, prosecuting cases which arise from the DNA results of the testing, and to notifying and responding to victims whose SAKs have sat untested for months, or even years. The moves come after nationwide media attention to the issue of untested kits and backlogs around the country, in addition to advocacy work spearheaded by the Joyful Heart Foundation's End the Backlog Project.

Untested kits and backlogs

Much debate exists surrounding the issue of untested kits and backlogs. The federal government estimates that hundreds of thousands of untested SAKs sit in storage around the country. In Florida, we currently do not know how many untested SAKs exist, though the number could be upwards of 10,000. This past spring, Jacksonville alone reported having an inventory of 1,943 untested SAKs.

The Joyful Heart Foundation defines a backlog in 2 ways; the first being when law enforcement books a kit into evidence but has not had the kit tested, for various reasons. The second category is SAKs which have been submitted for testing to a lab, but have not been tested in a timely manner due to limited resources.

There are several reasons why a SAK may not be tested. Some kits may have been sitting in storage since prior to the development of DNA testing technology. In Florida, victims are entitled to a forensic exam without making a report to law enforcement. Though law enforcement may store such non-report SAKs in their facility, they may not feel it an appropriate use of resources to test a SAK without a victim who wants to move forward with a criminal case. Further, law enforcement or prosecution may decide to only test a SAK where the suspect is unknown, in order to identify the assailant. The costs of testing a SAK can run approximately \$1,000-\$1,500. Like most agencies, law enforcement and prosecutors must be cognizant of how to spend limited resources.

The movement to test SAKs

Florida has been collecting DNA evidence from all convicted felons since at least 2005, and from convicted sex offenders and murderers since 2002, maintaining the evidence in CODIS. DNA testing has advanced to an extent that the information obtained from each and every SAK can help authorities to arrest and prosecute serial perpetrators who have thus far remained free to commit further assaults.

Research by David Lisak has shown that most perpetrators commit multiple batteries.¹ Testing SAKs can help to not only vindicate victims, as well as the innocent accused, but to

also identify repeat rapists. In Detroit, for instance, law enforcement and prosecutors were able to begin testing a backlog of over 11,000 SAKs due to funding received from the National Institute for Justice as well as private donations. At last count, authorities in Detroit had tested approximately 2,000 SAKs, resulting in over 1,400 DNA matches linked to 326 potential serial rapists for crimes committed across 31 states.ⁱⁱ

However, the cost of testing all SAKs is only one item of concern when thinking ahead to address an inventory of untested SAKs. Law enforcement and State Attorney's Offices must have the resources to investigate and prosecute perpetrators identified through testing SAKs. Further, advocates are needed to help make victim notifications and support victims through the criminal justice process.

Statute of limitations

The law exists in Florida for prosecuting cases pending the results of as-yet untested SAKs. In accordance with F.S. 775.15(15)(a), a prosecution for sexual battery under Chapter 794 or for lewd and lascivious offenses under Chapters 800 and 825 of Florida Statutes may be commenced within one year after a perpetrator is identified through DNA analysis.

The statewide assessment of untested SAKs is the first step in bringing justice to victims throughout the state. With the availability of funding to start addressing this issue, Florida must begin to think ahead to how to tackle the inventory of untested SAKs prior to the release of FDLE's January 1 report.

ⁱ Lisak, D. & Miller, P. M. (2002). Repeat rape and multiple offending among undetected rapists.

ⁱⁱ <http://www.endthebacklog.org/detroit-0>