

Approved

**Minutes of the
January 15, 2016 Meeting of the
Sexual Assault Evidence Kit Tracking and Reporting Commission**

Members Present:

Amy Barkholz - Michigan Health and Hospital Association
Debi Cain - Michigan Domestic and Sexual Violence Prevention and Treatment Board
Representative Laura Cox - Michigan House
Catherine Garcia-Lindstrom - Michigan Crime Victim Services Commission
Kathy Hagenian - Michigan Coalition to End Domestic and Sexual Violence
Kimberly Hurst - Michigan Chapter of International Association of Forensic Nurses
Carol L. Isaacs - Department of Attorney General
Sheriff Terrance Jungel (ret.) - Michigan Sheriff's Association (arrived at approximately 1:51 p.m.)

Members Participating By Telephone Conference Call:

Senator Tonya Schuitmaker - Michigan Senate
Chief Robert Stevenson (ret.) - Michigan Association of Chiefs of Police (arrived at approximately 1:51 p.m.)
Keith Clark for Kym L. Worthy - Prosecuting Attorneys Association of Michigan

Members Absent (with notice):

Representative Stephanie Chang - Michigan House
Colonel Kriste Etue - Michigan State Police
Claire Khouri - Executive Office of the Governor
Kym L. Worthy - Prosecuting Attorneys Association of Michigan

Members Absent

Senator Bert Johnson – Michigan Senate

Staff to the Commission

Lore Rogers - Michigan Domestic and Sexual Violence Prevention and Treatment Board

Guests:

Rick Arnold - Michigan State Police
Michael Bobbitt - Michigan Domestic and Sexual Violence Prevention and Treatment Board
John Bowen - Michigan State Police

Gail Krieger - Michigan Domestic and Sexual Violence Prevention and Treatment Board
Anica Letica - Department of Attorney General
Marla Mitchell - Cichon - WMU - Cooley Innocence Project
Mary Morrow - Prosecuting Attorneys Association of Michigan
Greg Michaud - Michigan State Police
Jeff Nye - Michigan State Police
Matt Oppsommer - Michigan State Police
Kristin Schelling - Michigan State Police
Derek Sova – Chief of Staff for Senator Tonya Schuitmaker
Amanda Tringl - Michigan State Appellate Defenders Office
Tiffany Vedder - Michigan State Police

Welcome and Introductions

Commission Co-Chair Debi Cain convened the January 15, 2016 Sexual Assault Evidence Kit Tracking and Reporting Commission in the first floor conference room of the Capitol View Building, at 1:30 p.m. Roll call was taken and there was not a quorum at the beginning of the meeting. D. Cain noted that her co-chair, Colonel Etue, regrets not being able to attend, but that she had an unavoidable conflict. Colone Etue serves on the Executive Committee of the Board of the International Association of Chiefs of Police and was notified of a meeting of that Board for this same day, after the Commission meeting was scheduled.

Ms. Cain extended a welcome to guests and the opportunity to introduce themselves.

Report from the Chair

D. Cain said that all the committees have met at least once and have progress reports to share with the Commission at today's meeting. The committees are scheduled to meet again within the next couple weeks and are working toward making some recommendations to the commission.

D. Cain also noted that there is overlap among the Committees and that some Committees may want to meet jointly, and asked the members to keep that in mind as they listen to the Committee reports.

REPORTS FROM WORKING COMMITTEES:

Report from Committee to Plan a Statewide Tracking System:

K. Hurst reported that the committee has met twice to discuss the statewide tracking system. The committee reached consensus on the following issues and is likely going to be able to have a draft report and recommendations generated after its next meeting on February 26, 2016. The Committee has reached consensus on the following issues:

In order to protect victim privacy and prevent accidental transfer of kits to law enforcement when victim has not released them, there should be a “hard stop” built into the tracking system so that the health care provider is asked to note whether victim has signed the release, and if the “no” box is checked, there is no way for health care to inadvertently notify law enforcement that the kit should be picked up.

The Committee discussed whether there should also be a hard stop if the victim later decides that he or she does not want the criminal case to go any further. Committee agreed that if victim has signed release and kit has already been transferred to law enforcement, a hard stop should not be triggered, that revocation of that release is ineffective once the kit has been transferred to law enforcement from healthcare provider. However, if the kit is still in the possession of the health care provider and victim revokes release, kit should not be transferred.

Barkholz notes that there is a difference in release of medical records under HIPAA and in release of these kits, and healthcare may not realize this.

Training would be needed for healthcare and law enforcement once the tracking system is set in place. Prominent instructions should also be included with sexual assault evidence kits so that all hospitals and clinics in the state will know how to process the kits into the tracking system correctly.

Other issues discussed by the committee included:

- agreeing not to track the sexual assault evidence kit through linking it to reimbursement through the safe response fund.
- the statewide tracking system is not intended to be documentation chain of evidence.
- the need for all dates of transfer to be in real time unless there is a waiver.
- the need to be able to generate exception reports or alerts within timelines.
- who will have access to information about the number and location of unreleased kits with regard to what the statute states.
- which disciplines should have access, such as SANE programs, health care, Michigan Domestic and Sexual Violence Prevention and Treatment Board and law enforcement with regard to the Michigan State Police.
- the need for an annual aggregate report to be generated at the state level.
- the likelihood of using a bar code with a matching kit number so they can be tracked with a unique identifier.
- security issues, such as how victims will get access and how to protect information.
- agreeing that there will be a unique identifier that the health care provider can issue to victims.
- what to do about people that do not have internet access and how to assist them with gaining access.
- a system for reporting victim access.

Commission member T. Jungel arrived, and the Chair took notice that the Commission meeting now had a quorum.

MOTION: Moved by Rep. L. Cox, seconded by C. Garcia-Lindstrom, to approve the agenda as presented. Motion carried.

MOTION: Moved by C. Garcia-Lindstrom, seconded by K. Hurst, to approve the October 2, 2015 minutes. Motion carried.

Report from Committee to Plan for Audit of Ongoing Submission of Sexual Assault Evidence Kits:

T. Jungel reported that the first committee meeting was a great brainstorming session, but the committee is not yet ready to make recommendations to the Commission. Some of what the committee has discussed so far includes: What should this audit look like, who should be responsible for conducting it, how often should an audit be conducted, how do the audit results get reported, and whether or not there should be sanctions for agencies that are determined not to be submitting kits in accordance with the Sexual Assault Kit Evidence Submission Act. The committee brainstormed a list of all possible agencies or organizations that could possibly be the auditing agency and agreed that auditing agency should have no conflict of interest in auditing law enforcement and should have more than titular authority, "more muscle behind their bark." T. Jungel noted that the committee was leaning toward a state agency, but will continue discussing this and the other issues at its next meeting on January 21.

T. Jungel noted that how the audit is conducted may be contingent upon which tracking software package is used. As well, the goal of the committee is to ensure that sexual assault evidence kits are properly tracked and reported and that there are no untested kits.

Report from the Committee to Plan Audit of Untested Sexual Assault Evidence Kits: C. Isaacs talked about the history of the Attorney General asking the legislature and Governor to agree to appropriate money from settlements. The first \$4 million went to Wayne County, which identified 8000 sexual assault evidence kits. The Attorney General helped formulate some outside company contractors and worked with the Michigan State Police to expedite processing of about 8000 sexual assault evidence kits. The next year \$3 million was acquired from settlements of the Attorney General's office to assist with investigation and prosecution of cases in Wayne County. This year the money is to be used for testing of sexual assault evidence kits, prosecution and investigation and victim services.

Wayne County prosecutors are receiving about \$2 million in SAKI grants this year. Flint is receiving \$1.2 million in grants to inventory untested kits and fund two police investigators, a dedicated prosecutor, a sexual assault advocate through the YMCA and a property clerk. Flint also has another grant to test approximately 246 sexual assault evidence kits. The Michigan

State Police received a \$1.39 million grant to contract with the Prosecuting Attorney Association of Michigan to implement a new SAEK tracking system. There is a need to know how to deal with the backlog of untested sexual assault evidence kits and move forward so this situation never happens again in Michigan.

The committee discussed the difference between an audit and a survey. Auditing untested sexual assault evidence kits requires knowing the location of these kits. C. Isaacs said it is essential to coordinate with everyone in the state who might know where the sexual assault evidence kits are. The grants require that all kits be tested. There is an overlap between Wayne County, Flint and the rest of the state. The auditing will have to be done as broadly as possible. The committee needs to define the meaning of tested, untested and released sexual assault evidence kits. L. Rogers said that some of the old kits were sort of tested, but the consensus of the committee is that if a sexual assault evidence kit has not gone through full testing then it is an untested sexual assault evidence kit. C. Isaacs said there is money available to test all untested sexual assault evidence kits in the state.

G. Michaud said there is a way to a visual audit on a county by county basis that will allow certification of the audits. G. Michaud said an audit is a personal inventory of the sexual assault evidence kits and that Genesee and Calhoun counties would be good starting points. K. Clark said whatever tracking system is put in place, it will be used for a long time and the committee needs to look at all of the options in order to make the best decisions.

Public Comment: G. Michaud asked if statutory revisions could be put on the agenda for the committees.

ADJOURNMENT

MOTION: Moved by C. Garcia Lindstrom to adjourn, seconded by Sen. T. Jungel. Motion passed.

The meeting ended at 3:19 p.m.

Respectfully submitted,

Lore A. Rogers
Staff to the Commission