

2016

Report of the Michigan Sexual Assault Evidence Kit Tracking and Reporting Commission

Report as mandated by the Sexual Assault Evidence Kit
Tracking and Reporting Act. MCL 752.962.



The Report of the Michigan Sexual Assault Tracking and Reporting Commission

Michigan Domestic and Sexual Violence Prevention and Treatment Board
235 S. Grand Avenue, Suite 615, Lansing, MI 48933



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

NICK LYON
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July 20, 2016

Dear Reader:

As co-chairs of the Sexual Assault Evidence Kit Tracking and Reporting Commission (the Commission), we are pleased to share with you this 2016 Report from the Commission. This report reflects the work over the past year by the 15-member Commission to develop a plan and guidelines to (1) determine the number and location of unsubmitted and untested sexual assault evidence kits (kits) that are in storage at medical or law enforcement agencies throughout the state, (2) implement a statewide tracking system for kits that includes electronic access by victims, and (3) audit the ongoing submission of kits to ensure that current kits are processed and tested in a timely manner.

We want to take this opportunity to acknowledge and thank the Michigan legislature for its commitment to improving the response to sexual assault crimes, as evidenced not only by its creation of this Commission, but also by the other sexual assault legislation it has enacted and the legislative appropriations it provided to the Michigan Attorney General to help inventory, investigate and prosecute cases arising from untested sexual assault evidence kits. We also want to thank the Governor for his unflagging support of these legislative initiatives and of the work of the Commission.

The Commission was aided significantly in this project by three hard-working committees. Each of these committees was chaired or co-chaired by Commission members and included other Commission members as well as representatives from several professional disciplines from across the state of Michigan. This report could not have been completed so well within the timelines required but for the fact that the Commission and committee members volunteered many hours of their time, knowledge and expertise to this effort. We are proud to have worked together with all of them, and we look forward to continuing to work together over the next two years to ensure implementation of the plans and recommendations contained in this report.

Sincerely,

Debi Cain
Executive Director, Michigan Domestic and Sexual Violence Prevention and Treatment Board and
Co-Chair of the Sexual Assault Evidence Kit Tracking and Reporting Commission

Col. Kriste Kibbey Etue
Director, Michigan State Police and
Co-Chair of the Sexual Assault Evidence Kit Tracking and Reporting Commission

MICHIGAN DOMESTIC AND SEXUAL VIOLENCE PREVENTION AND TREATMENT BOARD

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Executive Summary of the Report of the Michigan Sexual Assault Evidence Kit Tracking and Reporting Commission

The Sexual Assault Evidence Kit Tracking and Reporting Commission (the Commission) was created on January 1, 2015, the effective date of the Sexual Assault Evidence Kit Tracking and Reporting Act, MCL 752.962. That Act charged the Commission with developing plans and guidelines for (1) a uniform statewide system to track the submission and status of sexual assault evidence kits (kits), with secure electronic access for victims, (2) a uniform system to audit untested kits that were collected on or before March 1, 2015, and were released by the victims to law enforcement, and (3) auditing the ongoing submission of kits under the Sexual Assault Kit Evidence Submission Act, MCL 752.931-752.935. The Commission was also charged with developing recommendations for legislation and funding needed to implement its plans.

The Commission met five times over the course of a year to accomplish its charge, and some Commission members also chaired and/or served on different working committees with multidisciplinary members that met separately to develop components of the plan for review and approval by the full Commission.

Summary of key components of the plan for a uniform statewide tracking system for kits:

- There will be a statewide electronic web-based system, administered by the Michigan State Police and used by healthcare providers, law enforcement, and laboratories to whom kits are delivered for testing to track, among other things, the dates on which kits are: (1) collected by healthcare providers, (2) retrieved by law enforcement, (3) delivered by law enforcement to laboratories, and (4) tested by laboratories. Tribal jurisdictions and federal law enforcement are encouraged to use the system.
- Victims will be provided with information at the time of the sexual assault medical forensic examination to allow them to track their kits using the electronic system.
- Confidentiality of victim information will be protected by, among other things, ensuring that personal identifying information about the victim is not allowed to be entered into the tracking system by healthcare, law enforcement or laboratories.
- There should be a fully funded and comprehensive educational effort to inform all users of the tracking system about the existence of the system, the requirement to use the system, and the requirements of the Sexual Assault Kit Evidence Submission Act.

Summary of key components of the plan for a uniform system to audit untested kits collected before March 1, 2015:

- An untested kit is defined as one that was collected on or before March 1, 2015, was released to law enforcement by the victim or was collected by a medical examiner's office, and was never subjected to any forensic analysis.

- Audit inquiries will be directed to all law enforcement agencies in the state of Michigan, all medical examiner's offices, all healthcare providers known to have received unused kits for the purpose of sexual assault medical forensic examinations, and all sexual assault medical forensic exam providers known to have regularly performed these examinations and collected kits. Tribal jurisdictions are encouraged to participate in this audit.
- The count of untested kits provided by the audited entities will be verified by the auditing agency.

This plan to audit untested kits has been substantially accomplished and the remaining work is in process thanks to the parallel work done by the Department of the Attorney General pursuant to legislative appropriation, and the ongoing work of the Michigan State Police through a partnership with the Prosecuting Attorneys Association of Michigan.

Summary of key components of the plan for a uniform system to audit the ongoing submission of kits under the Sexual Assault Kit Evidence Submission Act:

- The Michigan Domestic and Sexual Violence Prevention and Treatment Board (the Board) should be responsible for auditing the ongoing submission of kits.
- Healthcare providers, law enforcement, and laboratories should be included in the audit. Tribal jurisdictions and federal law enforcement are encouraged to participate.
- The Board will generate an annual audit report that will reflect the number of kits collected, retrieved, delivered, or analyzed by each respective healthcare, law enforcement, or laboratory agency which were within or outside of the deadlines established by the Sexual Assault Kit Evidence Submission Act.
- Every healthcare provider, law enforcement agency, and laboratory will have the ability to conduct a self-audit at any time by accessing the tracking system and generating reports that reflect their agency's compliance with the Sexual Assault Kit Evidence Submission Act.
- All entities covered by the Sexual Assault Kit Evidence Submission Act will be required to use the statewide electronic tracking system implemented by the state. Tribal jurisdictions and federal law enforcement are encouraged to participate.

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Wayne County Prosecutor
Representing the Prosecuting Attorneys Association of Michigan

***COMMISSION CO-CHAIRS**

COMMISSION STAFF: LORE ROGERS, Staff Attorney

Michigan Domestic and Sexual Violence Prevention and Treatment Board

ACKNOWLEDGMENTS

The work of the Commission was informed by several advisory committees whose members included:

Rachael Carr, Uniting Three Fires Against Violence
Keith Clark, Wayne County Prosecutor's Office
F/Lt. Cris Hawkins, Michigan State Police
Coffiann Hawthorne, House Democratic Policy Staff
Lori Jump, Uniting Three Fires Against Violence
Gail Krieger, Michigan Domestic and Sexual Violence Prevention and Treatment Board
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Captain Greg Michaud, Michigan State Police
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Dan Sonneveldt, Michigan Department of the Attorney General
Amanda Tringl, state Appellate Defenders Office
Valerie Williams, Hope Shores Alliance
Inspector Brad Wise, Battle Creek Police Department
Captain Monica Yesh, Michigan State Police

COMMITTEE ASSIGNMENTS

Audit of Untested Sexual Assault Evidence Kits Collected Prior to March 1, 2015

Amy Barkholz,[†] Michigan Health and Hospital Association

Keith Clark, Wayne County Prosecutor's Office

Kathy Hagenian,[†] Michigan Coalition to End Domestic & Sexual Violence

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Anica Letica, Michigan Department of Attorney General

Captain Greg Michaud, Michigan State Police – Forensic Sciences Division

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

Joyce Siegel, Sexual Assault Services of Calhoun County

Dan Sonneveldt, Michigan Department of Attorney General

Amanda Tringl, state Appellate Defenders Office

Inspector Brad Wise, Battle Creek Police Department

Audit of Ongoing Submission of Sexual Assault Evidence Kits

Amy Barkholz,[†] Michigan Health and Hospital Association

Rachael Carr, Uniting Three Fires Against Violence

Representative Stephanie Chang,[†] Michigan House of Representatives

Catherine Garcia-Lindstrom,[†] Chair of the Michigan Crime Victim Services Commission

Coffiann Hawthorne, House Democratic Policy Staff

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Valerie Williams, Hope Shores Alliance

Captain Monica Yesh, Michigan State Police

statewide Tracking System for Sexual Assault Evidence Kits with Electronic Access by Victims

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Captain Greg Michaud, Michigan State Police – Forensic Sciences Division

Ruth Oja, Crime Victims Advocate, Hannahville Indian Community

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

Senator Tonya Schuitmaker,^{*,†} Michigan Senate

*** Committee Chair**

† Member of the Sexual Assault Evidence Kit Tracking and Reporting Commission

BACKGROUND

Charge of the Commission

The Sexual Assault Evidence Kit Tracking and Reporting Commission (“the Commission”) was created by the Sexual Assault Evidence Kit Tracking and Reporting Act, MCL 752.962, which was effective January 1, 2015. That Act charged the Commission with accomplishing the following within 365 days after its first meeting:

1. Develop guidelines and a plan to implement a uniform statewide system to track the location, lab submission status, completion of forensic testing, and storage of sexual assault evidence kits. However, access to any information collected through the statewide system created under this act of unreleased or unused sexual assault evidence kits shall only be disclosed to specific entities selected and identified by the commission that will use the information only for policy or training purposes and to sexual assault victims or their designees as described in subdivision (c). Information collected from an unreleased sexual assault evidence kit shall not contain any information identifying the victim to whom the kit is associated.
2. Develop guidelines and a plan to implement a uniform system to audit the proper submission of sexual assault evidence kits as mandated in the sexual assault kit evidence submission act.
3. Develop guidelines and a plan to implement a secure electronic access that allows a victim, or his or her designee, to access or receive information about the location, lab submission status, and storage of sexual assault evidence that was gathered from him or her, provided that the disclosure does not impede or compromise an ongoing investigation.
4. Develop guidelines and a plan to implement a uniform system to audit untested sexual assault evidence kits that have been released by the victim and were collected 30 days before the effective date of the sexual assault kit evidence submission act.
5. Develop guidelines and a plan to safeguard confidentiality of the information and limited disclosure.
6. Recommend sources of public and private funding to implement the plans developed under this subsection.
7. Recommend any changes in law or policy needed to support implementation of the plans developed under this subsection.
8. Submit a report on the plans developed under the Act to designated House and Senate committees and subcommittees, as well as to the House and Senate fiscal agencies.

Process of the Commission

The Commission met five times over the course of the one year to complete the plan, guidelines and recommendations included in this report.¹ During its first meeting the Commission elected co-chairs: Colonel Kriste Etue, director of the Michigan State Police, and Debi Cain, executive director of the Michigan Domestic and Sexual Violence Prevention and Treatment Board. The Commission created three working committees to prepare the initial draft of the plan and guidelines for the full Commission to consider. These working committees were chaired by Commission members and included criminal justice professionals, healthcare professionals and victim advocates from across Michigan. Committee members are listed on page 3 of this report.

The Committee to Draft a Plan for the Audit of Untested Sexual Assault Evidence Kits Collected Prior to March 1, 2015. Carol Isaacs, chief deputy attorney general, chaired this committee. It met three times and was charged with drafting a proposed plan addressing the requirements of 762.852(8)(d) of the Sexual Assault Evidence Kit Tracking and Reporting Act: “Develop guidelines and a plan to implement a uniform system to audit untested sexual assault evidence kits that have been released by the victim and were collected 30 days before the effective date of the sexual assault kit evidence submission act, 2014 PA 227, MCL 752.931 to 752.935.”

The Committee to Draft a Plan for the Audit of Ongoing Submission of Sexual Assault Evidence Kits. Terrance Jungel, executive director of the Michigan Sheriffs’ Association and Robert Stevenson, executive director of the Michigan Association of Chiefs of Police, co-chaired this committee. It met four times and was charged with drafting a proposed plan addressing the requirements of MCL 762.852(8)(b) of the Sexual Assault Evidence Kit Tracking and Reporting Act: “Develop guidelines and a plan to implement a uniform system to audit the proper submission of sexual assault evidence kits as mandated in the sexual assault kit evidence submission act [SAEKSA], 2014 PA 227, MCL 752.931 to 752.935.”

The Committee to Draft a Plan for a statewide Tracking System for Sexual Assault Evidence Kits with Electronic Access by Victims. Kimberly Hurst, executive director of Wayne County SAFE, and Senator Tonya Schuitmaker, co-chaired this committee. It met five times and was charged with drafting a proposed plan addressing the requirements of 762.852(8)(a) and (c) of the Sexual Assault Evidence Kit Tracking and Reporting Act: “Develop guidelines and a plan to implement a uniform statewide system to track the location, lab submission status, completion

¹ The Commission met on July 20, 2015, October 2, 2015, January 15, 2016, April 15, 2016, and June 17, 2016. The meetings were posted and open to the public. Meeting minutes can be found at http://www.michigan.gov/mdhhs/0,5885,7-339-73971_7119_7261-60468--,00.html.

of forensic testing, and storage of sexual assault evidence kits,” and “[d]evelop guidelines and a plan to implement a secure electronic access that allows a victim, or his or her designee, to access or receive information about the location, lab submission status, and storage of sexual assault evidence that was gathered from him or her, provided that the disclosure does not impede or compromise an ongoing investigation.”

GUIDELINES AND PLAN FOR AUDITING UNTESTED SEXUAL ASSAULT EVIDENCE KITS

The Sexual Assault Evidence Kit Tracking and Reporting Act charged the Commission with the responsibility to: “Develop guidelines and a plan to implement a uniform system to audit untested sexual assault evidence kits that have been released by the victim and were collected 30 days before the effective date of the sexual assault kit evidence submission act, 2014 PA 227, MCL 752.931 to 752.935.” MCL 762.852(8)(d).

The Act does not require the Commission to develop a plan for testing of these kits, and the Committee therefore has not developed a plan for testing. However, as described later in this report, the Michigan State Police is engaged in gathering these kits from across the state and submitting them to laboratories for testing.

Additionally, the Commission was not charged with developing, and has not developed, recommendations for best or promising practices with respect to the procedures for investigation or prosecution of cases that are generated from the testing of previously untested kits identified as a result of the audit of those kits.²

1. The following definitions should be used in planning and conducting the audit:

- An **audit** is an official examination, count, and verification of the previously untested sexual assault evidence kits in this state.
- An **untested kit** is
 - a kit collected from a sexual-assault victim on or before March 1, 2015; and
 - released to law enforcement by the victim, or collected by a medical examiner’s office³; and
 - never subjected to any forensic analysis.⁴

² There are resources that have been generated from previous projects around the country, including from Detroit, that reflect best or promising practices on these issues, and links to those resources are included in the appendices.

³ A sexual assault forensic examination and evidence collection by a medical examiner is part of a law enforcement investigation, is not for purposes of medical treatment, and so would not require a release in order for the kit to be transferred to law enforcement.

⁴ There likely are old kits in law enforcement possession in which the evidence previously was forensically analyzed for serology, serology was positive, but testing for DNA was not done at that time because there was no CODIS to enable comparison to other profiles. These kits are not considered to be “untested” under this definition and would not be counted as part of the audit. Including partially tested kits in the definition of “untested” is not consistent with the intent or literal meaning of the word “untested,” and would place an extraordinary and unjustified burden on law enforcement, which would have to examine every kit in its possession that has already been submitted to a lab for analysis to determine if the analysis was limited to serology or if it included DNA analysis.

By way of example, untested kits include, but are not limited to, those kits from cases where the perpetrator has confessed or been convicted of any crime without the kit being subjected to forensic analysis, cases in which no police report was filed or generated, and cases where no prosecution resulted from a law enforcement investigation, but a kit exists and has not been tested.

- For purpose of the audit of untested kits, a kit is considered to have been released when a victim has provided signed, written consent to giving his or her kit to a law enforcement entity after being informed of his or her legal options.

In light of the fact that practices for obtaining informed consent from sexual assault victims varied in the past, it is presumed for purposes of this audit only that a kit in law enforcement's possession at the time of the audit was released by the victim.

2. The following are places where untested kits could be located and which should be included in the audit of untested kits:

- All law-enforcement agencies within the state of Michigan. Tribal jurisdictions may participate in the audit and are encouraged to do so. The state shall work cooperatively with tribal jurisdictions to enable them to participate.
- Medical examiner offices.

Some participants in the Commission's working committee had experience with finding untested kits at medical examiners offices, which apparently were collected as part of a death investigation. Although this may happen rarely, the audit should make inquiry of medical examiner officers to ensure that untested kits in those facilities are included.

Although not part of its charge, the Commission points out that victim notification to families of homicide victims should be handled with the same sensitivity to trauma as with notification in cold cases to surviving victims of sexual assault, since family may not have known that their deceased family member had been sexually assaulted in the course of the homicide.

- Any healthcare provider to whom Michigan State Police has distributed kits in the preceding 10 years.
- Any sexual assault medical-forensic exam provider known to have regularly collected or performed kits.

3. The places where kits could be located, identified in the preceding paragraph, should be contacted and asked to provide a count of the number of untested kits that are at those locations.

- The request to healthcare providers should make clear that:
 - those providers are being asked to provide information ONLY about kits that they can determine from their records were released by the patients, and that they are NOT being asked to re-contact patients to request a release or to determine if a release was ever executed;
 - the providers should not open the kit;
 - if the providers confirm from their records that one or more kits in their possession were released, they should let the auditing entity know the number of those kits; and
 - if the providers cannot tell whether or not one or more kits were released by the patient(s), then those kits should not be included in the number count provided to the auditing entity.

4. The “count” of kits provided by law enforcement should be verified by the auditing agency.

THE COMMISSION'S PLAN FOR AUDITING UNTESTED KITS HAS ALREADY BEEN ACCOMPLISHED OR IS IN PROCESS THROUGH PARALLEL EFFORTS OF THE ATTORNEY GENERAL AND THE MICHIGAN STATE POLICE IN PARTNERSHIP WITH THE PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN

The Commission's guidelines and plans for auditing these untested sexual assault kits have already been accomplished or are currently in the process of being accomplished, thanks to the parallel work done on this issue by the Department of the Attorney General through a legislative appropriation and by the Michigan State Police through two federal grants awarded in 2015, the Bureau of Justice Assistance Sexual Assault Kit Initiative Grant and the District Attorney of New York Grant. These parallel efforts of the Attorney General, the Michigan State Police and the Prosecuting Attorneys Association of Michigan have been guided by the Commission's work, and have also helped to inform the Commission's guidelines and plans.

The Attorney General has conducted a count of untested kits collected before October 1, 2014, and in law enforcement possession. This count began in September 2015, and was conducted by the Attorney General working with the elected prosecutors and law enforcement in all Michigan counties, except Wayne County.⁵ Staff at the Attorney General's office followed up through extensive telephone contact and email correspondence with law enforcement agencies throughout the state to emphasize that all untested kits were to be included in this count, regardless of the reasons why the kits may not have previously been submitted for testing. At the end of January 2016, the Attorney General Bill Schuette announced that law enforcement had reported a total count of 1,819 untested kits in the state.

There is a slight difference between the kits included in the Attorney General's count and what is required to be covered in the plan and recommendations from this Commission. The Commission is required to plan for an audit that would cover kits older

⁵ Wayne County was excluded from this count because of the express requirements of the legislative appropriation to the Department of the Attorney General for this inventory effort. Wayne County already was in the process of doing its own audit and had already addressed the very large stockpile of untested kits from the City of Detroit Police Department.

than March 1, 2015, and that audit must include all of the state, including Wayne County. The statewide inventory being conducted by the Michigan State Police through its Bureau of Justice Assistance Grant covers what is required by the Commission's plan. The Michigan State Police and its grant partner, the Prosecuting Attorneys Association of Michigan, have requested that all law enforcement agencies in the state (including Wayne County) provide the number of, and identifying information for, all kits in law enforcement possession that are older than October 1, 2015. The Prosecuting Attorneys Association of Michigan and Michigan State Police will then be able to sort the information about these kits to provide a count of the number of kits older than March 1, 2015.

Michigan State Police and the Prosecuting Attorneys Association of Michigan also are auditing the number of untested kits at hospitals or other healthcare providers. As part of the inventory request to all law enforcement agencies, the Prosecuting Attorneys Association of Michigan has requested that law enforcement reach out to medical facilities in their jurisdictions that are known to collect sexual assault kit evidence and to take possession of any kits stored at those facilities for which the victim has signed a release. The Prosecuting Attorneys Association of Michigan has sent a separate letter to all healthcare providers that routinely request and receive kits from Michigan State Police for use in conducting sexual assault medical forensic exams. That letter asked those healthcare providers to complete a short inventory spreadsheet with the number of, and the relevant identifying information for, any kits in its possession that were collected before March 1, 2015, for which the patient/victim had signed a consent form releasing the kit to law enforcement.

The Prosecuting Attorneys Association of Michigan has also sent a letter to all medical examiners offices in the state, requesting that the medical examiners complete a similar spreadsheet for any kits in their possession that were collected before October 1, 2015.

The process of verifying the number of untested kits from law enforcement is being done through the Bureau of Justice Assistance Sexual Assault Kit Initiative grant. Grant-funded staff from the Prosecuting Attorneys Association of Michigan have already been meeting at central locations in jurisdictions that have untested kits, and are counting the kits, logging the kit numbers, collecting the kits and then having them delivered to the contracted accredited laboratories for testing, all in a manner that is consistent with and maintains chain of custody. This verification process will continue until the last of the untested kits are accounted for and delivered to the labs.

In light of these parallel efforts and the funding previously appropriated by the legislature and funding awarded by grant to the Michigan State Police, no additional funding is needed and no legislation is required to implement the Commission's guidelines and plan for the auditing of untested kits.⁶

⁶ Since the Commission is not charged with developing a plan for the testing of these kits, it is not making any recommendation about the amount of or source of funding that may be needed to implement testing.

GUIDELINES AND PLAN FOR UNIFORM STATEWIDE TRACKING SYSTEM AND FOR SECURE ELECTRONIC ACCESS BY VICTIMS

The Sexual Assault Evidence Kit Tracking and Reporting Act requires the Commission to:

1. Develop guidelines and a plan to implement a uniform statewide system to track the location, lab submission status, completion of forensic testing, and storage of sexual assault evidence kits; and
 2. Develop guidelines and a plan to implement a secure electronic access that allows a victim, or his or her designee, to access or receive information about the location, lab submission status and storage of sexual assault evidence that was gathered from him or her, provided that the disclosure does not impede or compromise an ongoing investigation.
- MCL 762.852(8)(a) and (c).

There are conditions tied to these requirements in the statute. First, access to any information collected about unreleased or unused sexual assault evidence kits shall only be disclosed to (1) specific entities selected and identified by the commission that will use the information only for policy or training purposes, and (2) sexual assault victims or their designees. Second, information collected from an unreleased sexual assault evidence kit shall not contain any information identifying the victim to whom the kit is associated.

In developing the guidelines and plan for a uniform statewide tracking system and victim access, the Commission identified the following purposes for the tracking system: (1) to prevent the re-occurrence of stockpiling of released but untested kits at law enforcement or other locations, (2) to provide participants within the criminal justice system, including sexual assault victims, the ability to determine the “real-time” location and lab submission status of these sexual assault kits, and (3) to allow the Michigan State Police to track unused kits in inventory at any particular healthcare facility.⁷

As of the time of this report, there are no electronic statewide tracking systems for sexual assault kits in use in any other state. Two potential tracking systems have been piloted in Michigan. One of those projects is being piloted by the Wayne County Prosecutor’s Office utilizing UPS technology to track kits collected by one healthcare provider for cases falling within the jurisdiction of the Detroit Police Department. The other project is being piloted by

⁷ Providing for tracking of unused kits will allow Michigan state Police to better control kit waste and, as needed, transfer unused kits from one facility that is not anticipated to use them to another facility that needs additional kits.

the Michigan State Police with several law enforcement agencies and healthcare providers in both Washtenaw County and the City of Grand Rapids, utilizing a software system developed by STACS-DNA, a current vendor for the Michigan State Police Forensic Science Division. The Commission's report and plan for a statewide tracking system have been informed by those pilot projects.

Tracking System Recommendations

- 1. The tracking system should be electronic and entry of information into the system should be web-based.**
- 2. The tracking system should be administered by a state entity. It is recommended that the Michigan State Police be the administering agency.**
 - The administering agency would have the responsibility for web-hosting and software maintenance and update costs. It is estimated that these costs would be approximately \$500,000 to \$600,000 annually.
 - The administering agency would have the responsibility for authorizing user access to the system.
- 3. At minimum, the tracking system should include these features:**
 - Secure user access through unique user ID and unique password for each user.
 - Identification and tracking of kits via the bar code number (this is also the kit number) pre-labeled on the kit.
 - Ability for user to enter kit by either scanning kit bar code or manually entering kit number into system.
 - Ability to generate a unique password for each victim to use to track their kit and, when automatic generation of password is not possible at the healthcare provider location, the ability to generate automatic text (to mobile phone number designated by victim) sending link and instructions for accessing the system and creating their unique password. See Recommendation #6.
 - Fields that provide the following information for tracking and reporting purposes:
 - Date kit collected by healthcare provider;
 - Whether kit has been released by victim to law enforcement;
 - Date on which healthcare provider is no longer required to store the kit;
 - This date would be, at minimum, one year after collection, but the system should be configurable so that a healthcare provider can set the storage date for longer than one year if it chooses to do so.

- Date healthcare provider notifies law enforcement that kit has been released by victim to law enforcement;
- Date law enforcement takes possession of kit from healthcare provider or from another law enforcement agency;
- Date law enforcement notifies law enforcement in different jurisdiction that it has a kit that belongs in that different jurisdiction;
- Date law enforcement delivers kit to accredited laboratory for testing;
- Date laboratory completes forensic testing of the kit; and
- Date on which law enforcement retrieves kit for storage after completion of forensic testing.
- Fields that require entry of the following information:
 - Law enforcement complaint number;
 - Laboratory number.
- A field that allows, but does not require, law enforcement to enter its own unique property identifier.
- Time, date and user identity tracking whenever a user accesses system.
- Automatic notifications.
 - To law enforcement from healthcare provider when kit has been released by victim;
 - To healthcare provider storing unreleased kits, when the one-year (or longer) minimum storage date is approaching.
- A “hard stop” in the healthcare provider initial entry section, so that if a victim has not signed a consent to release the kit to law enforcement, the healthcare provider cannot click to automatically notify law enforcement that there is a kit to be picked up. This will help prevent accidental release of kits to law enforcement, when victims have not signed a consent to release. This “hard stop” would be removed in the event that the victim later releases the kit to law enforcement (see paragraphs 8 and 9 of this section).
- An automatic “hold” on victim access to tracking the location or lab submission status of the kit for a period of 48 hours after the kit has been released to law enforcement. This will provide law enforcement with an opportunity to make an initial determination as to whether victim access to kit status would impede or compromise an ongoing investigation and should continue to be withheld. If no action is taken by law enforcement to continue the hold, the hold will stop at the end of that initial 48-hour period.
- Ability for law enforcement to proactively “flag” a kit so that information about the status of that kit is not accessible to the victim when law enforcement has determined that disclosure of that information to the victim will impede or compromise an ongoing investigation. Law enforcement’s decision to withhold victim access under these

circumstances should be subject to timely review and either approval or change by the prosecutor in that jurisdiction.

- The generation of an advisory note that pops up in the system when victims log in and whose access to information about the location of their kits has been temporarily blocked by law enforcement, informing them of the block, the reasons for the block, and instructions for how to contact the investigating law enforcement agency for more information about the status of their kits.
- The ability to generate exception reports and for alerts to be automatically sent to the responsible agencies if timelines required by the Sexual Assault Kit Evidence Submission Act are not met for any particular kit.
- The ability for victims to securely verify their account and obtain a new password in the event that they lose their password.
- Ability for the administering agency to restrict user access to information in the system based on different permission levels (e.g., Hospital A has access to track and generate reports only on kits it used as part of a sexual assault medical forensic examination or that it has in inventory, Law Enforcement Agency X has access to track and generate reports on kits it has been notified have been released to it or which it has taken possession of or delivered, state auditing agency has access to all information in statewide system, etc.).
- A user-friendly reporting function that allows users with report level permissions to easily generate reports that reflect their agency or organization compliance with the Sexual Assault Kit Evidence Submission Act.

4. Entry of data into the system should be concurrent with kit collection, retrieval and delivery, when possible.

- The tracking system should have the ability to accommodate concurrent entry through a variety of mechanisms; for example, as web entry through computer or smartphone, or through scanning devices.
- If concurrent entry is not possible due to lack of equipment or technology at a healthcare facility or law enforcement agency to scan or to access the web-based portal, then entry should be made by the healthcare provider within 24 hours of kit collection and by law enforcement within 48 hours of retrieval of a kit.

If the purpose of the tracking system is to ensure that stockpiling of released kits does not occur again in this state, this can be accomplished without strict concurrent entry, provided that entry of kit information is done within a designated time after collection or retrieval of a kit. However, if the purpose of a statewide tracking system is to be able to determine the exact location of a kit at any point in time, then concurrent entry would be necessary to accomplish this. In light of the fact that information obtained through the Michigan state Police pilot tracking project indicates that strict concurrent entry will be difficult or impossible in some communities – both at healthcare providers and at law enforcement agencies – concurrent entry is preferred but is not required at this point. For example, in one county, any one deputy among 80-plus deputies might be assigned the responsibility on any given day to pick up kits from the local hospitals, and in order to ensure concurrent entry of the retrieval of those kits, there would need to be equipment on site at those hospitals that the deputy could use to log-in and enter the information about the kits being retrieved. In some communities, the healthcare provider performing the examination and collecting the kit may not have bedside access to a computer or – in the case of on-call response from a sexual assault nurse examiner program – may not even have access to the internet at the hospital where the examination is performed.

5. Persons/entities who should have access to the tracking system (“users”) and for what purpose. These users include those from tribes within Michigan.

- To enter data:
 - Healthcare;
 - Law enforcement;
 - Laboratory; and
 - Kit distributor.
- To track kits:
 - Healthcare – of kits it collected or its own inventory, this includes released and non-released kits;
 - Law enforcement – of released kits that it has been notified of, retrieved, delivered, or stored;
 - Prosecutors – of released kits that law enforcement has been notified of, retrieved, delivered, or stored in that prosecutor’s county;
 - Michigan State Police Forensic Science Division – to track status of all released kits and to track inventory of all unused kits;
 - Michigan State Police as administering agency – to assist in troubleshooting; and
 - Victims – to receive information about the location, lab submission status, and storage of sexual assault evidence that was gathered from him or her.
- To generate reports for policy and training purposes and/or to monitor agency compliance with Sexual Assault Kit Evidence Submission Act.
 - The Michigan Domestic and Sexual Violence Prevention and Treatment Board (as the agency responsible for auditing ongoing submission of kits) should have access to local and statewide information in the system about released kits. The annual audit reports generated by the auditing agency may be distributed by that agency to the public.
 - The Michigan State Police, as administering agency, for policy and training purposes, for released and unreleased kits.
 - The Michigan Domestic and Sexual Violence Prevention and Treatment Board, for policy and training purposes, for released and unreleased kits. The Board also may distribute that information to those entities using the system, and to the legislature, governor’s office, and other state entities, as needed for policy and training purposes. As well, the Board may prepare an annual report on the number of unreleased kits using only state-wide aggregated data.

- 6. Information about victims' access to track their kits, the ID and unique password to provide them access, and who to contact for help in accessing the system, must be provided to victims (orally and in writing) at the time that the medical examination and kit evidence collection is completed.** The tracking system should have capacity to generate a unique password for that victim that is connected to the kit ID number. If the healthcare provider conducting the exam does not have the equipment or technology to allow immediate access to the tracking system for kit entry and to generate the unique password for the victim, then there must be alternative ways of providing the victim with their ID and password, including the option of the tracking system automatically sending a text with a link and instructions to a mobile phone number provided by the victim for that purpose.

It is imperative that victims be given information at the time of collection about their ability to track their kits and the information that would allow them to do so. SANE provider and law enforcement experience has demonstrated that the healthcare provider and law enforcement may never have contact with a victim after the exam, even if the kit has been released by the victim to law enforcement. However, care must be taken not to overwhelm victims with information and choices at the time of the sexual assault medical forensic examination. This is a very traumatic time and experience for victims, which can make it difficult for them to make fully informed decisions about their options and to retain information and materials provided to them at that time. As well, if the healthcare provider does not have immediate access to a computer and the internet to enter the kit concurrently into the tracking system, then there would be no ability to have the system generate the victim's unique password at that time.

It should be noted that while smartphones and wireless technology seem pervasive, not all victims will have access to technology that enables them to obtain electronic access to the status of their kits. Victims in rural areas or in Indian country, and/or who have limited economic resources may be less likely to be able to take advantage of electronic access if not provided assistance or resources to do so.

- 7. Confidentiality of victim information in the tracking system should be protected by ensuring that personal identifying information about the victim, such as name, Social Security Number, birth date, address, etc., is not entered into the system and is not allowed to be entered into the system by healthcare providers, law enforcement or laboratories.**

- 8. The tracking system should be capable of allowing victims to electronically authorize the release of their kits to law enforcement**, but that capacity shall not be activated in the system until subject matter experts (including representatives from victim advocacy, healthcare providers, law enforcement) have developed a plan that addresses and incorporates the following:
- A method for verifying the identity of the victim authorizing release, that safeguards private victim information which may be needed as part of that verification process.
 - A way to give the victim sufficient information to assure informed consent to the release.
 - Creating automatic notification of the release to (1) a responsible person at the healthcare provider location, who can arrange for the kit to be located and made available for law enforcement retrieval, and (2) a responsible person at law enforcement so that law enforcement can retrieve the kit within the timelines required by statute.
 - Assuring that healthcare providers will honor an electronic release.
 - Creating a method for verifying the authorization of a victim that is compliant with state and federal privacy and security rules and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) and its successor regulations.
- 9. The tracking system should provide victims with unreleased kits the option to have a consent form, authorizing release of the kit, mailed to them at an address designated by them, for them to sign and mail to the healthcare provider storing their kit.**
- 10. There must be a “help desk” function included with the tracking system and provided by the vendor of that system, that is available 24 hours a day, 365 days a year, via online chat and phone (at user option) to provide assistance and help to all users of the system, including victims.** While this help desk is not intended to be a crisis line, victims could be in crisis at the point in time that they contact the help desk. Accordingly, any contract for the acquisition and maintenance of the tracking system should require that the persons providing that help function have sufficient training and information to enable them not only to assist victims with access to the tracking system but also to provide a helpful and appropriate referral to victims in crisis.
- 11. The vendor must provide a training package as part of its contract, which could consist of online tutorials, webinars, in-person training sessions and/or any other method designed to teach users of the tracking system on how to use the tracking system.**

12. The tracking system is not designed nor intended to be a substitute for chain of custody for evidentiary purposes.

13. There must be a comprehensive, fully funded, educational effort to inform all users, including tribal users and potential federal law enforcement users, about the existence of the tracking system, the requirements of the Sexual Assault Kit Evidence Submission Act, and the requirements to use the statewide tracking system.

This training could be accomplished through:

- Online webinars and tutorials for law enforcement prepared and presented by the Michigan Commission on Law Enforcement Standards (provided sufficient funding is appropriated for this purpose).
- Regional in-service half-day trainings for law enforcement prepared and presented by the Michigan Commission on Law Enforcement Standards (provided sufficient funding is appropriated for this purpose).
- Online webinars and tutorials for healthcare providers prepared and sponsored by the Michigan Domestic and Sexual Violence Prevention and Treatment Board in partnership and collaboration with the Michigan Health and Hospital Association (provided sufficient funding is appropriated for this purpose).
- A statewide training for prosecutors, law enforcement leadership and officers, sponsored or co-sponsored by one or more of the following: the Michigan Association of Chiefs of Police, the Michigan Sheriffs' Association, the Michigan State Police, the Michigan Commission on Law Enforcement Standards, the Prosecuting Attorneys Association of Michigan, and the Michigan Domestic & Sexual Violence Prevention & Treatment Board (provided sufficient funding is appropriated for this purpose).

14. The sexual assault medical forensic evidence kit should be updated to include:

- Prominent notification on the outside of the box and inside the box reminding the healthcare provider of the need to enter the kit into the tracking system, and a guide to doing so.
- Changes to the forms and victim handbook that may be needed or desired to enhance a victim's ability to understand their rights to access the tracking system and how to do so.

15. All healthcare providers performing sexual assault medical forensic exams in Michigan, all state and local law enforcement and all accredited labs to whom kits are delivered for forensic analysis, shall be required to enter the kit information into the uniform statewide tracking system. Tribal healthcare providers and law enforcement, and Michigan and federal law enforcement investigating sexual assaults within the state shall be allowed to use the system to track kits at their option, and are encouraged to do so. The state shall work cooperatively with tribal jurisdictions and federal law enforcement to enable them to participate in the tracking system.

The Commission has not been charged with the responsibility to select or recommend a particular software or vendor for this uniform statewide tracking system. There should be a Request for Proposals developed that contains the requirements specified by the Commission in this report. The co-chairs of the Commission will form a committee to assist in the development of that proposal. The RFP process should be expedited as much as possible to take advantage of federal grant dollars available for a limited time to pay for the administration of a tracking system.

GUIDELINES AND PLAN FOR UNIFORM SYSTEM TO AUDIT THE PROPER SUBMISSION OF SEXUAL ASSAULT EVIDENCE KITS UNDER THE SEXUAL ASSAULT EVIDENCE KIT SUBMISSION ACT

The Sexual Assault Kit Evidence Submission Act required the Commission to “Develop guidelines and a plan to implement a uniform system to audit the proper submission of sexual assault evidence kits as mandated in the Sexual Assault Kit Evidence Submission Act 2014 PA 227, MCL 752.931 to 752.935.” MCL 762.962(8)(b).

- 1. The state agency responsible for auditing the ongoing submission of sexual assault evidence kits (“kits”) should be the Michigan Domestic and Sexual Violence Prevention and Treatment Board, situated within the Michigan Department of Health and Human Services.**

The Commission identified several other possible state agencies or departments in which this responsibility potentially could be housed, including the following:

- The Michigan State Police.
- The Michigan Commission on Law Enforcement Standards.
- The Michigan Crime Victim Services Commission.
- The Prosecuting Attorneys Association of Michigan.
- The Michigan Sheriffs’ Association or the Michigan Association of Chiefs of Police, or both jointly.
- A new entity created through legislation for this purpose.

In order to be effective, the Commission determined that the auditing entity should:

- Be cloaked with the authority of the state.
- Be an entity that could command the attention of the agencies being audited (hospitals are included in the agencies to be audited).
- Have the capability of performing the audit without too much structural or organizational change or burden.
- Not have, or be perceived to have, a conflict of interest.
- Be able to implement sanctions and enforce compliance with the Sexual Assault Kit Evidence Submission Act, in the event that sanctions for non-compliance are adopted in the future.

- 2. All organizations that are covered by the Sexual Assault Kit Evidence Submission Act should be included in the audit.** These are: (1) healthcare providers performing the sexual assault medical forensic examinations with collection of a kit; (2) all law enforcement agencies within the state of Michigan, and (3) the accredited laboratories to whom law enforcement directly submits kits for testing and analysis.
- 3. Tribal law enforcement and federal law enforcement investigating sexual assaults within the state may participate in the audit and are encouraged to do so.** The state shall work cooperatively with tribal jurisdictions and federal law enforcement to enable them to participate.
- 4. The auditing agency will generate an audit annually, using the information in the statewide electronic tracking system that is adopted by the state as part of the Commission recommendations, following the process described below.**
 - Once a year the auditing agency will access the electronic tracking system and generate a draft report for each healthcare provider, law enforcement agency, and laboratory. This draft report will reflect the:
 - Number of kits that were collected from healthcare providers and released to law enforcement that met the 24 hour notification deadline specified in the Sexual Assault Kit Evidence Submission Act and the number of kits that did not meet the deadline;
 - Number of released kits that were retrieved from healthcare providers (or from another law enforcement agency) by each law enforcement agency within the 14 day period specified in the Sexual Assault Kit Evidence Submission Act, and the number of released kits that were not retrieved within that 14 day period;
 - Number of kits that were delivered to an accredited laboratory within the 14 day period specified and the number of kits that were not delivered within that 14 day period;
 - Number of kits submitted to each accredited laboratory in which analysis was completed within the 90 day period recommended in the Sexual Assault Kit Evidence Submission Act and the number of kits in which analysis was not completed within that recommended time period;
 - Number of kits retrieved by law enforcement after analysis; and
 - Physical location as of the date of the draft report of all released kits collected by healthcare in that year.

- The auditing agency will send the draft report specific to each entity to the designated person from that entity (for law enforcement this should be the chief, sheriff or post commander).
 - The tracking system adopted by the state should be configured in a way that would allow the Michigan Commission on Law Enforcement Standards to provide that system updated name and contact information when these commanding officers change at any entity.
- Each audited entity must respond to the draft report within 30 days by certifying that the data reflected in that report is accurate, or that the data is not accurate, and provide an explanation for the discrepancy, including what the entity believes is the accurate data.
- The auditing agency will provide a field in the draft report where each entity can briefly describe any challenges or barriers they have experienced in complying with the Sexual Assault Kit Evidence Submission Act.
- The auditing agency will compile the information from the draft reports and the responses from each entity into a final annual report which will be submitted to the legislature, the Governor's office, [and to the kit Tracking and Reporting Commission (unless the Commission has been abolished)], and will be published online and made available to the public.
- The auditing agency will compile a county-by-county report of the data and responses and distribute to each county prosecutor the data for that county at the time of or before submittal and publication of the final annual report.
- These reports from the auditing entity will not contain an evaluation or opinion about any specific entity's or jurisdiction's level of compliance with Sexual Assault Kit Evidence Submission Act.

5. There should be no sanctions or enforcement mechanisms created *at this time* for entities that appear to be out of compliance with the Sexual Assault Kit Evidence Submission Act. The issue of sanctions or enforcement should be reviewed by the Commission (or another appropriate entity) two years after implementation of the statewide electronic tracking system, at which point there will be sufficient data to evaluate whether sanctions are needed in order to ensure timely submission of kits.

The Commission believes that healthcare providers and law enforcement agencies should be given sufficient time to learn how to use the tracking system and develop their own protocols for ensuring compliance with the Sexual Assault Kit Evidence Submission Act. Further, the generation of an annual public report that reflects each entity's compliance with the Sexual Assault Kit Evidence Submission Act may in and of itself be sufficient

incentive for the participating agencies to self-monitor and seek to be in compliance, thus obviating the need for sanctions for non-compliance.

- 6. Those entities participating in the statewide electronic tracking system can conduct a “self-audit” at any time by accessing the electronic tracking system and viewing or printing reports of kits collected or retrieved/delivered/received by it.**
- 7. County prosecutors should be provided access to the system to review and monitor data on all released kits collected by healthcare providers and/or retrieved or delivered by law enforcement in that prosecutor’s county.**
- 8. All agencies that are encompassed by the Sexual Assault Kit Evidence Submission Act shall be required to use the uniform statewide tracking system implemented by the state.**

The only way to ensure compliance with the Sexual Assault Kit Evidence Submission Act is to require use of the statewide tracking system. Significantly, the state of Illinois previously mandated submission of kits in a manner similar to Michigan’s Sexual Assault Kit Evidence Submission Act. The Illinois mandate initially resulted in an increase in the number of kits being submitted to laboratories from law enforcement. However, over time the number of kits submitted to labs by Illinois law enforcement dropped back to the original threshold numbers. Some believe that this drop in submitted kits reflects a return to the practice of not submitting all released kits for testing. Since Illinois did not have, nor mandate the use of, a statewide tracking system, there was no way for that state to audit whether agencies were submitting all kits collected from and released by victims.

Further, mandating use of the tracking system not only will allow the state auditing agency to monitor compliance, it also will provide each healthcare provider and law enforcement agency with the ability to self-monitor and better manage actual practice at that agency.

RECOMMENDATIONS FOR CHANGES TO LAW OR POLICY TO SUPPORT IMPLEMENTATION OF THE GUIDELINES AND PLANS DEVELOPED BY THE COMMISSION

1. The Commission recommends legislation that mandates use of the uniform statewide tracking system, and entry of data into that system within the timelines set out in the Commission's guidelines and plan, by:
 - Healthcare providers who perform sexual assault medical forensic examinations and collection of evidence from the administration of a sexual assault evidence kit under section 21527 of the public health code, 1978 PA 368, MCL 333.21527.
 - All state and local law enforcement agencies.
 - All accredited laboratories responsible for forensic analysis of sexual assault kit evidence submitted to those laboratories from a Michigan law enforcement agency.

This legislation should expressly permit and encourage tribal agencies and federal law enforcement agencies investigating sexual assaults within the state to use the tracking system if they choose to do so. The state shall work cooperatively with tribal jurisdictions and federal law enforcement to enable them to participate.

The Commission may recommend additional legislation in the future after implementation of the tracking system. For example, as noted earlier in this report, the Commission will be reviewing and evaluating whether or not sanctions are needed for non-compliance with the use of the tracking system or with the Sexual Assault Kit Evidence Submission Act.

FUNDING RECOMMENDATIONS

The Sexual Assault Evidence Kit Tracking and Reporting Act requires the Commission to “[r]ecommend sources of public or private funding to implement the plans developed under the act.”

1. As noted earlier in this report, no funding is needed to implement a uniform plan to audit the untested sexual assault kits released by the victim and collected 30 days before the effective date of the Sexual Assault Kit Evidence Submission Act. That plan is being implemented through funds previously appropriated by the legislature to the Department of the Attorney General and through nearly \$2 million in grant funds awarded by the federal Bureau of Justice Assistance to the Michigan State Police.
2. The Commission recommends that funds be appropriated for the acquisition of a statewide electronic tracking system which meets the guidelines established by the Commission.
3. The Commission recommends that after acquisition of the statewide tracking system, funds be appropriated annually for the costs of web-hosting, maintaining and supporting that system at the administrating agency.
4. The Commission recommends that there be an annual appropriation to the Michigan Domestic and Sexual Violence Prevention and Treatment Board in the Department of Health and Human Services for the cost of contracting with a person or entity to conduct the annual audit of the proper submission of sexual assault evidence kits pursuant to the Sexual Assault Kit Evidence Submission Act.
5. The Commission recommends that there be an appropriation of funds to the Michigan Domestic and Sexual Violence Prevention and Treatment Board in the Department of Health and Human Services to plan, prepare and implement training for healthcare providers on the existence of the tracking system, the requirement to use that system, and the requirements of the Sexual Assault Kit Evidence Submission Act.
6. The Commission recommends that there be an appropriation of funds to the Michigan State Police to plan, prepare and implement one statewide training for prosecutors, law enforcement leadership and officers on the existence of the tracking system, the requirement to use that system and the requirements of the Sexual Assault Kit Evidence Submission Act.

7. The Commission recommends that there be an annual appropriation of funds to the Michigan Commission on Law Enforcement Standards to plan, prepare and implement online webinars and/or a series of regional in-service half-day trainings for law enforcement on the existence of the tracking system, the requirement to use that system and how to use that system, and the requirements of the Sexual Assault Kit Evidence Submission Act.

ISSUES THAT ARE OUTSIDE THE MANDATE OF THE COMMISSION BUT WHICH THE COMMISSION HAS INCLUDED IN ITS RECOMMENDATIONS FOR FURTHER CONSIDERATION

In the course of its work, the Commission identified several issues that are outside the scope of the statutory mandates but which the Commission believes should be considered by it or others at a later time.

Issues for future consideration:

1. Medical examiners conduct sexual assault forensic examinations as part of some death investigations, but those kits are not covered by the Sexual Assault Kit Evidence Submission Act and so are not required to be picked up by law enforcement or submitted to an accredited laboratory within any particular time period. Accordingly, the Sexual Assault Kit Evidence Submission Act might need to be amended to make clear that these kits are included in the notification and time deadlines provided for in that Act. Whether this amendment is needed will depend on the number of untested kits, if any, that are disclosed by medical examiners through the inventory being conducted by Michigan State Police and Prosecuting Attorneys Association of Michigan.
2. Storage of unreleased kits:
 - Consider regulating where and how a healthcare provider should store kits that have been collected but not released to law enforcement.
 - Consider creating a state entity that stores unreleased kits after expiration of the minimum one-year period for storage by healthcare providers.
3. Consider including modules in the tracking system in that would track when kits are destroyed, and by whom (note that healthcare providers and law enforcement have differing authority/ability to destroy kits under different circumstances).
4. Consider having the tracking system provide the capacity to enter the results of forensic analysis (whether a DNA profile was able to be developed, whether the profile has been entered into CODIS, whether there is a match to that profile with another profile in CODIS) and,
 - Including a module that allows victims to access this information (information which is required to be provided by the Sexual Assault Victims Access to Justice Act) and
 - Providing healthcare providers with access to this information for kits that they collected.

APPENDICES

SEXUAL ASSAULT EVIDENCE KIT TRACKING AND REPORTING
Act 318 of 2014

AN ACT to create the sexual assault evidence kit tracking and reporting act; to require the tracking and reporting of sexual assault evidence kit information; to create the sexual assault evidence kit tracking and reporting commission; to prescribe the powers and duties of the sexual assault evidence kit tracking and reporting commission; to create a database of information to track and report sexual assault evidence kit information; to make appropriations for various state departments and agencies for the fiscal year ending September 30, 2015, and every subsequent fiscal year, and to provide for the expenditure of the appropriations; and to prescribe the powers and duties of certain state departments and officials.

History: 2014, Act 318, Eff. Jan. 1, 2015.

The People of the State of Michigan enact:

752.961 Definitions.

Sec. 1. As used in this act:

(a) "Commission" means the sexual assault evidence kit tracking and reporting commission created in section 2.

(b) "Michigan domestic and sexual violence prevention and treatment board" means the Michigan domestic and sexual violence prevention and treatment board created under EO 2012-17.

(c) "Sexual assault evidence kit" means that term as defined in section 21527 of the public health code, 1978 PA 368, MCL 333.21527.

History: 2014, Act 318, Eff. Jan. 1, 2015.

752.962 Sexual assault evidence kit tracking and reporting commission; creation; membership; appointment; vacancy; meetings; election of chairperson and officers; quorum; business conducted at public meeting; writing subject to freedom of information act; duties after initial meeting; implementation of plans; appropriation; abolishment of commission.

Sec. 2. (1) The sexual assault evidence kit tracking and reporting commission is created within the Michigan domestic and sexual violence prevention and treatment board. The commission shall consist of the following members:

(a) The director of the department of state police or his or her designated representative from within the department of state police.

(b) The attorney general or his or her designated representative from within the department of the attorney general.

(c) The president of the prosecuting attorneys association of Michigan or his or her representative.

(d) The president of the Michigan association of chiefs of police or his or her representative.

(e) The president of the Michigan sheriff's association or his or her representative.

(f) The executive director of the Michigan domestic and sexual violence prevention and treatment board or his or her representative.

(g) The executive director of the Michigan coalition to end domestic and sexual violence or his or her representative.

(h) The president of the Michigan health and hospital association or his or her representative.

(i) A representative appointed by the governor from the executive office of the governor.

(j) The president of the Michigan chapter of the international association of forensic nurses or his or her representative.

(k) The chairperson of the Michigan crime victim services commission described in section 2 of 1976 PA 223, MCL 18.352, or his or her representative.

(l) One individual appointed by the senate majority leader who is a state senator from the majority party within the state senate.

(m) One individual appointed by the senate minority leader who is a state senator from the minority party within the state senate.

(n) One individual appointed by the speaker of the house of representatives who is a state representative from the majority party within the state house of representatives.

(o) One individual appointed by the minority leader of the house of representatives who is a state representative from the minority party within the state house of representatives.

(2) The members first appointed to the commission under subsection (1)(i) and (l) to (o) shall be appointed

within 90 days after the effective date of this act.

(3) If a vacancy occurs on the commission, the appropriate entity shall make an appointment in the same manner as the original appointment.

(4) The first meeting of the commission shall be called by the director of the department of state police or his or her designated representative or the executive director of the Michigan domestic and sexual violence prevention and treatment board no later than 30 days after all of the initial members of the commission have been appointed under subsection (1)(i) and (l) to (o). At the first meeting, the commission shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the commission shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 7 or more members until the requirements of subsection (8) are met. After the requirements of subsection (8) are met, the commission shall meet as often as required to carry out the requirements of subsection (11).

(5) A majority of the members of the commission constitute a quorum for the transaction of business at a meeting of the commission. A majority of the members present and serving are required for official action of the commission.

(6) The business that the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(7) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(8) The commission shall do all of the following no later than 365 days after its initial meeting:

(a) Develop guidelines and a plan to implement a uniform statewide system to track the location, lab submission status, completion of forensic testing, and storage of sexual assault evidence kits. However, access to any information collected through the statewide system created under this act of unreleased or unused sexual assault evidence kits shall only be disclosed to specific entities selected and identified by the commission that will use the information only for policy or training purposes and to sexual assault victims or their designees as described in subdivision (c). Information collected from an unreleased sexual assault evidence kit shall not contain any information identifying the victim to whom the kit is associated.

(b) Develop guidelines and a plan to implement a uniform system to audit the proper submission of sexual assault evidence kits as mandated in the sexual assault kit evidence submission act, 2014 PA 227, MCL 752.931 to 752.935.

(c) Develop guidelines and a plan to implement a secure electronic access that allows a victim, or his or her designee, to access or receive information about the location, lab submission status, and storage of sexual assault evidence that was gathered from him or her, provided that the disclosure does not impede or compromise an ongoing investigation.

(d) Develop guidelines and a plan to implement a uniform system to audit untested sexual assault evidence kits that have been released by the victim and were collected 30 days before the effective date of the sexual assault kit evidence submission act, 2014 PA 227, MCL 752.931 to 752.935.

(e) Develop guidelines and a plan to safeguard confidentiality of the information and limited disclosure.

(f) Recommend sources of public and private funding to implement the plans developed under this subsection.

(g) Recommend any changes to law or policy needed to support implementation of the plans developed under this subsection.

(h) Submit a report on the plans developed under this subsection to all of the following:

(i) The standing committees of the senate and house of representatives with jurisdiction over issues pertaining to the prosecution of criminal sexual conduct.

(ii) The senate and house of representatives appropriations subcommittees on the departments of state police and the attorney general.

(iii) The senate and house fiscal agencies.

(9) Subject to appropriation of sufficient funding, the commission shall oversee implementation of the plans developed under subsection (8).

(10) There is appropriated \$25,000.00 for the department of human services for the fiscal year ending September 30, 2015 and each fiscal year after that. The funds appropriated under this subsection shall be used only to implement and carry out the purposes of this act.

(11) The commission shall be abolished as follows:

(a) If funds are not appropriated to implement the plan developed under subsection (8), the commission shall be abolished 2 years after the date on which the report described in subsection (8)(h) was submitted.

(b) If funds are appropriated to implement the plan developed under subsection (8), the commission shall

be abolished upon the final implementation of the plan.

History: 2014, Act 318, Eff. Jan. 1, 2015.

SEXUAL ASSAULT KIT EVIDENCE SUBMISSION ACT
Act 227 of 2014

AN ACT to create the sexual assault kit evidence submission act; to provide for the collection of sexual assault kit evidence; to prescribe the powers and duties of certain state and local government departments and agencies; to establish certain procedures regarding the collection, handling, and disposition of sexual assault kit evidence; and to prohibit the exclusion of sexual assault kit evidence under certain circumstances.

History: 2014, Act 227, Eff. Mar. 31, 2015.

The People of the State of Michigan enact:

752.931 Short title.

Sec. 1. This act shall be known and may be cited as the "sexual assault kit evidence submission act".

History: 2014, Act 227, Eff. Mar. 31, 2015.

752.932 Definitions.

Sec. 2. As used in this act:

(a) "Accredited laboratory" means a DNA laboratory that has received formal recognition that it meets or exceeds a list of standards, including the FBI director's quality assurance standards, to perform specific tests, established by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic community in accordance with the provisions of the federal DNA identification act, 42 USC 14132, or subsequent laws.

(b) "Analyzed" means evaluating items for the presence of a body fluid, cellular material, or DNA followed by the testing of suitable items at forensic DNA regions for comparison purposes.

(c) "Department" means the department of state police, including its forensic science division.

(d) "Health care facility" includes a hospital, clinic, or urgent care center that is regulated under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, and any other facility that is authorized to provide sexual assault medical forensic exams under that act.

(e) "Law enforcement agency" means the local, county, or state law enforcement agency with the primary responsibility for investigating an alleged sexual assault offense case and includes the employees of that agency.

(f) "Sexual assault kit evidence" means evidence collected from the administration of a sexual assault evidence kit under section 21527 of the public health code, 1978 PA 368, MCL 333.21527.

(g) "Sexual assault evidence kit" means that term as defined in section 21527 of the public health code, 1978 PA 368, MCL 333.21527.

(h) "Sexual assault offense" means a violation or attempted violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g.

(i) "Victim" means, for the purposes of making communications and receiving notices under this act, an individual who was subjected to a sexual assault offense.

History: 2014, Act 227, Eff. Mar. 31, 2015.

752.933 Release of sexual assault kit evidence; consent; notice to law enforcement agency; storage policy.

Sec. 3. (1) A health care facility that has obtained written consent to release sexual assault kit evidence shall notify the investigating law enforcement agency, if known, or the law enforcement agency having jurisdiction in that portion of the local unit of government in which the medical facility is located of that fact within 24 hours after obtaining that consent.

(2) A health care facility that has not obtained written consent to release any sexual assault kit evidence shall inform the individual from whom sexual assault kit evidence was obtained of its sexual assault kit evidence storage policy. The information provided under this subsection shall include a statement of the period for which that evidence will be stored before it is destroyed and how the individual can have the evidence released to the investigating law enforcement agency at a later date. Any sexual assault kit evidence that is not released to a law enforcement agency under this section shall be stored for a minimum of 1 year before it is destroyed.

History: 2014, Act 227, Eff. Mar. 31, 2015.

752.934 Notice of release of sexual assault kit evidence; possession; assignment of criminal complaint number; submission to laboratory or department; analysis; uploading of DNA

profiles to databases; failure to comply with requirements of act.

Sec. 4. (1) A law enforcement agency that receives notice under section 3 that sexual assault kit evidence has been released to that law enforcement agency shall take possession of the sexual assault kit evidence from the health care facility within 14 days after receiving that notice.

(2) If a law enforcement agency described in subsection (1) determines that the alleged sexual assault occurred within the jurisdiction of another law enforcement agency and that it does not otherwise have jurisdiction over that assault, that law enforcement agency shall notify the other law enforcement agency of that fact within 14 days after receiving the kit from the health care facility that collected the sexual assault kit evidence.

(3) A law enforcement agency that receives notice under subsection (2) shall take possession of the sexual assault kit evidence from the other law enforcement agency within 14 days after receiving that notice.

(4) The investigating law enforcement agency that takes possession of any sexual assault kit evidence shall assign a criminal complaint number to that evidence in the manner required by that agency and shall submit that evidence to the department or another accredited laboratory for analysis within 14 days after that law enforcement agency takes possession of that evidence under this section. Sexual assault kit evidence that was received by a law enforcement agency within 30 days before the effective date of this act shall also be submitted to the department or other accredited laboratory as provided in this section.

(5) Each submission of sexual assault kit evidence for analysis under this act shall be accompanied by the criminal complaint number required under subsection (4).

(6) All sexual assault kit evidence submitted to the department or an accredited laboratory on or after the effective date of this act shall be analyzed within 90 days after all of the necessary evidence is received by the department or other accredited laboratory, provided that sufficient staffing and resources are available to do so.

(7) The DNA profiles of all sexual assault kit evidence analyzed under this section on or after the effective date of this act shall be uploaded only into those databases at the state and national levels specified by the department.

(8) The failure of a law enforcement agency to take possession of sexual assault kit evidence as provided in this act or to submit that evidence to the department or other accredited laboratory within the time prescribed under this act does not alter the authority of the law enforcement agency to take possession of that evidence or to submit that evidence to the department or other accredited laboratory under this act and does not alter the authority of the department or other accredited laboratory to accept and analyze the evidence or to upload the DNA profile obtained from that evidence into state and national DNA databases under this act.

(9) The failure to comply with the requirements of this act does not constitute grounds in any criminal proceeding for challenging the validity of a database match or of any database information, and any evidence of that DNA record shall not be excluded by a court on those grounds.

(10) A person accused or convicted of committing a crime against the victim has no standing to object to any failure to comply with the requirements of this act, and the failure to comply with the requirements of this act is not grounds for setting aside the conviction or sentence.

History: 2014, Act 227, Eff. Mar. 31, 2015.

752.935 Destruction or disposal of sexual assault kit evidence; notice to victim.

Sec. 5. If a law enforcement agency intends to destroy or otherwise dispose of any sexual assault kit evidence in a sexual assault offense case before the expiration for the limitation period applicable under section 24 of chapter VII of the code of criminal procedure, 1927 PA 175, MCL 767.24, and its destruction does not otherwise conflict with the requirements of section 16 of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.16, the law enforcement agency with the primary responsibility for investigating the case shall notify the victim of that intention in writing at least 60 days before the evidence is destroyed or otherwise disposed of.

History: 2014, Act 227, Eff. Mar. 31, 2015.

Appendix C

Links to Some Resources on Promising Practices Related to Investigation and Prosecution of Cases from Previously Untested Sexual Assault Kits

Forming an Action Research Team to Address Sexual Assault Cases, US Department of Justice, Office of Justice Programs, National Institute of Justice, <https://www.ncjrs.gov/pdffiles1/nij/249232.pdf>

“As part of the NIJ-funded action-research project in Wayne County (Detroit), Michigan, the Prosecutor’s Office formed multidisciplinary team to address the issue of unsubmitted SAKs. The team included practitioners who dealt with sexual assaults every day — police officers, crime lab analysts, prosecutors and victim advocates — and social science researchers. This brochure offers guidance based on Detroit’s experience for forming a multidisciplinary team to conduct action research on a large number of unsubmitted SAKs.”

Notifying Sexual Assault Victims After Testing Evidence, US Department of Justice, Office of Justice Programs, National Institute of Justice, <https://www.ncjrs.gov/pdffiles1/nij/249153.pdf>

“Testing SAKs in older cases can raise complex legal and psychological issues for the victims. Using a victim-centered and trauma-informed approach for notifying victims about the status of their sexual assault cases may help minimize trauma. This brochure provides guidance based on lessons learned in Detroit and Houston about how best to notify victims in situations where previously unsubmitted SAKs in older cases are now being tested. These lessons might also be useful in the investigation and prosecution of current cases.”

Untested Evidence in Sexual Assault Cases, US Department of Justice, Office of Justice Programs, National Institute of Justice, <http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx#creating>

Chapter 5, Notifying Victims: Developing & Evaluating a Victim Notification Protocol, The Detroit Sexual Assault Kit (SAK) Action Research Project (ARP), Final Report, Campbell, R., Fehler-Cabral, G., December 2015, <https://www.ncjrs.gov/pdffiles1/nij/grants/248680.pdf>

Cold Case Victim Notification Sample Policies and Forms, submitted to the National Center for Victims of Crime, available at <http://victimsofcrime.org/our-programs/dna-resource-center/untested-sexual-assault-kits/victim-notification>

The Untested Rape Kit Crisis and Cold Case Sexual Assault Prosecutions, archived webinar recording and powerpoint presentation by Wayne County, Michigan, Prosecutor Kym Worthy, for the National Center for Victims of Crime, available at <https://victimsofcrime.org/our-programs/dna-resource-center/training/archived-webinars> and <http://victimsofcrime.org/docs/default-source/DNA%20Trainings/worthy-untested-rape-kit-crisis.pdf?sfvrsn=2>

Enhancing Sexual Assault Investigations Through Cultural Change: A Case Study, archived webinar recording and powerpoint presentation by Mary Lentschke, Assitant Chief for the Houston Police Department, for the National Center for Victims of Crime, available at <https://victimsofcrime.org/our-programs/dna-resource-center/training/archived-webinars> and <http://victimsofcrime.org/docs/default-source/DNA%20Trainings/hpd-ncvc-webinar-final.pdf?sfvrsn=2>

No More Harm: Untested Sexual Assault Kits and Communities of Color, archived webinar recording and powerpoint presentation by Condencia Brade from Sisters of Color Ending Sexual Assault, and Debi Cain from the Michigan Domestic & Sexual Violence Prevention & Treatment Board, for the National Center for Victims of Crime, available at <https://victimsofcrime.org/our-programs/dna-resource-center/training/archived-webinars> and <http://victimsofcrime.org/docs/DNA%20Trainings/no-more-harm-full-slides.pdf?sfvrsn=2>

Cold Case Programs: Sexual Assault – Colorado, US Department of Justice Office of Justice Programs, SART Toolkit, available at <http://ovc.ncjrs.gov/sartkit/practices/law-victim-co.html>

Additional recorded webinars and articles are available at the Sexual Assault Kit Initiative TTA website, <http://sakitta.org/index.cfm?fuseaction=about>