



END THE BACKLOG

A Joyful Heart Foundation Initiative

Drafter's Checklist for Rape Kit Reform

Ending the backlog of untested rape kits in the United States will take a deep commitment at all levels of government. Every state must have clear laws and policies mandating rape kit tracking and deadlines for testing kits. Clear policies for handling rape kits will help create a criminal justice system that holds offenders accountable and creates opportunities for justice and healing for survivors. This checklist provides guidance to state lawmakers drafting rape kit reform legislation. It covers all of the provisions that should be included in a comprehensive rape kit reform law.

- Intent of the Law
- Definitions
- Audit
- Tracking
- Testing of Untested/Backlogged Rape Kits
- Submission Deadlines for New Rape Kits
- Resources
- Victim Notification
- Victim Compensation
- Extension or Elimination of the Statute of Limitations
- Evidence Retention

✓ Intent of the Law

The purpose of an intent section is to give the public and the people responsible for implementing the law a **clear vision of the goals of the legislation**. Where permissible in state legislative drafting rules, intent sections can provide an explanation of the problem and the proposed solution.

The legislature finds that DNA evidence is a powerful law enforcement tool that can identify unknown suspects, connect crimes together and exonerate the innocent. It is the intent of the legislature that rape kits are tested in a timely manner to advance public safety.

This section may also include *statistics* and *state-specific information*.

✓ Definitions

Different interpretations of standard terms can result in people and entities failing to comply with rape kit reform laws. Defining terms reduces the chance for misunderstanding and “lack of clarity” being cited as an excuse to ignore the law. Some common terms are “*sexual assault kit*,” “*law enforcement agency*,” “*anonymous or unreported rape kit*,” and “*untested*.” For example, in Texas law (SB1636), “law

enforcement agency” is defined as “a state or local law enforcement agency in this state with jurisdiction over the investigation of a sexual assault.”

✓ Audit

The first step to rape kit reform is to ascertain the number of untested rape kits in the state. If a statewide count has not been completed, reform should start with a baseline audit—or inventory—to determine the number of untested rape kits that are in law enforcement facilities, hospitals, crime labs and any other rape kit storage facilities across the state. Once the number of untested rape kits in the state is known, transparency and accountability is established and planning for resource allocation and testing can begin.

Audit legislation should:

- Assign responsibility to **one state agency** for carrying out the audit. This can be the state crime lab, the Attorney General, the State Auditor or the Governor’s office;
- Mandate the audit be completed **within 180 days**;
- Describe **the information to be included**, such as the date each kit was collected and the reason it was not submitted to a crime lab for testing;
- Be clear that **all untested rape kits in law enforcement’s possession** must be counted, including kits past the statute of limitations;
- Specify that **anonymous or unreported kits be counted separately**;
- Require a **final report** of the results, including a *list of any agencies that failed to participate in the audit*, be sent to the state legislative bodies and governing officials and be made publicly available online;
- Include a **plan for testing all previously untested kits**, a **budget request** and **next steps for action**; and
- Mandate **annual audits**, with *annual reports* of the results to be made publicly available online.

✓ Tracking

States should mandate the implementation of a **tracking system** that can follow the path of a rape kit throughout the entire process: from the hospital, to the responding law enforcement agency, through the crime lab. The first step may be creating a **multidisciplinary taskforce or workgroup** comprised of law enforcement, crime lab personnel, prosecutors, victim advocates, and Sexual Assault Forensic Examiners to develop recommendations for a tracking system.

✓ Testing of Untested/Backlogged Rape Kits

Sexual assault survivors whose kits have languished for years—and sometimes even decades—deserve to have their kits tested, regardless of how much time has passed since the sexual assault. Laws aimed at ending the rape kit backlog should mandate **a deadline for sending all previously untested kits (including kits past the statute of limitations) to the crime laboratory for analysis**. For example, the deadline in Colorado’s law is 120 days; in Illinois, it is 180 days. Ohio and Pennsylvania both required that previously untested rape kits be submitted within one year of the law’s passage. To prevent kits from becoming backlogged at the lab, **crime lab processing deadlines** should also be included in the law. Although the timeframe for processing kits will vary from state to state, and will be contingent on lab resources and the result of the audit, the standard deadline for processing a rape kit should be 30 days.

✓ Submission of New Rape Kits

Survivors expect the evidence recovered during the forensic exam after a sexual assault will be handled carefully and tested expeditiously. A state seeking to reform rape kit handling and make sure the problem does not happen again will mandate deadlines for the **submission of rape kits from new cases within a certain timeframe**. Submission policies should require:

- Hospitals to notify law enforcement to pick up the kit from the hospital within 24 hours;
- Law enforcement to pick up kits from the hospital within 72 hours;
- Law enforcement to submit the kits to the lab within seven days of collecting them; and
- The crime lab to test the kit and enter the results into the DNA database within 30 days of receiving it.

The law should also require the state crime lab to use *private laboratories for testing if it cannot meet the deadline* established by the law.

Additionally, the law should make clear that any law enforcement jurisdiction with kits belonging to another jurisdiction must notify that jurisdiction within seven days of obtaining the kit, and the receiving jurisdiction must pick up the kit within seven days.

✓ Resources

States must dedicate **sufficient resources** to eliminate their backlogs and to test all kits moving forward. It will be difficult for a state to forecast the resources necessary to institute mandatory testing until an audit is completed. The report issued at the completion of the audit should include information about the laboratory's projected workload increase and the funding it will need to carry out the mandate.

Some states have pursued creative funding strategies for DNA testing. One Governor allocated funds from state legal settlement awards to fund the testing of rape kits and prosecutions resulting from testing backlogged rape kits. Increasing fines and penalties on offenders is another option.

✓ Victim Notification

Sexual assault survivors want and deserve information about the status of their cases. States should ensure that **survivors' rights to notice** are established in law.

In *cases in which a rape kit was backlogged or untested*, the law should grant survivors (or their guardian in the case of a minor, or relative in the case of a deceased victim) the right to be notified, upon request, about any change in the status of their case, including a match in the DNA database and the re-opening of the case.

In *new cases*, upon request, a victim should have the right to be notified about the status of the rape kit, including notification about when the kit is submitted to the lab, when the kit is entered into the DNA database and when a match occurs. The law should also mandate that a victim has the right to be notified if a decision is made not to test the kit in accordance with the law, or when there is any planned destruction of a rape kit.

✓ Elimination of the Statute of Limitations

Rape is a crime with life-long and profound impact on survivors. To ensure that survivors of rape and sexual assault have access to justice and offenders are held accountable for their crimes—no matter how much time has passed—states should ***eliminate the statute of limitations for rape or enact a DNA exception to the existing statute of limitations***, which allows prosecution to commence when identification of the offender has been made through DNA testing.

✓ Evidence Retention

The law should ***clearly mandate the length of time for which rape kits must be retained***. In many states, this timeframe is identical to the statute of limitations. In some states, the evidence retention law is longer than the statute of limitations. Rape kits should be kept at least as long as the case can be prosecuted.

For further reading and information, please visit www.endthebacklog.org.