



# **Comprehensive Rape Kit Reform: A Legislative Handbook**

*October 2017*

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# Understanding Rape Kit Reform

**Every 98 seconds, someone is sexually assaulted in the United States.** When the victim reports the assault to the police, a hospital, or a rape crisis center, a medical professional conducts an exhaustive and invasive four- to six-hour examination of the victim's body for DNA evidence left behind by the attacker. During the examination, the victim's body is photographed and swabbed for biological evidence. The examiner collects and preserves this evidence in a **sexual assault evidence kit, often referred to as a "rape kit."** Survivors can consent to release this kit to law enforcement and report the crime, or can elect to have the kit for testing at a later date ("non-investigatory kits").

DNA is an incredibly powerful tool for law enforcement. When tested, DNA evidence can identify an unknown assailant, confirm the presence of a known suspect, affirm the survivor's account of the attack, discredit the suspect, connect the suspect to other crime scenes to identify serial offenders, and exonerate the innocent. Testing rape kits for **DNA evidence can both solve and prevent crimes**; however, many of these kits are never tested.

## What is the backlog?

The rape kit backlog is a term used to refer to both rape kits stored by law enforcement agencies that have not been submitted to crime labs, as well as kits awaiting testing at crime labs nationwide. Generally, "unsubmitted" or "untested" are used to refer to such kits in law enforcement storage, while "awaiting testing" or "backlogged" describe kits at the lab. To capture the full extent of this national problem, Joyful Heart refers to all kits connected to reported sexual assaults that have not been analyzed for DNA evidence, regardless of storage location, as "untested," and, collectively, as the "rape kit backlog."

Because most jurisdictions do not have systems for tracking or counting rape kits, we cannot be sure of the total number of untested kits sitting in police and crime lab storage facilities around the country. However, experts estimate there are **hundreds of thousands of untested kits**. To date, nearly 200,000 kits have been uncovered by investigative reporters and through The Accountability Project, a Joyful Heart Foundation initiative that uses public records requests to ascertain the number of untested kits in municipalities across the country.

**Every rape kit booked into evidence and connected to a reported sexual assault should be submitted to a crime lab** for testing, and public crime labs must commit to testing all rape kit evidence in a timely manner. Since 2010, Joyful Heart has made the **elimination of the national backlog of untested rape kits** our top advocacy priority. Through partnerships with federal, state, and local governments, nonprofit organizations, law enforcement, advocates, survivors, and other stakeholders, we are working to raise awareness, unlock critical funding, identify best practices, and enact reforms to improve the criminal justice system's response to sexual violence.

## Why does the backlog exist?

The backlog of untested rape kits represents the failure of the criminal justice system to take sexual assault seriously, prioritize the testing of rape kits, protect survivors, and hold offenders accountable. There are several contributing factors that create a backlog.

### ***Lack of policies and protocols for rape kit testing***

Most jurisdictions do not have clear, written policies for the testing of rape kits. This results in decisions being made on a case-by-case basis, without any guidelines, and means individual detectives may have discretion over whether to send a kit for analysis. Several factors can affect the officer's decision, including:

- **Whether the department prioritizes sexual assaults.** Law enforcement agencies often fail to dedicate the time and resources other crimes receive to sexual assault cases. Too often, sex crimes units are under-resourced and inadequately staffed. This can lead to detectives' inability to appropriately investigate every case and to discarding certain kinds of cases they may not perceive as prosecutable. Leadership is also central to the way a department handles sexual assault cases. If department leaders do not prioritize rape cases, it is highly likely these cases will be neglected.
- **Existing biases.** Without clear policies, law enforcement officers must individually make decisions regarding kit testing, enabling existing biases to impact case outcomes. Negative stereotyping and victim-blaming beliefs are all too prevalent in our society, which affects how cases are handled. Research has shown that members of law enforcement disbelieve victims of sexual assault more than victims of any other type of crime, and often blame them for the crime.

### ***Knowledge gaps and lack of training***

A lack of training and understanding about sexual assault and its impact on survivors, sex offenders, and forensic DNA can all impact whether a kit is submitted for testing:

- **Lack of understanding of how trauma impacts memory and behavior.** Trauma can lead survivors to present to law enforcement in a wide range of ways that may, to the untrained eye, seem as if the person's story is not "credible". This might include having trouble recalling details and acting in a way those who do not understand trauma may think is not "typical" for a sexual assault survivor. This lack of knowledge often leads to a detective closing a case as "unfounded" and the associated kit is not sent for testing.
- **Erroneous interpretation of victim "cooperation".** Law enforcement professionals who are not trained on victimization and trauma often erroneously label cases as "unfounded" or survivors as "uncooperative". Survivors may walk away from the criminal justice process for a myriad of reasons, including fear of blame, privacy concerns, and poor treatment by law enforcement or prosecutors. Many survivors disengage from the criminal justice process after completing their first interview due to poor treatment from law enforcement.
- **Lack of training about the power of DNA.** Law enforcement agencies and prosecutors may not be aware of the power of DNA and DNA databases to solve and prevent crime. Some do not fully understand the value of rape kit testing, or understand which kits can be sent for testing.
- **Lack of training about sex offenders and their criminal patterns.** In order to make informed determinations about sexual assault cases, law enforcement professionals need to understand how sex offenders behave. Perpetrators of sexual assault use shame and fear to lead victims to believe that no one will believe them. Perpetrators may

purposefully target vulnerable populations such as children, drug users, the homeless, non-English-speakers, and/or sex workers.

### ***Whether the identity of the perpetrator is known***

Many jurisdictions only test kits in cases where the assailant is unknown, in the hopes of identifying a suspect through DNA evidence. Rape kit testing, however, has significant value beyond identifying an unknown suspect. Testing rape kits can link unsolved crimes to a serial offender, confirm a suspect's contact with a victim, corroborate the victim's account of the attack, and exonerate innocent suspects. Research shows acquaintance rapists are often serial offenders, and may also commit crimes against people they don't know. Testing every rape kit connected to a reported crime ensures that links between crimes will be made, regardless of the relationship between the victim and the perpetrator.

### ***Lack of resources***

On average, it costs between \$1,000 and \$1,500 to test one rape kit. Many kits never make it to a crime lab in the first place and instead spend years—even decades—sitting untested in police storage facilities. Lack of essential funding at multiple levels is often a factor in why kits go untested:

- **Crime lab resources.** Public crime labs throughout the country have struggled to maintain sufficient funding and personnel in recent years, as technology has advanced and the demand for DNA testing has grown. In addition to rape kit evidence, crime labs may receive DNA samples from hundreds, or even thousands, of crime scenes each year. As a result, many labs have exceedingly long turnaround times—sometimes years—for testing DNA evidence, including rape kits.
- **Police resources.** Law enforcement agencies often lack the technology to track untested rape kits, as well as the personnel needed to ship or transport untested kits to a crime lab in a timely manner. Many also lack the staffing resources necessary to investigate or follow up on leads that arise from the rape kit testing.

### ***Outdated or unclear lab policies***

Public crime labs across the country increasingly recognize the need to update their DNA testing policies to reflect innovations in the fields of forensic science and criminal justice. In years past, many labs had narrow submission policies, some of which prohibited the submission of rape kits for DNA testing in cases in which the identity of the perpetrator is known to the victim. As more experts advocate for the value of testing all kits, including kits in cases with known perpetrators, these labs are shifting their policies to accept all kits. In other jurisdictions, a lack of clear communication between crime labs and law enforcement agencies has led to misunderstandings about what types of kits can be submitted for testing.

## **Why test all kits?**

Recently released federal best practices<sup>1</sup> call for the **mandatory submission and testing of every rape kit booked into evidence** and connected to a reported sexual assault. Each

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<sup>1</sup> [“National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach,”](#) U.S. Department of Justice National Institute of Justice, August 2017.

untested kit represents a missed opportunity to bring justice and healing to a survivor and increased safety to a community.

Mandating the swift testing of every sexual assault kit sends a **powerful message to survivors** that they—and their cases—matter. Sexual assault has the **lowest arrest rate** of all violent crimes. Leaving rape kits on shelves tells perpetrators that they can escape punishment for rape. Testing all previously unsubmitted, and newly collected, kits demonstrates a commitment to survivors' wellbeing and public safety.

Testing rape kits is also the pathway to a more effective criminal justice system. By testing kits, communities can identify serial perpetrators, take dangerous offenders off the streets, prevent future crimes, and exonerate the innocent. Testing rape kits also **saves communities millions of dollars**. According to a study from the Begun Center for Violence Prevention Research and Education at Case Western Reserve University, testing 4,300 previously unsubmitted kits in Cleveland has saved the community **\$38.7 million** dollars, or **\$8,893 per tested sexual assault kit**.

Special consideration must be given to **unreported or anonymous** kits. We must keep our promise to sexual assault survivors to allow them to decide the path to healing and justice that works best for them. It is critical to a survivor's wellbeing that their choices about engaging in the criminal justice system are honored. Therefore, we call for the mandatory submission and testing of **every rape kit booked into evidence and connected to a reported sexual assault, except anonymous or unreported kits**. By testing every such kit, communities can promote justice, improve safety, and save money.

## How can we end the backlog?

Survivors and advocates have worked for decades to raise awareness, expand access to services, and promote legislative changes to ensure victims of sexual violence receive the justice they deserve. We are grateful to leaders like survivor-advocate Debbie Smith, who built a national movement in support of DNA testing; former prosecutor Linda Fairstein, who pioneered the use of DNA in investigations of sexual assault; Manhattan District Attorney Cyrus Vance, Jr., who reached across state lines with \$38 million to help jurisdictions nationwide; and United States Vice President Joe Biden, who has made addressing sexual violence a cornerstone of his career in public service.

Eliminating the rape kit backlog will take a coordinated effort and deep commitment at all levels of government across the United States. To date, 32 states have passed rape kit reform laws, but only Texas has implemented all six pillars of legislative reform.

To successfully address the rape kit backlog, a series of specific policies must be enacted and implemented. These policies include:

1. **Annual or periodic statewide inventory**
2. **Mandatory testing of previously unsubmitted (backlogged) kits**
3. **Mandatory testing of newly collected kits**
4. **Tracking system for rape kits**
5. **Victims' right to notice and to be informed**
6. **Funding to implement reforms**

Additional best practices to consider when drafting legislation aimed at eliminating the backlog include: articulating the **intent of the law**, writing **definitions of key terms**, reforming the **statute of limitations**, improving **victim compensation** policies, and expanding the period of **evidence retention**. For an in-depth guide to drafting legislation, refer to our Drafter's Checklist (below).

Joyful Heart can help state legislators enact comprehensive reform, and assist communities working to address their backlogs of untested rape kits.

## 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 deadlines for testing and tracking rape kits. Strong policies for handling rape kits ensure that the criminal justice system holds offenders accountable and builds opportunities for justice and healing for survivors. This checklist provides guidance to state lawmakers drafting rape kit reform legislation and covers all the provisions that should be included in a comprehensive rape kit reform law.

Essential reforms to eliminate the backlog include:

1. An **annual statewide inventory and report of sexual assault evidence kits** to identify the number of untested kits (in law enforcement facilities, hospitals, crime labs, and any other storage facility) to understand the extent of the problem. Mandate that all relevant facilities in your state submit this information to a designated state-level agency within a timeframe of 180 days.
2. **Mandatory submission and testing of all previously unsubmitted (backlogged) sexual assault evidence kits**, with deadlines for both submission and testing. Mandate that each and every untested rape kit (including those past the statute of limitations) be submitted to the lab within a timeframe of 180 days.
3. **Mandatory submission and testing requirements for all newly collected kits**, with deadlines for both submission and testing. Mandate that, for all ongoing rape kit examinations: hospitals must notify the appropriate law enforcement agency within 24 hours of kit collection; law enforcement agencies must pick up the kit within three business days of notification; law enforcement agencies must submit the kit to the lab for analysis within seven days of pickup; and the lab must test the kit and enter any resulting DNA profiles into the CODIS DNA database within 30 days of receipt.
4. **An electronic tracking system for sexual assault evidence kits** that provides a way for survivors to check the status of their kits throughout the entire process, from collection to analysis and final disposition.
5. **Victims' right to notice and to be informed** about the status of a kit, and a mandate that victims be notified if there is a decision not to test a kit or if there is any planned destruction of a kit.
6. **Appropriation of state funding** to implement these reforms.

Additional best practice policies for legislators to consider when drafting include:

- Expressly articulating the **intent of the law**;
- Including **clear definitions** for all terms used in the law;
- Eliminating or otherwise reforming the **statute of limitations** for relevant crimes;
- Reforming policies for **victim compensation** funds; and

- Enumerating **evidence retention** policies to guide kit preservation and destruction.

The following is a detailed description of each of the recommended reforms, along with model language and examples from states that have already passed effective legislation.

Joyful Heart's model legislation is a survivor-centered approach to eliminate the backlog of untested kits in the state, prioritize the needs and rights of survivors, and take serial offenders off the streets. The recommendations that follow align with federal best practices as outlined in the National Institute of Justice's July 2017 report, "National Best Practices for Sexual Assault Kits: a Multidisciplinary Approach," and has been reviewed by crime lab personnel, victim advocates, medical professionals, DNA experts, law enforcement, prosecutors, victims' rights experts, and survivors. Every state should customize the model to ensure it addresses each state's unique challenges and existing statutes. The Joyful Heart Foundation is ready to assist in enacting the best legislation possible.

## ✓ **Essential Reforms: Annual Statewide Inventory and Report of Sexual Assault Evidence Kits**

Reform should start with a baseline inventory to determine the number of untested rape kits in law enforcement facilities, hospitals, crime labs, and any other rape kit storage facilities across the state. An inventory brings transparency and accountability to rape kit testing practices in states and local communities. Once the number of untested rape kits is known, planning for the necessary resource allocation, testing, and legislative initiatives addressing rape kit procedures can begin.

Inventory policies should:

- Assign responsibility to one state agency for carrying out the inventory. This can be the state crime lab, the Attorney General, the State Auditor, or the Governor's office.
- Mandate the initial inventory be completed **within 180 days**, and annually thereafter.
- Describe the information to be reported, 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 must be counted, **including kits collected past the statute of limitations** for the relevant crime.
- Specify **that kits connected to a victim who has not yet reported the crime** be counted separately. These kits are referred to as non-investigatory. Some states also use the terms "anonymous" or "unreported".
- Require annual reports of the results, including a list of any agencies that failed to participate in the inventory, be sent to state legislative bodies and/or governing officials, and be **made publicly available online** by a specific deadline.

To date, **23 states and Washington, D.C.** have passed laws requiring one-time, annual, or periodic inventory of untested rape kits. □



**MODEL LANGUAGE:** Annual Statewide Inventory and Report of Sexual Assault Evidence Kits

*Within 180 days of enactment of this law, and thereafter annually - scheduled 30 days after the start date of the new fiscal year regarding the previous fiscal year timeframe - the following reports shall be submitted to the [appropriate state agency] by law enforcement agencies, medical facilities, crime laboratories, rape crisis centers, and any other facilities that receive, maintain, store, or preserve sexual assault evidence kits:*

- A. *total number of all kits containing forensic samples collected or received*
- B. *for each kit:*
  - a. *date of collection or receipt;*
  - b. *category of the kit:*
    - i. *sexual assault was reported to law enforcement,*
    - ii. *victim chose not to file a report with law enforcement (non-investigatory);*
  - c. *status of the kit:*
    - i. *medical facilities: date the kit was collected, date the kit was reported to law enforcement, and date the kit was picked up by law enforcement;*
    - ii. *law enforcement: date the kit was picked up from a medical facility and date the kit was delivered to the crime laboratory;*
      - 1. *For kits belonging to another jurisdiction: the date that the jurisdiction was notified and the date it was picked up;*
    - iii. *crime laboratories: date the kit was received, from which agency the kit was received, date the kit was tested, date the resulting information was entered into CODIS and [other relevant state or local DNA databases], and all reasons a kit was not tested or a DNA profile was not created.*
- C. *total number of all kits remaining in possession of the medical facility, law enforcement, or laboratory, and all reasons for any kit in possession for more than 30 days [or beyond the required timeframe].*
- D. *total number of kits destroyed by medical facilities, law enforcement, or laboratories, and reason for destruction.*
- E. *The [appropriate state agency] shall compile the information in a summary report that includes a list of all agencies or facilities that failed to participate in the audit. The annual summary report shall be made publicly available on the [appropriate state agency]'s website, and shall be submitted to the Governor, the Attorney General, and legislative leadership.*

## **✓ Essential Reforms: Mandatory Submission and Testing Requirements for Previously Unsubmitted (Backlogged) Sexual Assault Evidence Kits**

Sexual assault survivors whose kits have languished for years—sometimes even decades—deserve to have their kits tested, regardless of how much time has passed since the sexual assault. When tested, DNA evidence from rape kits can be an incredibly powerful tool to solve and prevent crimes: it can identify unknown assailants, confirm known suspects, identify serial offenders by linking crimes together, and exonerate the innocent.

To accomplish these actions, previously unsubmitted kits must be tested and backlogged kit testing policies should:

- Mandate **all previously untested kits connected to a reported crime** be sent to the crime laboratory for analysis.
- Mandate all kits containing forensic samples stored outside of law enforcement agencies (for instance, hospitals or rape crisis centers) be submitted to the local law enforcement agency for assessment and submission to the lab.
- Include kits **past the statute of limitations** within the definition of “all” kits.
- Set a deadline for submission of untested kits of **no later than 180 days**.
- Set a deadline for the crime laboratory to complete analysis once a kit has been submitted to the lab of **no later than 90 days**.
- Consider including language requiring the lab to **outsource unsubmitted kits for speedier testing** if it is unable to meet the specified testing deadline.
- Consider **compliance or accountability mechanisms** to ensure local law enforcement agencies comply with the new requirements.

To date, **eight states** across the country require the submission and testing of backlogged kits.

**MODEL LANGUAGE: Mandatory Submission and Testing Requirements for Previously Unsubmitted (Backlogged) Sexual Assault Evidence Kits**

- A. *Within 90 days of enactment of this law, all previously unsubmitted sexual assault evidence kits containing forensic samples collected during a medical forensic exam in medical facilities or other facilities that collect kits, shall be submitted to law enforcement.*
- B. *Within 180 days of enactment of this law, each law enforcement agency shall submit all previously unsubmitted sexual assault evidence kits, including those past the statute of limitations, to the [appropriate state agency or accredited public crime laboratories].*
  - a. *The only exception for this requirement is non-investigatory sexual assault evidence kits associated with a victim who has not yet filed a report with law enforcement.*
  - b. *Non-investigatory kits shall be safely stored by law enforcement in a manner that preserves evidence for a duration of 50 years or the statute of limitations, whichever is longer.*
  - c. *Victims who do not file a report with law enforcement at the time the kit was collected do not negate their right to report the crime and have the kit tested in the future.*
- C. *The [Appropriate state agency or accredited public crime laboratories] shall test all previously unsubmitted sexual assault kits within 90 days of receipt from local law enforcement.*
  - a. *Testing shall be pursued to develop autosomal DNA profiles that are eligible for entry into the Combined DNA Index System (CODIS) and relevant state or local DNA databases.*
  - b. *In cases where testing has resulted in a DNA profile, the laboratory shall enter the full profile into the Combined DNA Index System Database (CODIS) and [other relevant state or local DNA databases]. The average completion rate for this analysis and classification shall not exceed 90 days.*
  - c. *If the [Appropriate state agency or accredited public crime laboratories] are unable to meet the deadline specified above, the sexual assault evidence kits shall be outsourced for testing to an accredited private crime laboratory.*

**EXAMPLES FROM THE STATES: Mandatory Submission and Testing Requirements for Previously Unsubmitted (Backlogged) Sexual Assault Evidence Kits<sup>2</sup>**

**Pennsylvania [P.L. 142, No. 27](#) – Complete backlog testing within three years**

*A laboratory shall complete the testing or analysis of the evidence as soon as possible, but no later than three years from the date of submission of the evidence to the laboratory.*

**Texas [S.B. 1636](#) – Complete backlog testing within three years (September 1, 2014)**

*Not later than September 1, 2014, ... the Department of Public Safety of the State of Texas shall, as provided by Sections 420.042 and 420.043, Government Code, as added by this Act, analyze or contract for the analysis of, and complete the required database comparison regarding all sexual assault evidence submitted to the department under Subdivision (2), Subsection (a) of this section.*

**Colorado [H.B. 13-1020](#) – Submit to lab within 120 days**

*On or before one hundred twenty days after the effective date of this section, each law enforcement agency shall forward to the Colorado Bureau of Investigation or other accredited crime laboratory the forensic medical evidence identified on the inventory submitted to the Colorado Bureau of Investigation.*

**Illinois [P.A. 096-1011](#) – Submit to lab within 180 days**

*Within 180 days after the effective date of this Act, appropriate arrangements shall be made between the law enforcement agency and the Department of State Police, or a laboratory approved and designated by the Director of State Police, to ensure that all cases that were collected prior to the effective date of this Act and are, or were at the time of collection, the subject of a criminal investigation, are submitted to the Department of State Police, or a laboratory approved and designated by the Director of State Police.*

**Ohio [130 S.B. 316](#) – Submit to lab within one year**

*A law enforcement agency shall review all of its records and reports pertaining to its investigation of any offense specified in division (B)(1) of this section as soon as possible after the effective date of this amendment. If the law enforcement agency's review determines that one or more persons may have committed or participated in an offense specified in division (B)(1) of this section or another offense committed during the course of an offense specified in division (B)(1) of this section and the agency is in possession of a sexual assault examination kit secured during the course of the agency's investigation, as soon as possible, but not later than one year after the effective date of this amendment, the agency shall forward the contents of the kit to the bureau of criminal identification and investigation or another crime laboratory for a DNA analysis of the contents of the kit if a DNA analysis has not previously been performed on the contents of the kit.*

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<sup>2</sup> Ordered by strength of adherence to best practices.

## ✓ Essential Reforms: Mandatory Submission and Testing Requirements for Newly Collected Sexual Assault Evidence Kits

After a sexual assault, survivors expect the evidence recovered during the forensic exam to be handled carefully and tested expeditiously. To keep the promise to survivors and prevent future backlogs, states must mandate deadlines for the submission and testing of newly collected rape kits.

Newly collected kit testing policies should:

- Mandate timeframes for each step of the process:
  - Hospitals and all other facilities conducting medical forensic exams must notify the appropriate law enforcement agency **within 24 hours** of the collection of a new kit.
  - Law enforcement must pick up the kit from the hospital **within three business days** of notification.
  - Law enforcement must submit the kit to the lab for analysis **within seven days** of picking up the kit from the hospital.
  - Law enforcement agencies picking up kits outside of their jurisdiction must notify the appropriate law enforcement agency **within seven days** of picking up the kit, and the receiving jurisdiction must pick up the kit **within seven days** of notification.
- Require the state crime lab to test the kit, and enter any resulting DNA profile into the CODIS database (and all relevant state and local databases) **within 30 days** of receiving the kit from law enforcement.
- Consider requiring the state crime lab to **outsource testing** to private laboratories if it cannot meet the deadline established by the law.

To date, **20 states and Washington, D.C.** mandate the timely submission and testing of newly collected kits.

**MODEL LANGUAGE: Mandatory Submission and Testing Requirements for Newly Collected Sexual Assault Evidence Kits**

- A. *Medical facilities and all other facilities that conduct medical forensic examinations shall notify the appropriate law enforcement agency immediately, and no later than 24 hours after the collection of a new sexual assault evidence kit.*
- B. *Local law enforcement agencies shall:*
  - a. *Take possession of the sexual assault evidence kit from medical facilities within three business days of notification.*
  - b. *Submit new sexual assault evidence kits to the [Appropriate state agency or accredited public crime laboratory] within seven days of taking possession.*
    - i. *The only exception for this requirement is non-investigatory sexual assault evidence kits associated with a victim who has not yet filed a report with law enforcement.*
    - ii. *Non-investigatory kits shall be safely stored by law enforcement in a manner that preserves evidence for a duration of 50 years or the statute of limitations, whichever is longer.*
    - iii. *Victims who do not file a report with law enforcement at the time the kit was collected do not negate their right to report the crime and have their kit tested in the future.*
  - c. *Notify the appropriate jurisdiction within seven days of taking possession of a kit outside of their jurisdiction. The appropriate jurisdiction shall take possession of the sexual assault evidence kits within seven days of notification.*
- C. *The [Appropriate state agency or accredited public crime laboratory] shall test all sexual assault kits within 30 days of receipt from local law enforcement.*
  - a. *Testing shall be pursued to develop autosomal DNA profiles that are eligible for entry into the Combined DNA Index System (CODIS) and other relevant state or local DNA databases.*
  - b. *In cases where testing has resulted in a DNA profile, the laboratory shall enter the full profile into the Combined DNA Index System Database (CODIS) and [other relevant state or local DNA databases]. The average completion rate for this analysis and classification shall not exceed 90 days.*
  - c. *If the [Appropriate state agency or accredited public crime laboratories] are unable to meet the deadline specified above, untested sexual assault evidence kits shall be outsourced to an accredited private crime laboratory.*

**EXAMPLES FROM THE STATES: Mandatory Submission and Testing Requirements for Newly Collected Sexual Assault Evidence Kits**

**Georgia [S.B. 304](#) – Hospitals must notify police upon victim request**

*When a forensic medical examination is performed, evidence is collected, and the alleged victim has requested that law enforcement officials be notified, the individual performing such exam, or his or her designee, shall notify the appropriate law enforcement agency of the collection of such evidence.*

**Pennsylvania [P.L. 142, No. 27](#) – Police must collect from hospitals within 72 hours**

*The local law enforcement agency shall take possession of the sexual assault evidence within 72 hours of receiving notice.*

**New York [S08236](#) – Police must submit to the lab within ten days**

*Each such police agency and prosecutorial agency shall submit any sexual offense evidence kits in its custody or control to an appropriate forensic laboratory within ten days of receipt.*

**Kentucky [16 R.S. S.B. 63](#) – Test within 90 days by 2018 and 60 days by 2020**

*The department shall analyze and classify all sexual assault evidence collection kits it receives. In cases where a suspect has been identified, the department may give priority to analysis and classification of sexual assault evidence collection kits where the reference standard for comparison is provided with the kit. Except as provided in subsection (3)(e) of this section, by July 1, 2018, the average completion rate for this analysis and classification shall not exceed ninety (90) days, and by July 1, 2020, the average completion rate for this analysis and classification shall not exceed sixty (60) days.*

## ✓ Essential Reforms: Tracking System for Sexual Assault Evidence Kits

States should mandate the implementation of an electronic tracking system to follow the path of a rape kit throughout the entire process: from the hospital, to the local law enforcement agency, throughout the analysis process at the lab, to final disposition. All states should ensure legislation requires the creation of a secure victim access portal through which survivors can obtain information about their kit and receive critical updates. The first step may be creating a multidisciplinary taskforce or workgroup comprised of law enforcement, crime lab personnel, prosecutors, victim advocates, survivors, and Sexual Assault Forensic Examiners to develop recommendations for a tracking system and be charged with implementation.

In 2016, **Washington** became the first state in the country to pass a law requiring the development of a statewide tracking system. Idaho also enacted legislation requiring the establishment of a statewide tracking process. Four other states have since enacted laws mandating the creation of tracking systems. Additionally, Illinois and Michigan have enacted legislation requiring commissions to study tracking systems and develop recommendations to implement such systems throughout the states.

**MODEL LANGUAGE: Tracking System for Sexual Assault Evidence Kits**

- A. *Within 90 days of enactment of this law, [appropriate state agency], shall convene a multidisciplinary task force on sexual assault evidence kits. The task force shall:
  - a. *Develop recommendations for establishing a statewide electronic sexual assault evidence kit tracking system.*
  - b. *Identify and pursue state and federal funding to establish the tracking system, including grants.*
  - c. *Be comprised of [X] members that include law enforcement professionals, crime lab personnel, prosecutors, victim advocates, victim attorneys, survivors, and Sexual Assault Nurse Examiners/Sexual Assault Forensic Examiners.*
  - d. *Monitor the tracking system's implementation for at least two years and recommend necessary modifications.**
- B. *The [appropriate state agency] shall implement the recommendations of the task force to adopt and maintain the statewide tracking system. The [Appropriate state agency] may contract with state or non-state entities including, but not limited to, private software and technology providers, for the creation, operation, and maintenance of the system. The tracking system shall:
  - a. *Track the status of sexual assault evidence kits from the collection site throughout the criminal justice process, including but not limited to the initial collection at medical facilities, inventory and storage by [law enforcement agencies or crime lab], analysis at crime laboratories, and storage or destruction after completion of analysis.*
  - b. *Allow all agencies or facilities that receive, maintain, store, or preserve sexual assault evidence kits to update the status and location of the kits.*
  - c. *Allow victims of sexual assault to anonymously access the system and receive updates regarding the location and status of their sexual assault evidence kits.*
  - d. *Use electronic technology that allows continuous access by victims, medical facilities, law enforcement, and crime laboratories.**
- C. *The [appropriate state agency] may phase-in initial participation according to region, volume of kits, or other appropriate classifications.*
- D. *The [appropriate state agency] shall submit a report on the current status and plan for launching the system, including the plan for phased implementation, to the Governor, the Attorney General, legislative leadership, and the task force in advance of the legislative session following enactment of this law.*
- E. *All entities in the chain of custody of sexual assault evidence kits shall fully participate in the system no later than one year from the date of adoption.*
- F. *Participation is mandatory for law enforcement agencies, medical facilities, crime laboratories, and any other facilities that receive, maintain, store, or preserve sexual assault evidence kits.*



## EXAMPLES FROM THE STATES: Tracking System for Sexual Assault Evidence Kits

### Washington [H.B. 2530](#) – Statewide tracking system

*The statewide sexual assault kit tracking system must:*

- (a) Track the location and status of sexual assault kits throughout the criminal justice process, including the initial collection in examinations performed at medical facilities, receipt and storage at law enforcement agencies, receipt and analysis at forensic laboratories, and storage and any destruction after completion of analysis;*
- (b) Allow medical facilities performing sexual assault forensic examinations, law enforcement agencies, prosecutors, the Washington State Patrol Bureau of Forensic Laboratory Services, and other entities in the custody of sexual assault kits to update and track the status and location of sexual assault kits;*
- (c) Allow victims of sexual assault to anonymously track or receive updates regarding the status of their sexual assault kits; and*
- (d) Use electronic technology or technologies allowing continuous access.*

### Utah [H.B. 200](#) – Statewide sexual assault tracking system

*(1) The department shall develop and implement a statewide tracking system by July 1, 2018, that contains the following information for all sexual assault kits collected by law enforcement:*

- (a) the submission status of sexual assault kits by law enforcement to the Utah Bureau of Forensic Services;*
- (b) notification by the Utah Bureau of Forensic Services to law enforcement of DNA analysis findings; and*
- (c) the storage location of sexual assault kits.*

*(2) The tracking system shall include a secure electronic access that allows the submitting agency, collecting facility, department, and a victim, or his or her designee, to access or receive information, provided that the disclosure does not impede or compromise an active investigation, about the:*

- (a) lab submission status;*
- (b) DNA analysis findings provided to law enforcement; and*
- (c) storage location of a sexual assault kit that was gathered from that victim.*

## ✓ Essential Reforms: Victims' Right to Notice and to be Informed

Sexual assault survivors want and deserve information about the status of their cases. In 2016, Joyful Heart conducted a research study on victim notification, which found access to information about the status of their cases can promote healing for survivors of sexual assault. States should ensure survivors' rights to notice are established in law.

Policies should:

- Grant survivors the right to be notified, upon request, about the status of their 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; and
- Ensure this right extends to cases in which the **decision is made not to test** their kit, as well as notification **in advance of planned kit destruction** in accordance with the law.

To date, **12 states and Washington, D.C.** have passed laws establishing victim notification rights for sexual assault survivors.

**MODEL LANGUAGE: Victims' Right to Notice and to be Informed**

*No later than [DATE], [appropriate state agency] will ensure that statewide policies and procedures for law enforcement shall be adopted concerning contact with victims and notification concerning sexual assault evidence kits. The policies and procedures shall be evidence-based and survivor-focused and shall require:*

- A. Each agency to designate at least one person, who is trained in trauma and victim response, to receive all inquiries concerning sexual assault evidence kits and to serve as a liaison between the agency and the victim.*
- B. Victims of sexual assault be provided with the contact information for the designated liaison(s) at the time that a sexual assault evidence kit is collected.*

*In advance or at the time of the medical forensic examination or law enforcement interview, medical professionals, victim advocates, law enforcement officers, or prosecutors shall provide victims of sexual assault with a physical document developed by [appropriate state agency] identifying their rights under law.*

*Under this section all victims of sexual assault shall have the right to:*

- C. Consult with a sexual assault victim advocate who has confidentiality and privilege; waiving the right to a victim advocate in one instance does not negate this right. The medical facility, law enforcement officer, or prosecutor shall inform the victim of this right prior to commencement of a medical forensic examination or law enforcement interview, and shall not continue unless such right is knowingly and voluntarily waived.*
- D. Information, upon request, of the location, testing date and testing results of a kit, whether a DNA sample was obtained from the kit, whether or not there are matches to DNA profiles in state or federal databases and the estimated destruction date for the kit, if applicable, in a manner of communication designated by the victim.*
- E. Be informed when there is any change in the status of their case, including if the case has been closed or reopened.*
- F. Designate a person of the victim's choosing to act as a recipient of the information provided under this subsection.*
- G. Be informed about how to file a report with law enforcement and have their sexual assault evidence kit tested in the future, if the victim chose not to file a report or have the kit tested at the time the kit was collected.*
- H. Be informed about the right to apply for victim compensation.*

**EXAMPLES FROM THE STATES: Victims' Right to Notice and to be Informed**

**Utah [14 H.B. 157](#) – Rights to case information and designated recipient**

*Victims of sexual offenses have the following rights...*

- (ii) the right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence;*
- (iii) the right to be informed whether a DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System;*
- (iv) the right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and*
- (v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection.*

**Oregon [16 S.B. 1571](#) – Process and protocol for victims' inquiry**

*No later than January 1, 2017, each law enforcement agency within this state shall adopt policies and procedures concerning contact with the victims and the provision of information to victims concerning sexual assault forensic evidence kits. The policies and procedures must include:*

- (a) A requirement that the agency designate at least one person within the agency to receive all telephone inquiries concerning sexual assault forensic evidence kits and to serve as a liaison between the agency and the Department of State Police.*
- (b) A requirement that, at the time that a sexual assault forensic evidence kit is collected, a victim be provided with the contact information of a person described in paragraph (a) of this subsection.*
- (c) Provisions allowing sexual assault victims to request and receive information concerning sexual assault forensic evidence kits, including but not limited to the location, testing date and testing results of a kit, whether a DNA sample was obtained from the kit, whether or not there are matches to DNA profiles in state or federal databases and the estimated destruction date for the kit.*
- (d) A requirement that a person described in paragraph (a) of this subsection provide, in response to a victim inquiry concerning a sexual assault forensic evidence kit, any information the victim requests in a manner of communication designated by the victim, as soon as possible and within 30 days of the inquiry, unless the agency declines to provide the information pursuant to paragraph (e) of this subsection.*
- (e) Provisions allowing the agency to decline to provide information that interferes with the investigation or prosecution of a case.*
- (f) A procedure that allows a sexual assault victim to provide the agency with written authorization for a designee to access information on the victim's behalf.*
- (g) Provisions allowing a victim to contact a person described in paragraph (a) of this subsection to request that an untested nonanonymous kit be reclassified as an anonymous kit, or an untested anonymous kit be reclassified as a nonanonymous kit, and a requirement that the agency notify the department of the reclassification.*

## ✓ Essential Reforms: Appropriation of State Funding

This work takes political will and significant resources. As states and local jurisdictions enact legislation and update policies to reform law enforcement practices around rape kit testing, the need for funding to implement a multi-disciplinary response will increase. **Federal funding is currently available** for jurisdictions working to eliminate their backlogs (see “Addressing the Cost of Testing All Kits”).

Additional state funding is a critical element of addressing the backlog and should be considered as policies are being drafted. It will be difficult for a state to forecast the resources necessary to institute mandatory testing until an inventory is completed. The report issued at the completion of the inventory should include information about the laboratory’s projected workload increase and the funding it will need to carry out the mandate.

Many states have appropriated funds to support rape kit reform in varied ways:

- **Arizona:** In 2017, Arizona legislators appropriated [\\$1.2 million in new funding](#) to test backlogged rape kits.
- **Colorado:** In 2013, Colorado legislators appropriated \$6,351,002 in new funding to clear the state’s backlog of untested kits.
- **Florida:** In 2015, Florida legislators appropriated [\\$300,000](#) for the FDLE audit. The 2015 budget also appropriated [\\$10,401,490](#) for the FDLE to distribute rape kits to local law enforcement agencies and test rape kits, including backlogged kits.
- **Kentucky:** In 2016, Kentucky legislators appropriated [\\$4,500,000 in funding](#) to test backlogged kits.
- **Michigan:** In 2013, Michigan legislators appropriated [\\$4,000,000 in new funding](#) to test backlogged kits. In 2014, Michigan legislators appropriated [an additional \\$3,000,000](#) to fund prosecutions linked to newly tested backlogged kits.
- **Nevada:** In 2015, Nevada legislators appropriated nearly [\\$3,700,000 in new funding](#) to test backlogged kits. In 2017, legislators appropriated an additional [\\$3 million](#) to reduce the backlog at the lab.
- **Texas:** In 2013, Texas legislators appropriated [\\$11,000,000 in funding](#) to test backlogged kits. In 2017, legislators appropriated an additional \$4.2 million to test backlogged kits.
- **Utah:** In 2014, Utah legislators [appropriated \\$750,000](#) to test backlogged kits. In 2017, legislators appropriated an additional [\\$1.2 million](#) to implement a rape kit reform law.
- **Washington:** In 2015, Washington legislators also appropriated [\\$2,750,000](#) to test newly collected kits. In 2016, Washington legislators appropriated [nearly \\$3,800,000](#) to fund the statewide tracking system.

So far, **13 states and Washington, D.C.** have appropriated funds for rape kit reform.

## ✓ Additional Best Practices: 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. It might also include statistics and state-specific information.

**MODEL LANGUAGE: Intent of the Law**

*The legislature finds that DNA evidence is a powerful law enforcement tool that can identify unknown suspects, connect crimes, and exonerate the innocent. Standard and efficient sexual assault evidence kit procedures and a statewide tracking system will ensure that victims receive accurate information that enables them to take steps to protect their rights, while preventing misplacement of kits, delays in testing, or destruction of evidence. It is the intent of the legislature that rape kits are tested in a timely manner to enhance public safety by protecting survivors, exonerating the innocent, and holding offenders accountable.*

**EXAMPLES FROM THE STATES: Intent of the Law**

**Idaho [H.B. 528](#) – Power of DNA**

*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.*

**New Mexico [16 S.M. 050](#) – Incidence of sexual assault in the state**

*WHEREAS, reports of sexual assaults in New Mexico have increased sixty-two percent since 2003, and from 2003 through 2012, state funding for services for survivors of sexual assault has not increased to meet the increase in reports; and*

*WHEREAS, sixty-six percent of incidents of sexual violence in New Mexico are committed against children and adolescents, which is twelve percent higher than the national average; and*

*WHEREAS, one in four women and one in twenty men in New Mexico experience an attempted or completed rape in their lives, and eighty-three percent of those attempted or completed rapes are not reported...*

**✓ Additional Best Practices: 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 or “lack of clarity” to be cited as an excuse to ignore the law.

Common terms to define include:

- “accredited laboratory”
- “Combined DNA Index System”
- “DNA analysis”
- “kit”
- “law enforcement agency”
- “medical forensic examination”
- “non-investigatory”
- “previously unsubmitted sexual assault evidence kits”
- “status”
- “untested sexual assault evidence kit”

**MODEL LANGUAGE: Definitions**

- 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. *“Combined DNA Index System” (CODIS) means the Federal Bureau of Investigation’s program of support for criminal justice DNA databases as well as the software used to run these databases.*
- C. *“DNA analysis” means the isolation of autosomal deoxyribonucleic acid (DNA) to develop DNA profiles that are eligible for entry into the Combined DNA Index System (CODIS); DNA samples taken from evidence containing DNA from a known individual or of unknown origin; the determination of the DNA test results; and entry of resulting DNA profiles into CODIS.*
- D. *“Kit” means sexual assault evidence kit.*
- E. *“Law enforcement agency” means a police department, the office of a sheriff, the state highway patrol, a county or city prosecuting attorney, or a federal, state, or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest.*
- F. *“Medical forensic examination” means an examination of a sexual assault patient by a health care provider, ideally one who has specialized education and clinical experience in the collection of forensic evidence and treatment of these patients. The examination includes gathering information from the patient for the medical forensic history; an examination; coordinating treatment of injuries, documentation of biological and physical findings, and collection of evidence from the patient; documentation of findings; information, treatment, and referrals for STIs, pregnancy, suicidal ideation, alcohol and substance abuse, and other non-acute medical concerns; and follow-up as needed to provide additional healing, treatment, or collection of evidence.*
- G. *“Newly collected kit” refers to sexual assault evidence kits that are not part of the backlog or have been collected since timeframes and requirements for testing kits became law.*
- H. *“Non-investigatory” refers to a sexual assault evidence kit that is collected from a victim of sexual assault through a medical forensic examination where the victim elects, at the time of the examination, not to report the sexual assault offense to a law enforcement agency.*
- I. *“Previously unsubmitted sexual assault evidence kits” means any kit that has been held untested by medical facilities, law enforcement agencies, or accredited laboratories.*
- J. *“Sexual assault evidence kit” means a collection of human biological specimen(s) collected by a health care provider during a medical forensic examination from the victim of a sex offense.*
- K. *“Status” refers to the location and date/time when the sexual assault evidence kit transfers within the chain of custody.*
- L. *“Untested sexual assault evidence kit” means a human biological specimen(s) collected by a health care provider during a forensic medical examination from the victim of a sexually-oriented criminal offense that has not been through DNA analysis and has been held untested by medical facilities, law enforcement agencies, or accredited laboratories.*

## ✓ Additional Best Practices: Statute of Limitations

Rape is a crime with a lifelong, profound impact on survivors. To ensure 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, which allows prosecution to commence when identification of the offender has been made through DNA testing.

Several states implemented statute of limitations reforms in 2016:

- **California** [eliminated the statute of limitations](#) for criminal felony sex offenses, including rape;
- **Colorado** [extended the statute of limitations](#) for felony sexual assault to 20 years; and
- **Nevada** [extended the statute of limitations](#) for criminal sexual assault from four years to 20 years.

### MODEL LANGUAGE: Statute of Limitations for Sexual Assault

*(Option 1) Eliminate the statute of limitations for sexual assault.*

*(Option 2) If a DNA profile is generated from the analysis of a sexual assault evidence kit, or other evidence becomes available, the related case can be reopened at any time after the commission of the offense, regardless of the statute of limitations on the crime.*

### EXAMPLE FROM THE STATES: Statute of Limitations for Sexual Assault

#### **Indiana [119 Act No. 94](#) – Discovery of evidence through DNA analysis**

*A prosecution for rape as a Level 3 felony that would otherwise be barred under this section may be commenced not later than five (5) years after the earlier of the date on which:*

- (1) the state first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis;*
- (2) the state first becomes aware of the existence of a recording (as defined in IC 35-31.5-2-273) that provides evidence sufficient to charge the offender with the offense; or*
- (3) a person confesses to the offense.*

## ✓ Additional Best Practices: Compensation for Victims

In many states, victims of crime are eligible to receive reimbursement for out-of-pocket expenses associated with their victimization. Applications for reimbursement must be submitted within a specific period of time following the crime. These time limits may preclude survivors, in cases with renewed investigative activity, who did not apply for victim compensation funds at the time of the crime. The submission and testing of previously untested rape kits—and resulting new action in these cases—may bring up counseling or other needs for survivors. Survivors should not have to bear the burden of these costs alone due to a delay outside of their control.

States should ensure survivors whose kits were left untested remain eligible for reimbursement funds by **enacting clear exceptions to the existing application period**. Such exceptions should include a clear explanation of what constitutes **appropriate** cause for the exception,



including any **further investigation initiated by law enforcement** into a previously reported crime.

**MODEL LANGUAGE:** Compensation for Victims

*When a renewed investigation into a previously reported sexual assault crime is initiated by a law enforcement agency after DNA testing or other evidence has revealed the identity of the offender, any victim or secondary victim of such crime committed by such offender may be eligible to apply within two years for victim compensation even if the deadline for reimbursement application has passed.*

**EXAMPLE FROM THE STATES:** Compensation for Victims

**Delaware [Title 11, Chapter 90](#) – Exceptions to existing victim compensation rules**

*13a. Notwithstanding the provisions of paragraph 10 of this section or any other provisions of this chapter to the contrary, where:*

- 1. Further investigation into a previously reported crime is initiated by a law-enforcement agency;*
  - 2. An offender appears in any judicial or administrative proceeding regarding a criminal charge, conviction, or sentence, including but not limited to a trial, appeal, post-conviction relief, mediation, penalty, parole or pardon hearing;*
  - 3. The offender is released from incarceration; or*
  - 4. The death penalty is imposed pursuant to § 4209 of this title;*
- any victim or secondary victim of such crime committed by such offender may apply for reimbursement as set forth in paragraph (13)b. of this section.*

*b. A victim or secondary victim may apply for reimbursement under the circumstances set forth in paragraph 13a. of this section for the following:*

- 1. The cost of mental health counseling services, not to exceed 50 sessions;*
  - 2. Reasonable expenses incurred due to attendance at criminal proceedings;*
  - 3. Expenses for essential personal safety property, not to exceed \$1,500;*
- provided that such costs are incurred within 1 year prior to, or within 2 years after, the opening of such investigation, the date of such judicial or administrative proceeding or the release or execution date of the offender.*

## ✓ **Additional Best Practices: 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.

There is a growing movement to pass evidence retention laws across the country.

In 2016:

- Congress passed a **federal law** granting survivors the right to have their kits preserved for [either the maximum possible statute of limitations or for 20 years](#), whichever is shorter;
- **Massachusetts** enacted a law requiring government entities to preserve all rape kits for [either 15 years or the statute of limitations](#), whichever is longer; and



- **Oregon** passed a law requiring law enforcement to retain all rape kits for [no less than 60 years](#).

**MODEL LANGUAGE:** Evidence Retention

*All sexual assault forensic evidence kits, including non-investigatory kits shall be safely stored in a manner that preserves evidence for a duration of 50 years or the statute of limitations, whichever is longer.*

## Testing Rape Kits Stops Serial Rapists

Major cities like Cleveland, Detroit, and Memphis have discovered thousands of backlogged kits in storage, and taken action. These jurisdictions are testing their kits, submitting eligible DNA profiles into the national database (CODIS), and investigating and prosecuting resulting cases.

As of September 2017, testing these backlogged rape kits has resulted in the identification of over 1,300 potential serial rapists. These serial offenders, linked to kits in just three cities, have committed crimes across at least 40 states and Washington, D.C. They have not just committed rape—many have been linked to other violent crimes, as well.

In March 2016, researchers at Case Western Reserve University published an analysis of serial vs. one-time sexual offenders, based on a random sample of cases associated with previously backlogged kits from Cuyahoga County, Ohio. Their analysis found that **more than half of these sexual assaults were connected to serial offenders**, suggesting that serial offenders are more common than previously believed. They recommend that jurisdictions thoroughly investigate every sexual assault case as possibly perpetrated by a serial offender, and test all sexual assault kits associated with a reported crime.

The following case studies illuminate the fact that rapists are often serial offenders and that DNA is one of the best tools we have to take these dangerous offenders off the streets and keep communities safe.

### Cleveland, Ohio

In 2011, the Ohio Attorney General launched the Sexual Assault Kit Testing Initiative, which incentivized law enforcement agencies across the state to submit all untested kits in storage to the state crime lab. As of October 2017, nearly 300 law enforcement agencies across Ohio have submitted 13,931 kits for testing and the crime lab has completed analysis on 13,145 of these kits, resulting in 4,768 DNA hits.

Through this initiative, the lab has tested over 6,800 kits from Cuyahoga County, resulting in the identification of **436 serial rapists**. One rapist identified through the backlog testing effort has been linked to **17 victims**.

#### Cold Case Convictions: Cleveland

Former Lake County probation officer Nathan Ford has been linked to at least 15 rapes since the early 1990s. Ford was first convicted of raping seven women and one child in 2006. In 2015, newly analyzed DNA evidence from untested rape kits connected Ford to an additional 7 rapes.

Ford is serving 138 years in prison for his 2006 convictions. Since the launch of the Ohio Sexual Assault Kit Testing Initiative, Ford has been linked to 14 additional assaults.

## Detroit, Michigan

In 2009, the Wayne County Prosecutor's Office discovered **11,341 untested rape kits** in a Detroit Police Department storage facility. As of October 2017, Detroit has tested approximately 10,000 kits, resulting in 2,616 DNA matches and the identification of **811 suspected serial rapists**. The Wayne County Prosecutor's Office has obtained 113 convictions, and DNA from the testing of these kits has been linked to crimes committed in 40 states and Washington, D.C.

### Cold Case Convictions: Detroit

In 2003, DeShawn Starks sexually assaulted two women in Detroit, six months apart. Both women submitted to rape kits, but their kits were not tested and their cases were not investigated until a decade later. In 2013, Starks sexually assaulted two more women in Detroit. Both women submitted to rape kits, and their kits were tested. When the resulting profile was entered into CODIS, the DNA hit linked the case to another crime.

Ten years after Sparks' 2003 crimes, Detroit tested all of these kits as part of its backlog elimination initiative, and DNA linked Starks to both crimes. Had the kits been tested following collection, at least two sexual assaults could have been prevented. Sparks is currently serving a sentence of 45-90 years in prison.

## Addressing the Cost of Testing All Kits

Most jurisdictions have failed to prioritize funding for testing rape kits, which cost an average of \$1,000 to \$1,500 per kit. Rape kit reform can be costly: jurisdictions must count and test kits; expand investigation, prosecution, and laboratory capacity; implement victim notification and re-engagement protocols; and employ a multi-stakeholder approach to reform.

The federal government has a key role to play in investing injustice for survivors, accountability for perpetrators, and safety for our communities. Over a decade ago, Congress took a major step toward addressing the rape kit backlog with the creation of the Debbie Smith Act. This law has been essential to drawing attention to rape kit backlogs—especially those in crime laboratories—and galvanizing lawmakers and the public to action.

After years of advocacy for dedicated federal funding to assist jurisdictions seeking to clear their backlogs of untested rape kits, in 2014, Joyful Heart helped unlock significant funding—nearly \$80 million—to address the rape kit backlog nationwide. In September 2015, Joyful Heart Founder & President Mariska Hargitay stood beside United States Vice President Joe Biden, Attorney General Loretta Lynch, and Manhattan District Attorney Cyrus Vance, Jr. as they awarded these grant funds from the Department of Justice and the [Manhattan District Attorney's Office](#) to 48 law enforcement agencies in 27 states to address their backlogs of untested rape kits.

Since 2015, the [Sexual Assault Kit Initiative \(SAKI\)](#), as the federal grant program is known, has provided communities across the country with vital resources to develop and implement comprehensive, multi-disciplinary rape kit reform. These funds are used to test backlogged kits, investigate and prosecute cases connected to the backlog, and support victim re-engagement

with the criminal justice system. These grants can also be used to develop tracking systems, train law enforcement, conduct research on outcomes of testing kits, and expand the collection of offender DNA. This grant requires the coordination of a multidisciplinary group of stakeholders for a successful application.

Other Ongoing Federal Grant Programs:

- The National Institute of Justice (NIJ) offers the Sexual Assault Forensic Evidence-Inventory, Tracking and Reporting Program (SAFE-ITR) grants,[1] which can be used to fund the development of inventorying, tracking, or reporting systems for rape kits locally or statewide.
- The National Institute of Justice (NIJ) offers the DNA Capacity Enhancement and Backlog Reduction grants, also known as “Debbie Smith grants,” which can be used to process DNA samples and increase the capacity of public labs to process more DNA samples (for instance, by funding the salaries of new employees). Going forward, this solicitation will be amended to enable the funds to be used for inventorying or tracking kits.

In many cases, federal funding is not sufficient to fully address a state’s backlog. Additional funding should be set aside by state elected officials to ensure this work is fully funded.

## Testing Rape Kits Saves Communities Millions of Dollars

Testing every rape kit connected to a reported crime makes communities safer. And, as research proves, testing every kit also saves communities money.

In 2016, the Begun Center for Violence Prevention Research and Education at Case Western Reserve University analyzed the cost of testing backlogged rape kits in Cuyahoga County, Ohio.

Factoring in the cost of testing kits, investigating cases, and other related expenses, the study calculated the overall cost effectiveness of testing 4,347 unsubmitted kits:

- **Each kit tested produced an estimated net savings to the community of \$8,893.**
- **Testing all 4,347 kits produced a net savings of \$38.7 million.**
- **The estimated total cost savings of future sexual assaults averted due to testing backlogged kits, as of January 2016, was \$48.2 million.**

Research is now confirming what cities and states around the country have already discovered: testing every rape kit and thoroughly investigating every reported rape is financially beneficial for communities. As more sexual assault cases are pursued, more offenders are apprehended, and future crimes are averted. Investing in testing backlogged kits and pursuing justice today will lead to safer communities and significant savings tomorrow.

## Leadership in Tough Financial Times

With so many states facing tough decisions regarding where to focus resources, strong leadership is required to ensure that sexual assault is treated and funded in line with other

crimes. Below are examples of strong state leaders who stepped up, even as they have faced financial challenges in their states.

### **Arizona Governor Doug Ducey (R)**

“Just some of the achievements from this session include: providing funding to eliminate the rape kit backlog and ensure every kit gets tested going forward; establishing a review team to investigate every overdose death in Arizona; expanding programs and resources to give those exiting prison a true second chance; improving the safety and well-being of children in state’s care; and providing a hand up for those most in need. These achievements come on top of the landmark investments we passed for public schools, teachers, and universities that will benefit our state for years to come.”

### **Albuquerque Mayor Richard Berry (R)**

“Berry said he wants all of the rape kits to be processed. ‘We owe those 4,000 people an answer,’ he said. The remaining \$192,000 of the \$1 million is earmarked to ensure that the crime lab has the staff it needs to keep up with kits as crimes occur. The council approved a resolution earlier this month requiring APD to test rape kits within three months of receiving them, once the APD Crime Lab is staffed with 10 full-time analysts, but no later than October 2018.”

## **Resources for Advocates of Reform**

### *Talking Points*

- Every 98 seconds, someone is sexually assaulted in the U.S. After an assault, a victim may choose to have **evidence of the crime collected and preserved in a rape kit**. The process, conducted by a doctor or nurse, is an exhaustive and invasive four- to six-hour examination of the victim’s body for DNA evidence left behind by the attacker.
- DNA is a **powerful law enforcement tool**. When tested, rape kit evidence can identify an unknown assailant, reveal serial offenders, bring justice to the survivor, and exonerate the innocent. To accomplish these things, rape kits must be tested for the presence of DNA.
- Right now, **hundreds of thousands of untested rape kits** are in storage at law enforcement agencies nationwide. Because most jurisdictions do not have systems for counting or tracking rape kits, we cannot be sure of the total extent of the problem. To date, Joyful Heart has identified at least 200,000 kits in jurisdictions across the country.
- Every rape kit that goes untested is a **missed opportunity for justice for survivors and to promote public safety** for the greater community. If we allow rape kits to sit untested on a shelf, cases remain unsolved, serial rapists remain undetected, and innocent people remain incarcerated—all while survivors continue to wait for justice.
- The reasons for the rape kit backlog are myriad. In most jurisdictions, there is **no law or policy mandating** the testing of all rape kits, leaving the decision of which kits to test up to individual police or prosecutors. These decisions are too often based on bias or victim-blaming, lack of knowledge about the power of DNA technology, and the limited resources available to law enforcement agencies.

- Testing rape kits collected in connection to acquaintance cases is critical. Although the identity of the attacker is already known, testing these kits enables law enforcement to **identify serial perpetrators** who might otherwise escape notice. Results from cities across the country indicates that the prevalence of serial rapists may be higher than previously believed; for instance, researchers studying backlog testing in Detroit found that testing rape kits from both stranger and acquaintance cases led to the identification of 18 serial offenders through case-to-case associations, and researchers studying backlog elimination efforts in Cleveland found that over half of backlogged kits were connected to serial perpetrators.
- Testing rape kits **makes communities safer and saves them millions of dollars**. According to a study from the Begun Center for Violence Prevention Research and Education at Case Western Reserve University, testing just 4,300 previously unsubmitted kits in Cleveland has saved the community \$38.7 million dollars, or **\$8,893 per tested sexual assault kit**.
- Eliminating the backlog of untested rape kits is a cornerstone to improving our nation's criminal justice response to sexual violence.
- Ending the rape kit backlog will take a coordinated effort and deep commitment at all levels of our government and in communities across the U.S. **To successfully address the rape kit backlog, we are calling on state leaders to enact the following key reforms:**
  1. An **annual statewide inventory** to identify the number of untested kits and to get a clear picture of the scope of the backlog.
  2. Mandatory **submission and testing of all previously unsubmitted kits** within a timeframe of no longer than 180 days.
  3. Mandatory **submission and testing of all newly collected kits**: hospitals must notify law enforcement within 24 hours; law enforcement must pick up the kit within three business days; law enforcement must submit the kit to the lab within seven days; and the lab must test the kit and upload eligible DNA profiles to CODIS within 30 days.
  4. An electronic **tracking system** for survivors to check the status of their kit at any time.
  5. **Victims'** rights, including the right to be informed if there is a decision not to test a kit or when there is any planned destruction of a kit.
  6. **Appropriation of state funding** to implement reform as efficiently as possible.
- Tracking and testing rape kits can bring healing for survivors of sexual assault. Research shows that for survivors who want to know about their case, not having access to this information can severely hamper recovery. Survivor access to critical information about the status of their kits can help counter the loss of self-determination and control at the core of the sexual assault experience.

## Endthebacklog.org

Joyful Heart is proud to have founded [www.endthebacklog.org](http://www.endthebacklog.org), the premier website for public research, information, and action on eliminating the rape kit backlog in the United States.

The website includes an [interactive map](#) of rape kit reform across the nation, easy-to-navigate guides on what is happening in your state, an extensive [media archive](#) of news about the backlog from across the country, an [integrated blog](#) with updates and commentary about the backlog, and more.

The website provides resources for multiple stakeholders, including survivors, legislators, and reporters. The site features resources for legislators, including our [Drafter's Checklist](#) for rape kit reform and [best practice recommendations](#) from our research report on victim notification; resources for reporters, including [guidance from journalists](#) experienced in working with survivors; and [resources for survivors](#) of sexual assault, including a guide to [locating a rape kit](#).

The site also features an [advocacy center](#) with action steps for grassroots engagement with supporters in all 50 states. Since the site's launch, it has generated more than 756,000 pageviews from over 304,000 unique visitors. Our supporters have used the site's advocacy center to send over 8,000 letters to state and federal legislators.

Connect with us on Twitter ([@ENDTHEBACKLOG](#)) and [sign up for our newsletter](#) to learn more.