

# The Role of Administrative Procedures in Preventing the Backlog of Sexual Assault Evidence Kits

Heather Darby

Martin School of Public Policy and Administration

University of Kentucky

# THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

## Executive Summary

Across the nation, states are facing a large backlog of sexual assault evidence kits. Sexual assault evidence often sits in a police department or hospital for years without being tested. Public safety is diminished as criminal DNA is not tested and entered into CODIS. Victims have no sense of justice, and may lose confidence in the system. Without attention to the issue, the backlog will only continue to grow. As states have developed innovative and effective methods for addressing the backlog, their successes and failures have served as a base for others who are considering changes to avoid future backlogs. This study examined the Sexual Assault Forensic Evidence (SAFE) kit procedures in Kentucky and established four primary areas of concern: Funding, procedures, victim notification, and collaboration. States from across the nation were analyzed on one or more of these fronts to determine the best practices for addressing the backlog of SAFE kits. While other states have made significant strides toward the elimination of the current backlog and the prevention of future backlogs, six states were analyzed in-depth: California, Texas, Utah, Michigan, Ohio, and Illinois. Based on the analysis of practices in these states, this paper provides suggestions as to the next steps for Kentucky policy makers and stakeholders in improving the state's SAFE Kit tracking and testing structure.

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

### Introduction

---

In the state of Kentucky, as in other states across the nation, there is an observable problem surrounding the treatment of forensic evidence collected after a sexual assault. An individual who has been sexually assaulted may choose to go to the hospital and have physical evidence collected and stored in a sexual assault kit developed for that purpose. The procedures for collecting sexual assault kits and submitting them for testing are demonstrably lax in Kentucky, with a frequent breakdown in the communication between local and state law enforcement agencies. When a kit does arrive at the Central Lab in Frankfort, where all physical evidence from violent crimes is tested, there may not be a sufficient number of forensic analysts to test the kits in a timely manner. The combination of these factors has led to a backlog of untested sexual assault kits at the Central Lab. In addition to the problems with collection and testing, there are also problems with tracking the kits, which can compromise the chain of evidence required for legal processes. Victims are not typically notified when their kits are tested. They may not even be notified if local law enforcement has decided not to submit their kits. Victims know little about the progress of evidence processing, and receive little information regarding prosecution.

In the spring of 2015 Senate Joint Resolution 20 was passed by the General Assembly, requiring that all untested sexual assault kits in Kentucky be tested by November 1 of that year. At the time of the resolution, it typically took between six and nine months for a Sexual Assault Forensic Evidence (SAFE) Kit to be tested, and some did not ever make it to the lab for testing. Due to the insufficient tracking procedures, the total number of untested kits is unclear. State

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

Auditor Adam Edelen has stated an intention to develop an accurate count of the untested kits, and to ensure that they all undergo testing, by the end of 2015.

Although these efforts are likely to eliminate the mass of untested kits, the Auditor is aware that there is an underlying problem. The absence of clear procedures allows flaws in the system that undermine productivity and effectiveness. After counting and processing the existing SAFE kits, the next step should be to develop an improved process for collecting, testing, and tracking the kits in the future. The backlog problem will continue to exist if systemic changes are not made. Edelen has stated that finding the most effective procedures for Kentucky is the priority of the Auditor's office for 2015 ("Where the Backlog Exists"). The goal is to create policies and procedures where they do not exist, and to enforce those that do exist, to improve the safety and wellbeing of Kentucky citizens.

While it may seem that improvements will only affect a select few, these changes should be a concern for everyone. Individual citizens, law enforcement agencies, victim advocates, health care professionals, and prosecutors have a stake in the success and effectiveness of the evidence system. Each individual living or working in Kentucky should take an interest in public safety. Men, women, and children of all types are victims of sexual assault, and as such are stakeholders in this process. A perpetrator who is caught through the criminal justice system will be less likely to be a threat to others. Those individuals who have survived sexual assault or other violence, as well as victim advocates, hope to see justice. Many victims do not feel safe until their attacker is convicted. Law enforcement agencies and prosecutors

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

must consider public confidence in the justice system when making improvements. The flaws in the SAFE kit process reflect an issue that impacts each stakeholder and requires close attention.

### Background

---

A Sexual Assault Forensic Evidence, or SAFE, kit is used in hospitals when a man or woman has been sexually assaulted and would like to be treated for injuries, to receive prophylactic treatment for potential pregnancy or sexually transmitted diseases, and to have physical evidence collected. Evidence collection is optional for the victim. Other names for a SAFE kit are sexual assault kit (SAK), physical evidence recovery kit (PERK), sexual offense evidence collection (SOEC) kit, or rape kit (“What is a Rape Kit?”). The exam can be completed by a Sexual Assault Nurse Examiner (SANE) or physician who has received SANE training. The examiner looks for and photographs physical injuries, and collects saliva, semen, and other DNA evidence. If the victim decides to report his/her assault to law enforcement, the kits may be turned over to local police. If the victim decides not to report the assault, the hospital must keep the kit for ninety days.

After the hospital turns the kits over to law enforcement, there are few required procedures. If local law enforcement officials decide that the evidence should be tested, the kit is sent to the Central Lab in Frankfort. There, the staff prioritizes evidence testing order. Violent crimes are given highest priority, with murder being first and rape being second. If local law enforcement officials do not wish to test the kit, it may sit in the hospital or police station for years. When a kit is tested at the Central Lab, the analysts run tests to determine whether there is evidence of DNA that does not belong to the victim. When DNA evidence is discovered, it is tested against the FBI’s Combined DNA Index System (CODIS). CODIS is a database which

THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

contains DNA recovered in crime labs across the nation (Ritter, p. 18-20). Results from the forensic exam, including matches found in CODIS, can then be used in criminal investigation and prosecution.

There is a clear breakdown in one or more of these steps, as is evidenced by the large backlog of SAFE kits. The total number of untested kits in Kentucky is not known, but estimates range from 2,000-10,000 (Galofaro). Because the size of the backlog is known in Ohio (Casey, 2014), the number of rapes reported in Kentucky as a percentage of the number of rapes reported in Ohio was used as a basis to estimate the size of the backlog. The data used to make this estimate are in Table 1 below.

Table 1: Kentucky Rapes as a Percentage of Ohio Rapes

Year	Kentucky Rapes	Ohio Rapes	Kentucky rapes as a percentage of Ohio rapes
2009	1,531	4,119	37%
2010	1,438	3,730	39%
2011	1,499	3,679	41%
2012	1,312	3,813	34%
2013	1,126	2,824	40%

("Kentucky Crime Rates 1960 - 2013")

Assuming that around 38 rapes are reported in Kentucky for every 100 rapes in Ohio, a ballpark estimate of the existing backlog is around 3,420 kits:

$$9,000 \text{ backlogged kits in Ohio} * 38\% = 3,420 \text{ backlogged kits in Kentucky}$$

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

Despite the existence of the backlog, the community that surrounds this issue faces an important question: does a SAFE kit make a difference? In 2009, stakeholders in Detroit, Michigan worked together to create a task force that would address the SAFE kit backlog. Throughout the period during which Detroit counted SAFE kits, the interdisciplinary collaborative worked to incorporate research into its efforts. The team had limited resources, and had little information on the types of cases that benefitted the most from evidence. Kits of unidentified perpetrators would have a chance at identifying an individual acting as a danger to society, and could put the victim more at ease. Kits of known perpetrators would have a chance at identifying serial attacks. Kits from cases whose statute of limitations has expired might be used to link multiple cases to a serial perpetrator. (Note: In the state of Kentucky, there is a statute of limitations on sexual assault, which is considered a misdemeanor, but not on rape, which is considered a felony (“Kentucky Statutes”).)

In an effort to understand whether certain cases should take precedence, a Detroit task force sponsored by the National Institute of Justice determined how many kits from each population yielded DNA results. The 1,595 untested kits were placed into four categories: 1) stranger rape cases, 2) non-stranger rape cases, 3) presumed SOL-expired (statute of limitations) cases, and 4) DNA testing method (Campbell et al., 2015). These categories are listed below with definitions in Table 2. Of the total, 785 kits (49%) contained DNA information that was entered into CODIS. There were 455 “hits,” or matches in the system. Those cases that were not matched have the potential to be matched to future cases.

THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

Table 2: Michigan SAK testing categories

Category	Definition
<b>Stranger rape</b>	Victim is assaulted by an unidentified perpetrator
<b>Non-stranger rape</b>	Victim is assaulted by a friend, family member, acquaintance, etc
<b>Presumed SOL-expired cases</b>	Cases in which statute of limitations on rape has expired
<b>DNA testing method</b>	Cases used to experiment with new DNA testing method

(Campbell et al., 2015)

The kits that yielded DNA information were entered into CODIS, and a percentage returned a CODIS hit. For example, 239 profiles were entered into CODIS from group 1 (stranger rape), and 156 returned hits (65%). The percentages of hits for each testing group are displayed in Table 3. Although they are not relevant to the decision, Group 4 results are included in the table. Group 1 had the highest percentage of hits, at 65%. Both Group 2 and Group 3 had more than a 50% return rate. Testing in each of these groups yielded a considerable number of CODIS hits. These results make a case not only for testing of sexual assault evidence as a whole, but also the importance of testing kits from each of these categories.

Table 3: CODIS hits per testing group

Testing Group	Percentage of CODIS hits
<b>Group 1: Stranger rape</b>	65%
<b>Group 2: Non-stranger rape</b>	57%
<b>Group 3: SOL-Expired</b>	52%
<b>Group 4: New DNA testing method</b>	55%

(Campbell et al., 2015)

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

Additional research has given weight to the importance of sexual assault forensic evidence. A study completed in Duval County, Florida counted the number of sexual assault kits tested, the number of convictions, and demographic information on victims and prosecutors. Researchers found that of the 801 forensic exams, 44% identified a suspect, and 33% were prosecuted. Of the 237 cases that were not prosecuted, 153 (65%) represent cases in which either the victim or the prosecutor chose not to pursue prosecution (Gray-Eurom, Seaberg, & Wears, 2002). Use of DNA evidence has only recently become routine, but Sexual Assault Kits were used as evidence prior to the use of DNA. A 2002 study completed in British Columbia tested DNA in only 1.7% of the 462 cases in the study. Researchers found that severity of injuries was highly correlated with charge filing and conviction (McGregor, Du Mont, & Myhr, 2002).

Given the importance of Sexual Assault Forensic Evidence kits, the backlog and underlying issues in Kentucky present a policy problem that many would like to address. Some SAFE kits do not make it to the Central Lab for various reasons. Others take between six and nine months to process. Victims are not informed about the status of the evidence collected from them, and there is not an effective tracking process that is accessible to victims. The many aspects of the problem all contribute to a weaker sense of justice, public safety, and confidence in the system. The following analysis outlines the current process, identifies where procedures break down, and identifies the practices of other governments judged to excel at particular aspects of these processes in a way that could be used to improve Kentucky's system.

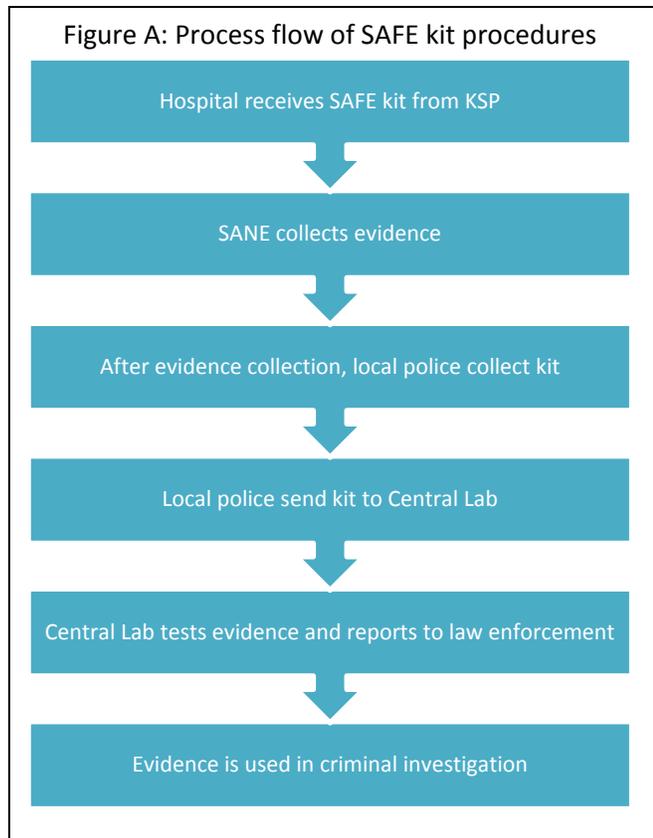
Research Design

---

Awareness of the backlog of SAFE kits has grown in 2015 in Kentucky, and State Auditor Adam Edelen has stated that his main priority for the year is to reduce the backlog. The first strides have been taken, as the General Assembly passed Senate Joint Resolution 20, requiring local governments to count the number of untested kits in their possession. Edelen has committed to reforming the system so that the state does not face a SAFE kit backlog in the future. However, it is necessary to study the current system and procedures before determining the best way to improve them. This research was completed in two parts. The first analyzes the process in Kentucky to find the breakdown(s) in productivity; the second looks to other state governments to determine the best practices for an efficient and effective system.

A process flow chart (Figure A) was established through interviews with stakeholders in the sexual assault prevention community. Employees at the State Auditor's office, the Bluegrass Rape Crisis Center, Kentucky Association for Sexual Assault Prevention, and the Lexington Police Department gave insight as to how the process currently works and where breakdowns might occur. Each party was consulted separately via phone, email, or in person. A compilation of their input yielded a well-rounded picture of the current process. Figure A outlines the existing steps from collecting evidence through reporting on findings. Figure C highlights the interruptions to the process, as revealed through analysis of interviews with those familiar with the system. Barriers to the process were placed into categories based on how they affected the system: funding, established procedures, victim notification, and collaboration.

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

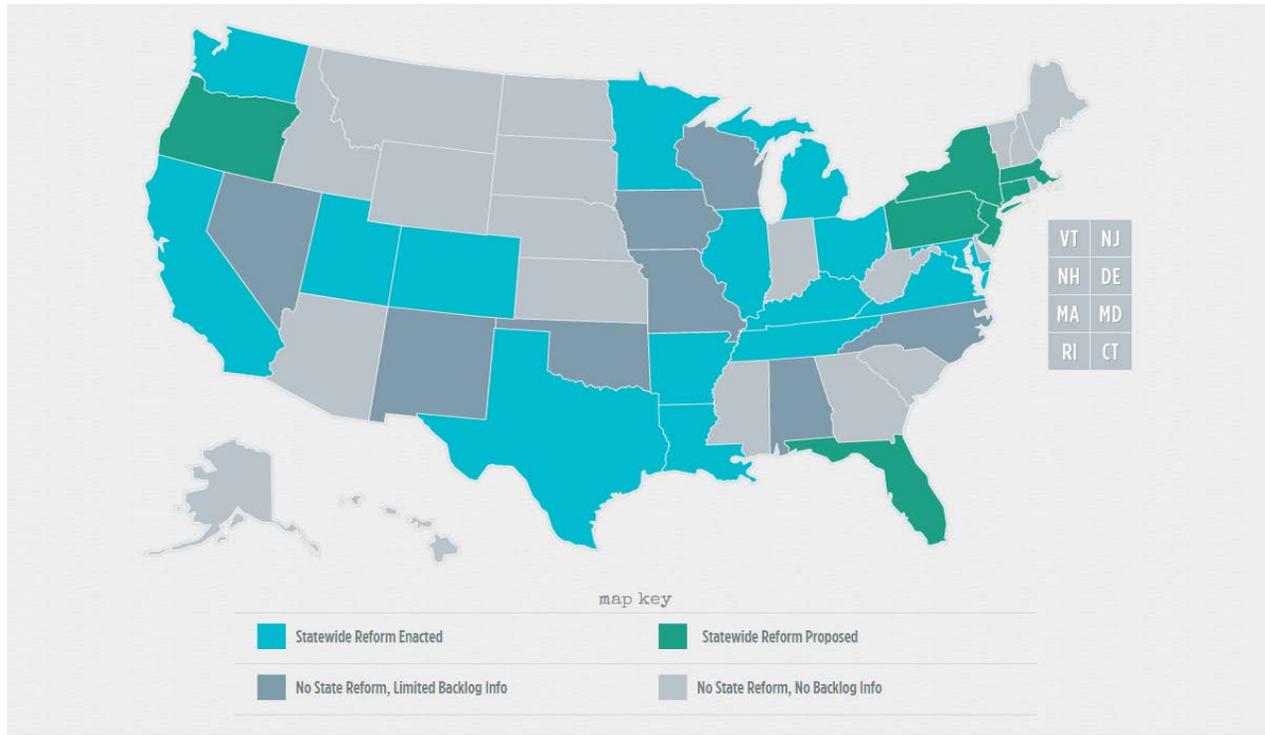


After the author gained an understanding of the obstacles faced during the process, other states were evaluated based on their progress in enacting reforms. Endthebacklog, a project of the Joyful Heart Foundation, is dedicated to putting an end to SAFE kit backlogs across the nation. The project collects information from each state regarding new legislation and policies and any other action taken. Figure B below displays the states that have enacted or proposed reforms, as well as those which have not taken the first step toward reform. Several of the states which have enacted reforms were considered for comparison (Michigan, Texas, Illinois, California, Ohio, and Utah were selected) in one of four categories that make up the problem: funding, established procedures, tracking, and collaboration. Although several states have made changes in multiple categories, many of them are the leaders in just one. For

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

instance, Detroit, Michigan has developed an innovative tracking system. Each of the states that has recently enacted reforms was reviewed, and one or more were chosen for each of the four categories mentioned previously.

Figure B: State reform map



(“Where the Backlog Exists”)

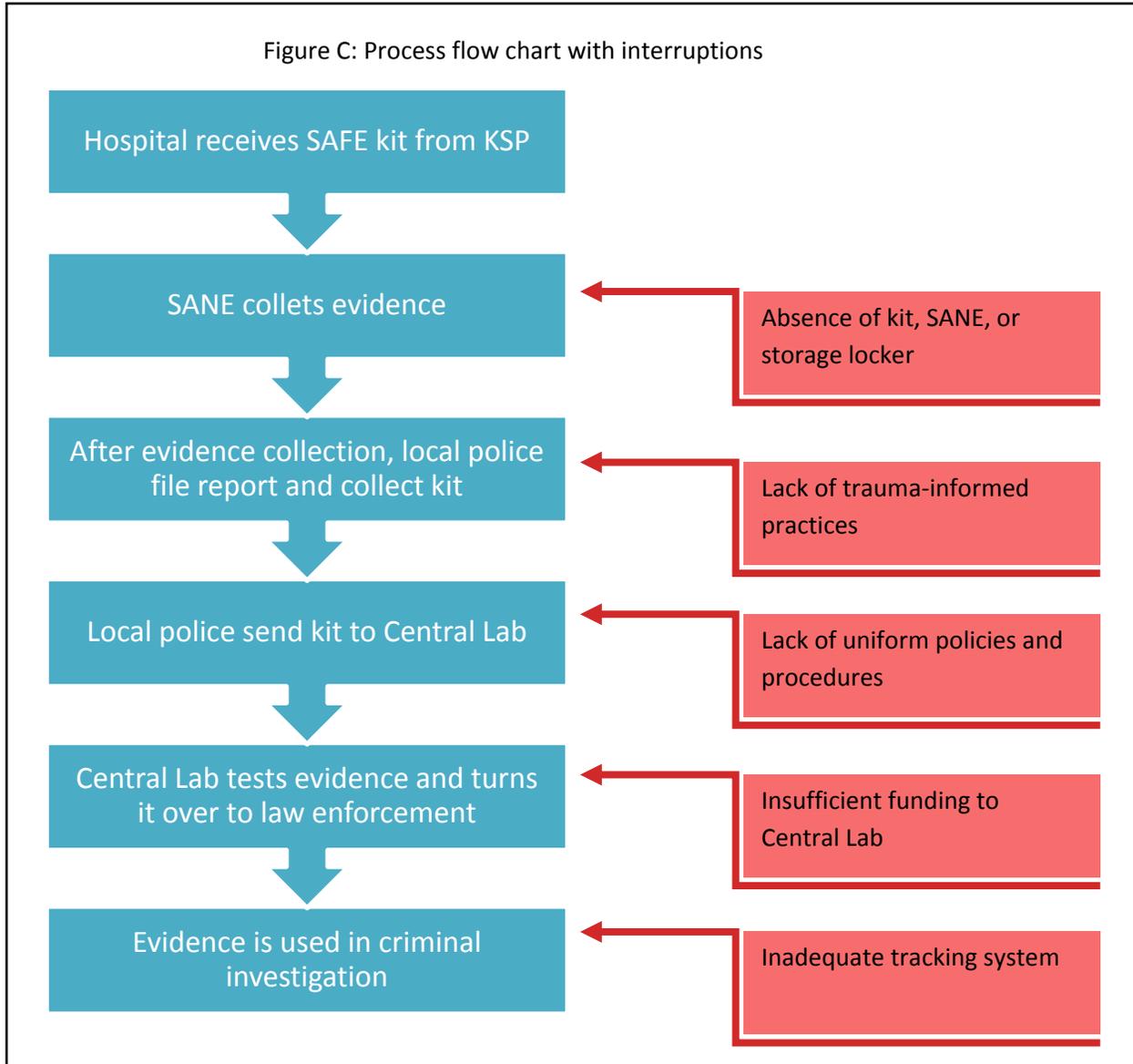
### Barriers to Efficiency and Accountability

---

Sexual assault evidence travels through many channels before it is used in a criminal investigation, and must confront a stream of obstacles along the way. The system cannot operate smoothly until these complications are identified and addressed. Figure C displays the process flow (found in Figure A above) along with the obstacles at each step. The following sections explore each section in further detail.

THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

Figure C: Process flow chart with interruptions



A. Funding

Budgetary concerns for Sexual Assault Forensic Evidence exams revolve primarily around funding for the Central Lab in Frankfort. Each kit costs between \$400 and \$1,500 to test, depending on how much evidence is included in the kit. However, victims are not required to pay the costs of collecting and testing the evidence. The Crime Victims Compensation Board in

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

Kentucky is responsible for covering the primary costs throughout the SAFE kits process. If a victim has a broken bone or other injury which is not included under the umbrella of routine services ("Sexual Assault Forensic-Medical Exams Toolkit Compliance Guide"), they are responsible for the payment for that service. The funding for the Crime Victims Compensation Board comes from federal sources as well as appropriations by the General Assembly (Ky Rev. Stat. Ann § 346.185).

While the kits are funded to some extent, there are still considerable road blocks, including inadequate staffing, at the Central Lab. Employee retention has become an issue, as forensic biologists have a variety of career opportunities that may offer superior pay and benefits. Kentucky currently has a 6-9 month backlog, but the testing process takes only two to three days to complete in the best of circumstances ("Sexual Assault Kit Testing: What Victims Need to Know"). In addition to retention problems, training for Central Lab employees takes up to one year (S. Hoelscher, personal communication, April 8, 2015). The year-long gap between hiring a forensic biologist and counting that individual as a fully trained employee may slow the process and contribute to the backlog.

### B. Procedures

Hospitals in Kentucky are legally obligated to provide SAFE exams when requested. They must acquire the kits and any other materials from the Kentucky State Police, and must have a health care provider on staff who can perform the exam (J. Johnson, personal communication, June 1, 2015). In the event that a victim would like to complete the exam but would not like to report the assault to law enforcement, the hospital is responsible for the storage of the kit for

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

up to ninety days ("Sexual Assault Forensic-Medical Exams Toolkit Compliance Guide").

Accountability on both of these fronts is low, and it is not uncommon for a hospital not to have a SAFE kit, or not to have a dedicated storage locker for the kit. There is also a lack of understanding from all parties involved about the required actions related to providing treatment and mandated reporting.

Although the Lexington Division of Police has recently begun to submit all SAFE kits for testing (M. Brotherton, personal communication, June 22, 2015), this is not an established procedure followed across the entire state. Police departments must follow specific requirements for certain cases—for instance, in child sexual assault cases. However, they use their own discretion for other cases. There is a lack of statutory guidelines regarding when it is necessary to submit a Sexual Assault Forensic Evidence kit for testing, leaving some kits forgotten in health care or law enforcement facilities.

In addition to the logistical lapses at this stage, there are some issues regarding trauma-informed practices. Trauma-informed practices “recognize the presence of trauma symptoms and acknowledge the role that trauma has played in their lives” (“About NCTIC”). While evidence collection may not be inhibited by the communication between victims and professionals, consideration for the victim is an important factor in the process. Stakeholders work to address sexual assault in a number of ways, and recognizing the needs of the victims is central to this process. The nature of the roles of certain stakeholders, such as law enforcement officials, prevents them from being trained on the most effective and compassionate way to communicate with victims. Without professionals who have a thorough understanding of

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

trauma-informed practices, victims may come away from the experience feeling that the parties involved in the process are not concerned with their well-being, and that there is no hope for their case. This reduces one aspect considered important in an effective procedure for managing SAFE kit evidence collection and investigation. Victim consideration comes into question again during the tracking process.

### C. Victim Notification

Victims of sexual assault and rape in Kentucky do not have direct access to the system that tracks the SAFE kit's progress through the testing process. They can, however, contact the police officer assigned to their case if they would like more information. An improved system would allow victims to use the tracking system without the assistance of a law enforcement officer. This would allow for greater privacy and peace of mind throughout the process. While the sexual assault itself is the primary cause of trauma, there can be secondary trauma following the event, particularly if victims cannot easily obtain information about the status of their cases and must live with uncertainty about what is happening ("Why Test Rape Kits After the Statute of Limitations has Expired? A Victim-Centric Approach"). The procedures for notification of legal proceedings are also lax. In the event that a previously tested SAFE kit is a match for a new SAFE kit, there are questions as to the proper way to contact the first victim. Reminding victims of an assault that occurred years ago can trigger strong reactions. They may relive the experience and revert to feelings of fear and anxiety ("New stories of sexual abuse can trigger memories, fear"). These reactions should be taken into account when developing procedures surrounding victim notification, particularly when the sexual assault was not recent.

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

### D. Collaboration

In Kentucky there is an overarching Sexual Assault Response Team (SART) advisory board which is comprised of advocates, law enforcement, medical examiners, and prosecutors. The purpose of the SART advisory board is to recommend the course of action for SARTs across the state and to provide assistance to multi-disciplinary teams when needed (Developing a Sexual Assault Response Team: A Resource Guide for Kentucky Communities). Community stakeholders are responsible for organizing SARTs locally, but are not mandated to do so. However, the positive impact of a Sexual Assault Response Team on the process and the community is considerable. Arndt and Goldstein (1993) found that law enforcement officials perceived the SART program to have positively affected the relations with other stakeholders and the fluidity of the process (Arndt and Goldstein, 1993). The officers also felt more equipped to work with victims during the reporting process.

Collaboration amongst the professionals in the community with a vested interest in supporting survivors is vital to the advancement of the system. Concerns such as trauma-informed practices, tracking, and uniform procedures might be better served if a multi-disciplinary team was working to develop the procedures. There is a multi-disciplinary team that addresses child sexual assault in Kentucky. The team was established based on four areas that are improved by collaboration. As defined by the Kentucky Multidisciplinary Commission on Child Sexual Abuse, those four areas are:

- 1) in the way the system creates further trauma for the child;
- 2) in the effectiveness of the process;
- 3) in the stress which the system historically has on professionals; and

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

- 4) in increasing the system's accountability to victims, survivors, and to its individual members. (“Model Protocol for Multidisciplinary Teams”).

While these areas are specific to child sexual assault, they are also relevant for adult sexual assault. During the establishment of the child sexual assault team, the existing multi-disciplinary teams in Kentucky were interviewed to gain an understanding of their inner workings. The majority of the team members believed that the team improved the effectiveness and accountability of the system (“Model Protocol for Multidisciplinary Teams”). An overarching multi-disciplinary team for rape of adults would likely have a similar infrastructure and would aim to enhance the system in a similar manner.

### Comparison States and Recommendations

---

The backlog of SAFE kits is not a problem unique to Kentucky. States across the nation are taking steps toward the elimination of their backlogs. Each state addresses the problem distinctively, and has various internal problems to address. Michigan, Texas, Illinois, California, Utah, and Ohio have each made changes in one of the four areas of concentration discussed above. These states were chosen because they have implemented effective or unique changes. Many of the states that have made large-scale reforms have done so in large cities (Chicago, Los Angeles, Detroit, and Houston) and can act as a model for Kentucky. On some occasions, individual cities have made reforms. As this research addresses state-wide changes, there is no distinction between city programs and state programs.

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

### a. Funding

There are considerable opportunities concerning funding for the Central Lab in Kentucky. Various grants are available that specifically target sexual assault evidence backlogs. Most of these are available from federal sources, such as the Debbie Smith DNA Backlog reduction grants or the Sexual Assault Forensic Evidence Registry Act (“Federal Responses”). Some states have folded the backlog into their annual budgets, and some have created innovative approaches to fund their evidence processing procedures.

Illinois was among the states to receive grants to fund backlog elimination initiatives. In 2013, the Illinois State Police department received over \$3 million in grant funding (“Illinois”). For fiscal year 2014, the Texas state government included \$10.8 million in the budget for sexual assault evidence testing. Around \$4 million was added to the annual budget in Michigan in 2013, and the program is currently funded through a project of the Michigan Women’s Foundation, the Wayne County Prosecutor’s Office, and the Detroit Crime Commission. The project is called Enough SAID (Enough Sexual Assault in Detroit), and it is a nonprofit that aims to complete testing for the remaining backlog in Detroit and to assist with criminal investigations regarding sexual assault and rape (“Enough SAID”).

Because the Crime Victims Compensation Board covers the majority of expenses for the supply and testing of kits, the primary funding concern is staffing at the Central Lab. Kentucky employs two levels of testing staff: Forensic Scientist Specialist I and Forensic Scientist Specialist II. The annual pay for these positions is \$42,660 and \$51,360, respectively (“Salary Search”). As a part of the reforms made in Ohio surrounding the backlog, ten additional forensic biologists

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

were hired to help to clear the backlog of 9,000 sexual assault kits (Casey, 2014), meaning that each biologist carried a case load of around 900 kits. This research does not focus on clearing the backlog, but rather on developing a system that will prevent a backlog in the future. After the backlog is cleared, the focus will be on funding a sustainable system. In 2013, approximately 1,125 kits were submitted for testing in Kentucky (“Kentucky Crime Rates”). Assuming that this number will not rise dramatically, one additional Forensic Scientist Specialist II who was dedicated to testing SAFE kits would cover the majority of kits tested each year. This would significantly contribute to the prevention of a Sexual Assault Forensic Evidence kit backlog. The total cost for the new employee would be salary plus benefits, at 30%:

$$\$51,360 * 1.3 = \$66,768$$

The State Auditor may wish to appeal to the Governor and the Appropriations and Revenue Committees for funding of the small additional staffing cost. After the initial training period, the new Forensic Scientist Specialist II would have the capacity to test up to 900 kits each year, preventing a backlog of untested kits.

### b. Procedures

The Kentucky sexual assault evidence processing system has an absence of procedures for submitting and testing evidence kits, as do many other states. It is common for states and cities attempting to reform the system to develop official policies for these steps. Many, including California, have made additions to their existing Crime Victims Bill of Rights. As of January 2015, California law requires that law enforcement agencies report each year on how many kits they receive, test, and do not test (CAB 909). The Sexual Assault Evidence Submission

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

Act was passed in 2010 in Illinois, which requires that evidence be submitted to the forensic laboratory no later than ten days after collection. The same legislation mandates testing of sexual assault evidence within six months of delivery. Illinois Compiled Statute 202 allows law enforcement to develop the procedures themselves, so long as the kits arrive at the forensic laboratory within ten days (ILCS 202). Stakeholders in Michigan created the Sexual Assault Tracking and Reporting Commission (SB 998) in 2014. Some of the duties of this commission are to create and implement protocols on the proper procedures to follow throughout the process (SB 998, (2015)).

Policies should be established in Kentucky that set a time frame for the process, from collection to submission to testing. States commonly require kits to be submitted within ten or thirty days of collection, and for the kits to be tested within six months of submission. Other policies should address the protocols for deciding when to submit a kit and when to withhold it from testing. The city of Lexington is currently submitting all kits for testing (Brotherton), but this is not a state-wide policy. If the multi-disciplinary team establishes certain instances in which the kit need not be submitted, those exclusions should be included in the new policy.

### c. Victim Notification

As mentioned previously, Detroit, Michigan has undertaken major overhauls in its sexual assault evidence process. Among these changes was Michigan Senate Bill No. 998, enacted in October of 2014, which created a multi-disciplinary team whose responsibility it became to develop and implement policies regarding tracking and reporting in sexual assault cases. This team, in collaboration with the shipping company UPS, helped develop a program for tracking

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

sexual assault evidence kits called UPS Trackpad (Eversley, 2015). This system incorporates the processes UPS uses for package delivery tracking, using handheld scanners and check-ins at each new location (Ramirez, 2015). The goal of this project was to increase accessibility to tracking information for victims (SB 998, (2015)). Individuals can use their tracking number to track their forensic evidence through the process without having to contact anyone else or wait for a reply.

Other states have developed diverse approaches to keep victims' needs at the forefront. A multi-disciplinary team in Houston, Texas worked to create protocols for victim notification, allowing individuals access to the testing status of evidence and the findings after the test has been run ("Compliant Notification and Information Line Protocols"). Utah has passed similar legislation, allowing victims to request information regarding results after the kit has been processed. Information that can be provided includes whether DNA evidence was collected from the perpetrator, and if there was a CODIS hit on that DNA. In addition, police officers are mandated to inform victims of stranger rape when their kits will not be submitted for testing ("Utah").

Kentucky policy makers should expand the existing tracking system to allow access by victims. A system modeled after UPS Trackpad in Detroit would be beneficial to both victims and law enforcement. Not only would tracking information be more available to victims, the system would likely be easier for police officers to use, as it would need to be accessible to the general public as well. As mentioned in the previous section, policies should be developed regarding victim notification. The policies should be modeled after legislation in Utah which,

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

when requested, provides victims details about the case, including decisions on submission of the kits, the presence of DNA, and CODIS hits.

The final recommendation regarding victims is to coach professionals in the system on their behavior and attitudes concerning sexual assault. In an effort to instruct stakeholders on the best practices when working with victims of assault, trainings should be provided on trauma-informed practices. These could be included in the existing trainings for each group, or could be offered as a multi-disciplinary training.

### d. Collaboration

Most states create multi-disciplinary teams to address one or more issues that contribute to the backlog. Detroit and Houston were both recipients of National Institute of Justice Action-Research project grants. Each city combined stakeholders from across the board to form a multi-disciplinary team dedicated to addressing the backlog of sexual assault evidence kits. The project brought together “boots-on-the-ground practitioners who deal with sexual assaults day-in and day-out: police officers, crime lab analysts, prosecutors and victim advocates.” (“Untested Evidence in Sexual Assault Cases”). The teams were able to provide support for the victims, law enforcement, advocates, and prosecutors involved with the system, and to further the improvement of existing problems. For example, the Houston team hired advocates and prosecutors dedicated to sexual assault, developed protocols for collecting, submitting, and testing, and trained stakeholders on trauma-informed practices. The team in Detroit had similar success (“Untested Evidence in Sexual Assault Cases”). These teams, equivalent to the Sexual Assault Response Team (SART), worked together to find funding and develop

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

solutions to intricate problems such as “performing a census, DNA testing, and victim notification” (“Untested Evidence in Sexual Assault Cases”). As individual entities, many of these changes would have been unattainable. The multi-disciplinary team served as a common ground for the various stakeholders to communicate openly about the concerns and how to address them.

The multi-disciplinary team for sexual assault in Kentucky should consist of stakeholders from law enforcement, prosecutors, victim advocates, health care providers, and employees of the Central Lab. This team should be established early in the process so that it can have input in any decisions that are made. The members of the team would have first-hand knowledge of the system and know the barriers that must be overcome, and would also have a network of individuals who are involved in the system. This could allow them to have a greater understanding of necessary improvements and how changes would likely affect the progress of cases through the system. The establishment of the multi-disciplinary team should be one of the first steps to reform.

### Limitations

---

While many individuals will acknowledge the need for most of these changes, there are significant limitations to the feasibility of the recommendations. Limitations for this suggested strategy are divided into two categories: limitations on implementation and limitations of this research.

## THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

### a. Limitations on Implementation

The most obvious constraint is funding. This suggested strategy has addressed budgetary concerns, but funding is never certain. Additionally, it would take considerable effort to secure funding, create a multi-disciplinary team, develop new policies, and begin implementing changes. The success of the reorganization relies heavily on the competency of the parties involved, and their cooperation. Resistance from stakeholders may be another limitation, as many aspects of the proposed changes require the support and collaboration of individuals who approach the problem with different intentions. The potential for improvement should act as the lynchpin unifying the stakeholders.

### b. Limitations of Research

The implications of this research are also limited by the dissimilarities between Kentucky and the comparison states used here. The states were chosen based on their reforms in one of the four areas of concentration. Many of the models used to develop a strategy for Kentucky are not state-specific, and will be translatable. For instance, most of the funding options used by other states are available across the nation, and the projects and legislation can be altered to fit Kentucky. Policies and protocols are translatable across states and governments. Still, there are likely to be instances where policies from other states may not be a good fit in Kentucky.

## Summary

---

The backlog of sexual assault evidence kits has become an issue across the United States, and Kentucky is no exception. The key stakeholders in the state are aware of the issue, and have already taken steps toward improvement. One additional scientist whose job is dedicated to testing kits from sexual assaults would ease the burden of the accumulation of sexual assault kits in the Central Lab. Appropriating funds for this position will help to prevent a future backlog. Policy makers in Kentucky should develop a set of guidelines that establish the protocols for mandated testing of SAFE kits, time frames for submitting and testing the kits, and victim notification of progress in the investigation. The tracking system should be updated to include accessibility for victims to tracking information, and stakeholders should be provided with training on trauma-informed practices. In order to address the primary concerns of funding, procedures, victim notification, and collaboration, a multi-disciplinary team should be developed in the image of those in Houston or Detroit. This team would be instrumental in making changes in various areas. These changes could enhance public safety across the state, and would act to increase confidence in the system. A SAFE kit system built on these recommendations would be expected to be more efficient and effective, contributing to victims' sense of justice and the wider community's sense of safety.

References

About NCTIC. Retrieved July 8, 2015.

Arndt, S., Goldstein, S. (1993). The SART/SANE orientation guide to community-based, multi-disciplinary sexual assault response teams and sexual assault nurse examiner program. Retrieved July 8, 2015 from [https://openlibrary.org/books/OL1166440M/The\\_SART\\_SANE\\_orientation\\_guide\\_to\\_community-based\\_multi-disciplinary\\_sexual\\_assault\\_response\\_teams\\_](https://openlibrary.org/books/OL1166440M/The_SART_SANE_orientation_guide_to_community-based_multi-disciplinary_sexual_assault_response_teams_)

Assem. Bill 909, 2015 Reg. Sess. (Cal. 2015).

Campbell, R., Fehler-Cabral, G., Pierce, S., Sharma, D., Bybee, D., Shaw, J., . . . Feeney, H. (2015, March 1). The Detroit Sexual Assault Kit (SAK) Action Research Project (ARP). Retrieved July 8, 2015, from <https://www.ncjrs.gov/pdffiles1/nij/grants/248680.pdf#page=163>

Casey, M. (2014). A Commitment to Justice: Analyzing Ohio's Untested Sexual Assault Kits. *The Police Chief*, LXXXI(10), 56-62. Retrieved from [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article\\_id=3523&issue\\_id=102014](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=3523&issue_id=102014)

Compliant Notification and Information Line Protocols. (2013). Retrieved July 8, 2015, from <http://houstonsakresearch.org/resources/documents/hotline.pdf>

Developing a Sexual Assault Response Team: A Resource Guide for Kentucky Communities. (2002). Retrieved from [http://www.ncdsv.org/images/KASAP\\_DevelopingSARTaResourceGuideForKyCommunities\\_1-2002.pdf](http://www.ncdsv.org/images/KASAP_DevelopingSARTaResourceGuideForKyCommunities_1-2002.pdf)

Enough SAID (Sexual Assault In Detroit). (2015). Retrieved July 8, 2015, from <http://www.enoughsaiddetroit.org>

Eversley, M. (2015, June 8). Detroit, UPS figure way out of sex assault kit backlog. *USA Today*.

THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

Federal Responses. (2015). Retrieved July 8, 2015 from <http://www.endthebacklog.org/ending-backlog-government-responses/federal-responses>

Galofaro, C. (2015, May 15). Ky, overhauling system of rape kit testing. The Courier-Journal. Retrieved from <http://www.courier-journal.com/story/news/2015/05/30/kentucky-rape-kits-testing/28227491/>

Gray-Eurom, K., Seaberg, D., & Wears, R. (2002). The Prosecution of Sexual Assault Cases: Correlation with Forensic Evidence, 39(1), 39-46. Retrieved from [http://ac.els-cdn.com/S0196064402079362/1-s2.0-S0196064402079362-main.pdf?\\_tid=5ad8a9fe-07d6-11e5-b467-00000aab0f6b&acdnat=1433105474\\_8391d48de070172c2f15ea4d6938bae1](http://ac.els-cdn.com/S0196064402079362/1-s2.0-S0196064402079362-main.pdf?_tid=5ad8a9fe-07d6-11e5-b467-00000aab0f6b&acdnat=1433105474_8391d48de070172c2f15ea4d6938bae1)

Illinois. (2015). Retrieved July 8, 2015, from <http://www.endthebacklog.org/illinois-0>

Kentucky Crime Rates 1960 - 2013. Retrieved July 8, 2015.

Kentucky Statutes. (2009, December 1). Retrieved July 8, 2015, from <https://www.rainn.org/pdf-files-and-other-documents/Public-Policy/Legal-resources/2009-Statutes/09KentuckyStatutes.pdf>

Ky. Rev. Stat. Ann. § 346.185

McGregor, M., Du Mont, J., & Myhr, T. (2002). Sexual Assault Forensic Medical Examination: Is Evidence Related to Successful Prosecution? *Annals of Emergency Medicine*, 39(6), 639-647. Retrieved July 8, 2015, from [http://www.sadvreatmentcentres.ca/en/secure/SANEModules/Module14\\_JudicialAnnEmergMed39-6-p639-47\\_McGregorMJDumontJMyhrTL.pdf](http://www.sadvreatmentcentres.ca/en/secure/SANEModules/Module14_JudicialAnnEmergMed39-6-p639-47_McGregorMJDumontJMyhrTL.pdf)

Model Protocol for Multidisciplinary Teams. Retrieved July 8, 2015, from <http://ag.ky.gov/criminal/victims/kmccsa/documents/modelprotocol.pdf>

News stories of sexual abuse can trigger memories, fear. (2011). Retrieved July 8, 2015, from <http://www.pcar.org/blog/news-stories-sexual-abuse-can-trigger-memories-fear>

THE ROLE OF ADMINISTRATIVE PROCEDURES IN THE PREVENTION OF THE BACKLOG OF SEXUAL ASSAULT EVIDENCE KITS

Ramirez, C. (2015, June 8). Worthy, UPS team up to track Detroit Rape kits. The Detroit News.

Ritter, N. Solving the Problem of Untested Evidence in Sexual Assaults. National Institute of Justice Journal, (267), 18-20. Retrieved 2015, from <https://www.ncjrs.gov/pdffiles1/nij/233284.pdf>

Salary Search. (2009). Retrieved July 7, 2015, from <http://opendoor.ky.gov/search/Pages/SalarySearch.aspx>

SB 998, 2013 Leg. 2015 (Mich. 2015)

Sexual Assault Forensic-Medical Exams Toolkit Compliance Guide. Retrieved July 8, 2015, from <http://kbn.ky.gov/apply/Documents/SAFEtoolkitguideFINAL.pdf>

Sexual Assault Kit Testing: What Victims Need to Know. Retrieved July 8, 2015, from <http://victimsofcrime.org/docs/default-source/dna-resource-center-documents/dna-sak-victim-brofinal.pdf?sfvrsn=2>

Untested Evidence in Sexual Assault Cases. (2015, April 7). Retrieved July 8, 2015, from <http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx#lessonslearned>

Utah. (2015). Retrieved July 8, 2015, from <http://www.endthebacklog.org/utah>

What is a Rape Kit? Retrieved July 8, 2015, from <https://www.rainn.org/get-information/sexual-assault-recovery/rape-kit>

Where the Backlog Exists. (2015). Retrieved July 8, 2015, from <http://endthebacklog.org/backlog/where-backlog-exists>

Why Test Rape Kits After the Statute of Limitations has Expired? A Victim-Centric Approach. (n.d.). Retrieved July 8, 2015, from <http://victimsofcrime.org/docs/sak-backlog-laws/why-test-expired-kits-victim-centric.pdf?sfvrsn=2>

810 Ill. Comp. Stat. Ann. § 202.