

PENNSYLVANIA STATE POLICE TESTIMONY

Joint House/Senate Democratic Policy Hearing

September 23, 2022



WRITTEN TESTIMONY

BUREAU OF FORENSIC SERVICE

The Pennsylvania State Police (PSP) is grateful to the members of the House and Senate Democratic Policy Committees, for the invitation to participate in this important discussion regarding rape kit tracking in Pennsylvania. We are pleased to have the opportunity to provide:

- An overview of the process by which rape kits are currently collected and tested.
- An overview of the general protocols in place for handling, storing and preserving rape kits.
- PSP's efforts to support the Sexual Assault Testing and Evidence Collection (SATEC) Act.
- Issues to consider with a rape kit tracking system

Overview of Sexual Assault Kits – Collection to Testing (current)

Act 165 of 2006 established a statewide sexual assault evidence collection program to develop minimum standard requirements for rape kits used in the Commonwealth. The multi-disciplinary advisory committee, chaired by the Pennsylvania Department of Health (DOH), included representatives from the PSP, the Pennsylvania Coalition Against Rape (PCAR), the International Association of Forensic Nurses, the Healthsystem Association of Pennsylvania, the Pennsylvania District Attorneys Association (PDAA), and regional Sexual Assault Response Team (SART) members. The advisory committee has updated the minimum standards every three years since 2007 and most recently updated the kit requirements in 2020. Health care facilities must purchase and use manufactured kits that meet the standards which are published on the DOH website and the PA Bulletin [50 Pa.B.6964].

When a sexual assault victim presents at a health care facility, that facility's protocol for collecting sexual assault evidence is followed and should comply with the instructions posted on the DOH website regarding the minimum requirements. The various samples that may be collected include oral, vaginal, and anal swabs along with swabs of other areas where biological evidence may have been left by the perpetrator. A standard buccal swab of the victim's DNA is collected. All samples are packaged to ensure evidence integrity and preservation. The samples are sealed in a box with tamper-proof evidence tape. It can take several hours for a Sexual Assault Nurse Examiner/Sexual Assault Forensic Examiner to properly collect and document the information required for a sexual assault kit. Part of the documentation includes recording the victim's choice whether to consent to the collection of evidence, to the release of information to law enforcement and to the testing of the evidence.

Once the kit is completed, the health care facility notifies the appropriate law enforcement agency as soon as practical. The kit is secured until its retrieval. The law

enforcement agency has 72 hours from receiving notice to take possession of the kit. If the jurisdiction of the assault is unknown, the health care facility is to contact the PSP station located in their county. Within 15 days of receiving written notice of consent for testing, the law enforcement agency submits the sexual assault kit awaiting testing to one of the approved forensic laboratories that provide service to their jurisdiction. The laboratories include the PSP Bureau of Forensic Services, the Philadelphia Police Department Office of Forensic Sciences, and the Allegheny County Office of Medical Examiner Forensic Laboratory.

The forensic laboratory stores the evidence until the case can be assigned to a forensic scientist to analyze the contents of the kit. The scientist is the first person to open the kit that was sealed at the health care facility. Items within the kit are documented and appropriate testing performed to identify body fluids and conduct DNA testing. Analysis of the sexual assault evidence should be completed within six months. Once the evidence is analyzed, a laboratory report of the findings is issued, and the evidence is returned to the submitting agency for storage and for use during prosecution. In addition, a laboratory report is generated and sent to the investigating officer and the prosecution. In Philadelphia, kits are retained as the forensic laboratory and the police department are the same agency. The time from when a kit is submitted to a forensic laboratory until the results are reported is called turnaround time. Turnaround time is impacted by the number of cases in the laboratory waiting to be analyzed, with cases generally analyzed in the order they were received. The greater the backlog of cases, the longer the turnaround time.

Overview of Sexual Assault Kits – Handling, Storage and Preservation

Kits are to be stored in compliance with the Storage and Preservation Policy for Sexual Assault Evidence published in the PA Bulletin [50 Pa.B. 4221]. When victims have opted against having the kit tested or have declined to engage with law enforcement regarding their assault, the kit remains properly stored in law enforcement's possession for the maximum applicable criminal statute of limitations unless consent is provided before that period. This policy applies whether the victim is anonymous or identified and whether the jurisdiction of the offense is known.

The kit is tracked in a manner that maintains an unbroken chain of custody until final disposition. This applies to kits from identified and anonymous victims, regardless of whether the kit will be submitted for testing. Tracking is currently accomplished by using an evidence or law enforcement agency incident number which will allow the victim to be notified by law enforcement of the status of the kit. For anonymous kits, the patient

visit identification number will be recorded on the kit and on the Anonymous Reporter Form. The patient visit identification number along with the incident number may aid in tracking.

Typically, kits can be stored in a temperature-controlled setting if they do not contain liquids or wet items. Liquids and wet items must be refrigerated or frozen.

PSP's Efforts to Support Sexual Assault Testing and Evidence Collection Act

PSP has participated on the DOH Sexual Assault Evidence Collection (SAEC) Advisory Committee since its inception. We have partnered with PCAR to conduct joint training initiatives to educate law enforcement and other stakeholders regarding the SATEC Act. We have posted training material on the Pennsylvania Chiefs of Police Virtual Training Network (PAVTN), on PSP's iNet and conducted numerous in-person training sessions. We have collaborated with the PA Chiefs and the PDAA to develop and publish the Storage and Preservation Policy. We developed and published the protocol for Anonymous Reporting which included an Anonymous Reporter Form and we collaborated with the Pennsylvania Office of Attorney General on the protocol of victim notification. The PSP Bureau of Forensic Services conducts an annual survey of untested rape kits in possession of law enforcement. The results of that survey and the status of regional multi-disciplinary SARTs throughout the state are reported to DOH for inclusion on their website by April 15th each year.

Issues to Consider with a Rape Kit Tracking System

There are numerous end-users to consider, including nearly 300 health care facilities, 1000+ law enforcement agencies, three approved government-funded forensic laboratories and 67 district attorneys offices.

Approximately 2,000 sexual assault kits are submitted to the approved forensic laboratories annually. The law enforcement agencies, including campus police and approved laboratories, reported 186 backlogged sexual assault kits awaiting testing at the end of 2021. Police departments are also in possession of 872 kits where the victim has not consented to having the kit tested, 523 kits where the victim is anonymous and 118 kits where the assault occurred in an unknown jurisdiction.

The health care facilities, law enforcement agencies, laboratories and district attorneys within PA vary significantly in available resources for internet access, equipment, and personnel to manage accounts and enter data.

Significant resources (personnel and funding) will likely be needed for equipment procurement, training (both on-boarding and continuing education due to staff turn-over), management of usernames and passwords, security monitoring, and security breach response (including notification of users/victims). PSP will be studying these needs in more depth over the next year pursuant to Act 70 of 2022. At the conclusion of our study, we will provide a report to the legislature that details these needs.

It is important to note that any Rape Kit Tracking system will need to be limited in what information is shared, even with the victim, in order to maintain the integrity of the investigation. It is also important that no personal identifying information be entered into the system by any of the end-users. Victims who wish to be notified of the laboratory test results from the sexual assault kit must obtain that information from the investigating agency or prosecutor of proper jurisdiction in order to maintain the integrity of criminal investigations. The report of laboratory findings is provided only to the submitting agency and prosecutor in compliance with accreditation standards. Laboratory personnel are not permitted to share results with victims or victim advocates in order to maintain confidentiality.

In anticipation of a tracking system, the SAEC Advisory Committee preemptively added a new requirement in 2020 for all rape kits used in the Commonwealth. Manufacturers must label each kit with a unique barcode and alpha-numeric identifier. Once a tracking system is initiated, the kits will already be barcoded or otherwise uniquely identified to facilitate tracking by the system end-users and victims.