

What is the Sexual Violence Justice Institute?

The [Sexual Violence Justice Institute](#) at the [Minnesota Coalition Against Sexual Assault](#) (SVJI@MNCASA) is a national resource for expertise in the criminal justice response to sexual violence. The documents produced by SVJI for STOP Administrators in this three-part series explores key topics related to sexual assault exams by providing in-depth information and contextual meaning. Part One aims to provide guidance in understanding the nuanced language around unsubmitted and untested/backlogged Sexual Assault Evidence Collection Kits (SAK).

What is an unsubmitted kit problem?

An **unsubmitted kit** is a kit where the victim reported their assault to a law enforcement agency but the agency has not submitted the kit to the lab for testing. These kits are typically waiting in law enforcement storage and have never been seen by the crime lab. An **unsubmitted kit problem** occurs when law enforcement is not appropriately sending incoming, reported kits to the lab for testing.

This type of problem is significantly different from a “backlog” issue. Additionally, some law enforcement agencies may be storing unreported kits, meaning that those victims received a medical forensic exam but never reported their crime to law enforcement. These unreported kits should not be counted as part of an unsubmitted kit audit and should never be tested unless the victim makes a report or consents to having the kit tested.

For additional definitions of terms, please refer to the first issue brief in this series, “Understanding what the “Rape Kit Backlog” Really Means: Language and Definitions.”

Why does this problem matter?

Across the country, unsubmitted SAK (Sexual Assault Evidence Collection Kit) issues are and have been under increased inquiry and analysis. There is no easy way to “fix” a jurisdiction’s unsubmitted kit problem; solutions are nuanced and complex. Jurisdictions must assess existing inventories of unsubmitted SAKs and prevent future submission issues by adopting new policies and practices. A critical analysis of the entirety of the problem will help practitioners avoid pitfalls and unintended results.

Context

The 2005 Violence Against Women Act (VAWA) addressed the availability of medical forensic exams for victims of sexual assault. The law ensured access to a medical forensic exam without charge and without an obligation to report to law enforcement or to cooperate with the criminal justice system. All states and territories were mandated to certify compliance with these requirements by January 5, 2009 in order to remain eligible for STOP grant funds from the Office on Violence Against Women (OVW). The [2013 VAWA reauthorization](#) kept the forensic compliance provisions from VAWA 2005 and added two new requirements, namely that no victim can be required to pay any out-of-pocket cost to obtain a medical forensic exam and that governmental entities will be eligible for STOP funding only if they notify victims about the availability of exams at no cost. The deadline for compliance with the 2013 VAWA requirements is March 2016.

While VAWA 2005 and 2013 set forth important legal guidance about forensic compliance in the states, many complex legal and procedural questions still remain about access, exam protocols, health care provider training, payment, storage infrastructure, and testing of sexual assault kits. It is not prudent to view these issues in isolation from one another.

Lessons learned from Detroit and key considerations

Understanding why unsubmitted kit issues exist is an important step in determining systemic problems. As Detroit evaluated the reasons for their unsubmitted kit problem, they identified five key reasons that SAK's were not submitted to the lab:

- Victim-blaming beliefs and behaviors by law enforcement;
- Lack of a written protocol for submitting kits to the lab for testing;
- Budget cuts that reduced law enforcement and crime lab personnel;
- High turnover in law enforcement leadership; and
- Few community-based victim advocacy services available (National Institute of Justice, 2015).

Unsubmitted kit problems may be caused by any combination of the aforementioned issues as well as other issues specific to a jurisdiction.

System practitioner considerations

There are no easy "fixes" to address an unsubmitted kit problem, as the solutions are nuanced and complex. Some key points to keep in mind are:

- Testing all unsubmitted kits will not fix the problem(s) that caused the proliferation of unsubmitted kits in the first place.
- Jurisdictions that have chosen to test all unsubmitted SAKs have required additional funding and/or personnel for their crime lab(s).
- Testing all unsubmitted kits has, at times, overwhelmed crime labs resulting in significant delays in processing newly submitted kits and potentially creating backlogs.
- If a victim reports to law enforcement and authorizes the release of the SAK for analysis, that victim has the expectation that the kit will be tested. In most cases, it is in the best interest of both the case and public safety to test the kit. Testing can corroborate the victim's account and may identify serial offenders. **Testing more kits may lead to increased convictions and suspects as the CODIS database grows.**

Victim-centered considerations

- If jurisdictions create policies to test all kits, it might include cases where the victim didn't give consent to release the kit to law enforcement. This would be a violation of victims' right to privacy of medical records and in some cases would propel victims into criminal justice processes regardless of whether they wanted to participate or not. This could undermine victim and community confidence in the criminal justice system.
- Victims who initially report a sexual assault and voluntarily participate in the medical forensic exam may change their decision about participating in the investigation. There are many reasons a victim may choose not to participate in the investigation, including threats from perpetrator(s), feeling unable to continue due to the impact of trauma, and/or feeling pressured not to report from family, friends, or community members. Systems practitioners should respect a victim's right not to move forward with an investigation and should therefore not test that victim's kit. Upholding this right may be controversial in some jurisdictions, as the conversation around balancing victim autonomy with public safety can be challenging.
- Across the country, advocates and medical personnel have assured victims of their option to receive the medical forensic exam regardless of whether or not they report to law enforcement. This commitment must be

kept, not only because it is legally required but because can have serious impacts on victim safety. Multidisciplinary collaborations can play a key role in creating policies that deal with unsubmitted kit problems while including victim consent for release of the kit to law enforcement for testing.

Decision points

By addressing issues related to previous unsubmitted kit problems, putting protocols and policies in place to avoid future unsubmitted kits, and incorporating victims' voices into all decisions, jurisdictions will likely improve the public's trust and victim participation in the criminal justice system. The following conversations are recommended when addressing unsubmitted kit problems and creating policies and protocols that protect against those problems in the future:

- *Who to include in this process?*
Decisions around unsubmitted kits cannot fall on only one person or agency. Professionals from law enforcement, advocacy, medical, prosecution and the crime lab should evaluate why an unsubmitted kit problem exists in their jurisdiction and come to consensus around course(s) of action needed. It is recommended that jurisdictions develop written policies and protocols to avoid future unsubmitted kit problems. Most importantly, victims should be included in these discussions as their perspective and input on the process is of the utmost importance.
- *To test or not to test?*
As aforementioned, testing any number of currently unsubmitted kits has many implications that need to be thoroughly examined before moving forward. What will the testing process look like? What impacts will an increase in testing have on the current system response? All of these questions and the additional questions that may rise during the process need to be examined and addressed *before* action is taken. It is important to know this planning process may take quite some time.
- *Victim notification*
Victims may not be aware their SAK has not been tested and assume that their kit was automatically tested or that the investigation has been closed. Regardless of the scenario, careful consideration should be given to deciding how to notify victims that their SAK will now be tested.

Implications for STOP administrators

- Model correct and consistent language.
- Ensure that victims' perspective is incorporated and central to the process.
- Effectively addressing unsubmitted kit problems takes time, and important conversations need to occur prior to taking action. Encourage and support this process.

Additional resources

National Institute of Justice—Web Feature: [Sexual Assault Kits: Using Science to Find Solutions](#).

The Urban Institute: [VAWA 2005 and Sexual Assault Medical Forensic Exams: Kit Storage Issues](#).

A Report to the Houston Sexual Assault Kit Action Research Working Group:

- [How to Notify Victims about Sexual Assault Kit Evidence: Insight and Recommendations from Victims and Professionals](#)

- [Key Components of Building a Successful Victim Notification Protocol](#)
- [Sexual Assault Victims' Experiences of Notification after a CODIS Hit.](#)

End Violence Against Women International (EVAWI) Training Bulletin: [Should We “Test Anonymous Kits?”
The NIJ-FBI Sexual Assault Kit Partnership—A Research Initiative for Unsubmitted Sexual Assault Kits](#)

References

National Institute of Justice. (2015). *Sexual assault kits: Using science to find solutions*. Retrieved from http://nij.gov/unsubmitted-kits/Pages/default.aspx?utm_campaign=eblast-govdelivery&utm_medium=eblast&utm_campaign=sakwebposter-092015.

End Violence Against Women International. (2013). *Should we “test anonymous kits?”* Retrieved from <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=51>.

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