

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 Three of this [three-part series](#) for STOP Administrators aims to provide guidance in addressing Sexual Assault Evidence Collection Kit (SAK) **backlogs** while simultaneously improving systems’ responses to victims.

What is a backlog?

The National Institute of Justice defines a **backlog** as untested kits that have been submitted to a crime lab and have not been tested after 30 days. These **untested kits** have already been submitted by a law enforcement department to be tested at a lab, and are thus located within a crime lab itself.

A backlog problem differs significantly from an unsubmitted kit problem.

Unsubmitted kit problems stem from law enforcement agencies not submitting kits to the lab for testing, whereas a backlog specifically refers to a group of kits located at a lab that have yet to be 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?

The phrase “rape kit backlog” has received intense national attention over the past few years, and many victims and communities are demanding change. Millions of dollars in federal and state grant money have been set aside to deal with issues stemming from backlogged and/or unsubmitted kit problems.

Fixing a backlog at a lab requires addressing the current backlog while also making structural changes so that future backlogs do not occur. Even if a backlog doesn’t currently exist, it will oftentimes manifest as the result of dealing with an unsubmitted kit problem. Sending massive amounts of unsubmitted kits to a lab all at the same time will inevitably take additional time and money for labs to respond to the large increase in kits needing to be tested. Taking a holistic approach to the problem will help practitioners avoid potential 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.

Key considerations for addressing a backlog

The first step in addressing a backlog is assessing why the problem exists in the first place. Recognizing whether it's a **capacity issue** (shortage of lab personnel, resources, etc.), a **process issue** (length of time to test kits, triaging high profile cases, etc.), the result of dealing with an **unsubmitted kit problem**, or a combination of these issues will help determine next steps.

CAPACITY

- In dealing with a backlog, many labs will determine they need additional personnel and/or resources in order to efficiently test the amount of incoming kits. An increase in personnel and any necessary resources will inevitably require additional funding.
- Some labs have outsourced some or all of their backlogged kits to private laboratories. This process requires thoughtful planning and consideration in order to ensure that kits tested at these private labs are tested in a way that matches the accreditation standards and policies adhered to by the original lab. Creating a process for outsourcing should be done thoroughly and conscientiously in order to account for any potential pitfalls.

TESTING PROCESS

- Consider if any adjustments can be made to the lab workflow that would allow for increased testing efficiency.
- Making simple or minor alterations to laboratory testing procedures may increase a lab's ability to handle an increased caseload.
- If a lab uses a triage practice in order to prioritize which kits are tested first, consideration should be given to ensure that the same kits or the same types of kits (such as "consent defense" cases) are not always put on the "backburner." Policies and procedures should be put in place that all kits are tested in a timely manner.

UNSUBMITTED KITS

- If a backlog is the result of dealing with an unsubmitted kit problem, careful considerations should be made regarding how the lab will manage a large influx of kits needing to be tested while also ensuring that new, incoming kits are not delayed. Careful planning around capacity and/or testing process should occur prior to sending all unsubmitted kits to a lab.

System practitioner considerations

- Consider any potential losses stemming from altering the testing process in a lab. Is there a way to balance efficiency and cost with effective evidence collection?
- Many jurisdictions use a combination of the aforementioned responses when addressing a backlog. In other words, dealing with a backlog will likely require more than one approach.
- 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 Combined DNA Index System (CODIS) database grows.**
- Plan for how the jurisdiction will report back about the number of kits tested. Many individuals within the community will be anxious to hear about testing progress, and it's important to keep those numbers accurate and consistent.
- **Be clear about language.** Make sure that key terms are defined and are used correctly so that everyone is talking about the same thing. For more information regarding the importance of language, please reference ["Understanding what the 'Rape Kit Backlog' Really Means: Language and Definitions."](#)

Victim-centered considerations

- If a jurisdiction is currently dealing with an unsubmitted kit problem, they might create policies to test all kits. Testing all unsubmitted kits might include cases where the victim didn't give consent to release the kit to law enforcement. This would be a violation of VAWA as well as 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. Remember that VAWA and best practices promote victim choice as a means toward better public safety outcomes because a lack of pressure to report may lead to more willing victim participation in the justice system in the long run.
- When receiving a medical forensic exam, many victims rightly assume that their kit will be tested. When dealing with a backlog, keep in mind that many victims may be surprised to hear that their kit has not yet been tested or that they now will be forced to revisit their assault. Careful policies and practices should be put in place in order to account for victims' responses when testing backlogged kits. Advocacy programs should be deeply involved in the planning and facilitation of the notification process.

Victim-centered considerations

The following conversations are recommended when addressing kit backlogs and creating policies and protocols that protect against those problems in the future:

WHO TO INCLUDE IN THIS PROCESS?

Decisions around backlogs cannot fall on only one person or agency. While representatives from the crime lab will undoubtedly be very involved in the process, jurisdictions should also involve professionals from other departments as well (law enforcement, advocacy, medical, and prosecution). By working together, these groups can create a process for dealing with a backlog while also ensuring that the needs of all disciplines are met and accounted for. Most importantly, victims should be included in these discussions as their perspective and input on the process is of the utmost importance.

HOW TO MOVE FORWARD?

It is imperative to think through the various implications stemming from the aforementioned options for dealing with a backlog. How will these processes impact victims? Are there any unintended consequences that might be associated with these courses of action? 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

As aforementioned, 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 administrators

- Model correct and consistent language.
- Ensure that victims' perspective is incorporated and central to the process.
- Anticipate and address potential unanticipated consequences.
- Effectively addressing backlogs 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?”](#)

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.

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