

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).

Why does language matter?

Language is incredibly important when describing and understanding complex issues, and STOP Administrators are in prime position to facilitate the understanding of these issues by modeling correct and consistent language in their work.

Language used to describe untested kits, unsubmitted kits, and "backlog" issues has unfortunately not been consistent and are oftentimes used interchangeably. Understanding the key terms and relaying them correctly is a vital first step in setting the stage for appropriate protocols and responses to issues stemming from untested and/or unsubmitted kits.

What is a "Backlog" and how does it differ from an "Unsubmitted Kit Problem"?

The National Institute of Justice defines a **backlog** as a group of 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.

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.

The distinction between a "backlog" and an "unsubmitted kit problem" is important because the steps involved in addressing a backlog of untested kits at the crime lab are drastically different from the steps involved in addressing an unsubmitted kit problem with law enforcement.

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.

Definitions

Inconsistency around language and definitions has been a challenge associated with unsubmitted and untested kit protocol implementation. Clarifying and using consistent and correct terms and language is integral to an improved process. SVJI recommends use of the definitions below to create consistency in the field:

Sexual Assault Evidence Collection Kit (SAK): A collection of evidence gathered from the victim by a healthcare professional, such as a Sexual Assault Nurse Examiner (SANE).

Medical Forensic Exam: SAKs are conducted by a healthcare professional during medical forensic exams. Medical forensic exams are often conducted by a specially-trained nurse known as a Sexual Assault Nurse Examiner (SANE). During the exam, both a medical and a forensic evaluation will be offered. The medical evaluation assesses the victim for any injury care or medications that may be needed due to the assault, and the forensic evaluation ensures that any evidence from the assault that might be present on the victim's body is collected.

Protocol: Protocols for SAK testing vary across states and jurisdictions, but SAKs are typically transferred to a law enforcement agency to ensure chain of custody. Law enforcement agencies utilize various protocols and have discretion whether and when they submit SAKs for testing.

Unsubmitted Kits: Kits that are transferred to a law enforcement agency for storage but have not been submitted to the lab for testing.

Untested Kits: Kits that have been transferred to a crime lab but have not yet been tested.

Backlog: Kits that were submitted to a crime lab that remain untested.

Unreported Kits: Unreported kits are collected in the same way as all SAKs, but the victim has chosen **not** to report the sexual assault crime to law enforcement. Victims who have a medical forensic exam and do not report to law enforcement are sometimes referred to as “medical-only reports” or “restricted reports” ([End Violence Against Women International](#), 2013).

Under VAWA, victims are able to have a SAK collected without having to report to law enforcement. In these instances, the victim's SAK should be securely stored but not tested until the victim reports to law enforcement. In some states, victims are able to give consent to test their kit without having to report to law enforcement. Again, jurisdictions have varying protocols regarding storage location and duration for unreported kits, although unreported kits are usually stored for a defined amount of time before they are destroyed. Protocols also vary regarding how victims are notified that their kit will be destroyed. **Regardless of protocol, unreported kits should not be included in any unsubmitted SAK inventories.**

Primary recommendation for STOP administrators

As a STOP Administrator, you can help to ensure that correct and consistent language is being used when addressing backlogs or unsubmitted kit problems. Encourage systems professionals, program partners, and the media to utilize correct and consistent language so that the problem gets described accurately and everyone is talking about the same thing.

Additional terms/language

Crime Lab: Every state has a lab or labs that test the evidence within SAKs. The time needed to complete testing varies across labs and sometimes on the priority level of the kit. Testing may take 30 days or as long as six months. Additional evidence such as clothing worn or bedding used during the assault may also be tested. Because so many victims know their perpetrator, evidence testing does not always result in a new investigative lead. The evidence may, however, corroborate the victim's account of the assault.

CODIS: Stands for the FBI's Combined DNA Index System. CODIS is a national criminal DNA database that is meant to provide investigative leads for law enforcement. Federal, state, and local participating laboratories can upload DNA profiles to the National DNA Index System (NDIS), which is a part of CODIS. These DNA profiles come from evidence collected at "crime scenes, from convicted offenders and arrestees, as well as from missing persons and unidentified remains" (National Institute of Justice, 2015). Once a DNA profile obtained from a SAK is uploaded to CODIS, that profile may match an offender or arrestee profile that is already in the system. Additionally, if the DNA profile obtained from the SAK is from a known suspect, that profile may match an unidentified profile in the system from another case. Once matches like this are made, "CODIS hits" may provide valuable information to investigating officers regarding potential suspect identities. Consequently, CODIS become stronger and more useful as additional DNA profiles are uploaded.

Additional resources

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

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>.

Contact us with questions or technical assistance requests

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