



A Model for Comprehensive State Legislation to End the Backlog

*Joyful Heart's model legislation is a survivor-centered approach to eliminate the backlog of untested kits in the state, test newly collected kits swiftly, prioritize the needs and rights of survivors, and take serial offenders off the streets. The language below aligns with federal best practices as outlined in the National Institute of Justice's July 2017 report, *National Best Practices for Sexual Assault Kits: a Multidisciplinary Approach*, and has been reviewed by crime lab personnel, advocates, medical professionals, law enforcement, prosecutors, and survivors. Every state should customize the model to ensure it addresses each state's unique challenges and existing statute. The Joyful Heart Foundation is ready assist in enacting the best legislation possible.*

INTENT OF THE LAW

The legislature finds that DNA evidence is a powerful law enforcement tool that can identify unknown suspects, connect crimes, and exonerate the innocent. Standard and efficient sexual assault evidence kit procedures and a statewide tracking system will ensure that victims receive accurate information that enables them to take steps to protect their rights, while preventing misplacement of kits, delays in testing, or destruction of evidence. It is the intent of the legislature that kits are tested in a timely manner to enhance public safety by protecting survivors, exonerating the innocent, and holding offenders accountable.

BE IT ENACTED THAT:

SECTION 1. *Annual Statewide Inventory and Report of Sexual Assault Evidence Kits*

Within 180 days of enactment of this law, and thereafter annually - scheduled 30 days after the start date of the new fiscal year regarding the previous fiscal year timeframe - the following reports shall be submitted to the [appropriate state agency] by law enforcement agencies, medical facilities, crime laboratories, rape crisis centers, and any other facilities that receive, maintain, store, or preserve sexual assault evidence kits:

- A. total number of all kits containing forensic samples collected or received
- B. for each kit:
 - a. date of collection or receipt;
 - b. category of the kit:
 1. sexual assault was reported to law enforcement,
 2. victim chose not to file a report with law enforcement (non-investigatory);
 - c. status of the kit:
 1. medical facilities: date the kit was collected, date the kit was reported to law enforcement, and date the kit was picked up by law enforcement;

2. law enforcement: date the kit was picked up from a medical facility and date the kit was delivered to the crime laboratory;
 - a. For kits belonging to another jurisdiction: the date that the jurisdiction was notified and the date it was picked up;
 3. crime laboratories: date the kit was received, from which agency the kit was received, date the kit was tested, date the resulting information was entered into CODIS and [other relevant state or local DNA databases], and all reasons a kit was not tested or a DNA profile was not created.
- C. total number of all kits remaining in possession of the medical facility, law enforcement, or laboratory, and all reasons for any kit in possession for more than 30 days [or beyond the required timeframe].
- D. total number of kits destroyed by medical facilities, law enforcement, or laboratories, and reason for destruction.
- E. The [appropriate state agency] shall compile the information in a summary report that includes a list of all agencies or facilities that failed to participate in the audit. The annual summary report shall be made publicly available on the [appropriate state agency]'s website, and shall be submitted to the Governor, the Attorney General, and legislative leadership.

SECTION 2. *Mandatory Submission and Testing Requirements for Previously Unsubmitted (Backlogged) Sexual Assault Evidence Kits*

- A. A. Within 90 days of enactment of this law, all previously unsubmitted sexual assault evidence kits containing forensic samples collected during a medical forensic exam in medical facilities or other facilities that collect kits, shall be submitted to law enforcement.
- B. Within 180 days of enactment of this law, each law enforcement agency shall submit all previously unsubmitted sexual assault evidence kits, including those past the statute of limitations, to the [appropriate state agency or accredited public crime laboratories].
- a. The only exception for this requirement is non-investigatory sexual assault evidence kits associated with a victim who has not yet filed a report with law enforcement.
 - b. Non-investigatory kits shall be safely stored by law enforcement in a manner that preserves evidence for a duration of 50 years or the statute of limitations, whichever is longer.
 - c. Victims who do not file a report with law enforcement at the time the kit was collected do not negate their right to report the crime and have the kit tested in the future.
- C. The [Appropriate state agency or accredited public crime laboratories] shall test all previously unsubmitted sexual assault kits within 90 days of receipt from local law enforcement.
- a. Testing shall be pursued to develop autosomal DNA profiles that are eligible for entry into the Combined DNA Index System (CODIS) and relevant state or local DNA databases.

- b. In cases where testing has resulted in a DNA profile, the laboratory shall enter the full profile into the Combined DNA Index System Database (CODIS) and [other relevant state or local DNA databases]. The average completion rate for this analysis and classification shall not exceed 90 days.
- c. If the [Appropriate state agency or accredited public crime laboratories] are unable to meet the deadline specified above, the sexual assault evidence kits shall be outsourced for testing to an accredited private crime laboratory

SECTION 3. *Mandatory Submission and Testing Requirements for Newly Collected Sexual Assault Evidence Kits*

- A. Medical facilities and all other facilities that conduct medical forensic examinations shall notify the appropriate law enforcement agency immediately, and no later than 24 hours after the collection of a new sexual assault evidence kit.
- B. Local law enforcement agencies shall:
 - a. Take possession of the sexual assault evidence kit from medical facilities within three business days of notification.
 - b. Submit new sexual assault evidence kits to the [Appropriate state agency or accredited public crime laboratory] within seven days of taking possession.
 - 1. The only exception for this requirement is non-investigatory sexual assault evidence kits associated with a victim who has not yet filed a report with law enforcement.
 - 2. Non-investigatory kits shall be safely stored by law enforcement in a manner that preserves evidence for a duration of 50 years or the statute of limitations, whichever is longer.
 - 3. Victims who do not file a report with law enforcement at the time the kit was collected do not negate their right to report the crime and have their kit tested in the future.
 - c. Notify the appropriate jurisdiction within seven days of taking possession of a kit outside of their jurisdiction. The appropriate jurisdiction shall take possession of the sexual assault evidence kits within seven days of notification.
- C. The [Appropriate state agency or accredited public crime laboratory] shall test all sexual assault kits within 30 days of receipt from local law enforcement.
 - a. Testing shall be pursued to develop autosomal DNA profiles that are eligible for entry into the Combined DNA Index System (CODIS) and other relevant state or local DNA databases.
 - b. In cases where testing has resulted in a DNA profile, the laboratory shall enter the full profile into the Combined DNA Index System Database (CODIS) and [other relevant state or local DNA databases]. The average completion rate for this analysis and classification shall not exceed 90 days.
 - c. If the [Appropriate state agency or accredited public crime laboratories] are unable to meet the deadline specified above, untested sexual assault evidence kits shall be outsourced to an accredited private crime laboratory.

SECTION 4. *Tracking System for Sexual Assault Evidence Kits*

- A. Within 90 days of enactment of this law, [appropriate state agency], shall convene a multidisciplinary task force on sexual assault evidence kits. The task force shall:
 - a. Develop recommendations for establishing a statewide electronic sexual assault evidence kit tracking system.
 - b. Identify and pursue state and federal funding to establish the tracking system, including grants.
 - c. Be comprised of [X] members that include law enforcement professionals, crime lab personnel, prosecutors, victim advocates, victim attorneys, survivors, and Sexual Assault Nurse Examiners/Sexual Assault Forensic Examiners.
 - d. Monitor the tracking system's implementation for at least two years and recommend necessary modifications.
- B. The [appropriate state agency] shall implement the recommendations of the task force to adopt and maintain the statewide tracking system. The [Appropriate state agency] may contract with state or non-state entities including, but not limited to, private software and technology providers, for the creation, operation, and maintenance of the system. The tracking system shall:
 - a. Track the status of sexual assault evidence kits from the collection site throughout the criminal justice process, including but not limited to the initial collection at medical facilities, inventory and storage by [law enforcement agencies or crime lab], analysis at crime laboratories, and storage or destruction after completion of analysis.
 - b. Allow all agencies or facilities that receive, maintain, store, or preserve sexual assault evidence kits to update the status and location of the kits.
 - c. Allow victims of sexual assault to anonymously access the system and receive updates regarding the location and status of their sexual assault evidence kits.
 - d. Use electronic technology that allows continuous access by victims, medical facilities, law enforcement, and crime laboratories.
- C. The [appropriate state agency] may phase-in initial participation according to region, volume of kits, or other appropriate classifications.
- D. The [appropriate state agency] shall submit a report on the current status and plan for launching the system, including the plan for phased implementation, to the Governor, the Attorney General, legislative leadership, and the task force in advance of the legislative session following enactment of this law.
- E. All entities in the chain of custody of sexual assault evidence kits shall fully participate in the system no later than one year from the date of adoption.
- F. Participation is mandatory for law enforcement agencies, medical facilities, crime laboratories, and any other facilities that receive, maintain, store, or preserve sexual assault evidence kits.

Section 5. *Victims' Right to Notice and to be Informed*

No later than [DATE], [appropriate state agency] will ensure that statewide policies and procedures for law enforcement shall be adopted concerning contact with victims and notification concerning sexual assault evidence kits. The policies and procedures shall be evidence-based and survivor-focused and shall require:

- A. Each agency to designate at least one person, who is trained in trauma and victim response, to receive all inquiries concerning sexual assault evidence kits and to serve as a liaison between the agency and the victim.
- B. Victims of sexual assault be provided with the contact information for the designated liaison(s) at the time that a sexual assault evidence kit is collected.
- C. In advance or at the time of the medical forensic examination or law enforcement interview, medical professionals, victim advocates, law enforcement officers, or prosecutors shall provide victims of sexual assault with a physical document developed by [appropriate state agency] identifying their rights under law.
- D. Under this section all victims of sexual assault shall have the right to:
- E. Consult with a sexual assault victim advocate who has confidentiality and privilege; waiving the right to a victim advocate in one instance does not negate this right. The medical facility, law enforcement officer, or prosecutor shall inform the victim of this right prior to commencement of a medical forensic examination or law enforcement interview, and shall not continue unless such right is knowingly and voluntarily waived.
- F. Information, upon request, of the location, testing date and testing results of a kit, whether a DNA sample was obtained from the kit, whether or not there are matches to DNA profiles in state or federal databases and the estimated destruction date for the kit, if applicable, in a manner of communication designated by the victim.
- G. Be informed when there is any change in the status of their case, including if the case has been closed or reopened.
- H. Designate a person of the victim's choosing to act as a recipient of the information provided under this subsection.
- I. Be informed about how to file a report with law enforcement and have their sexual assault evidence kit tested in the future, if the victim chose not to file a report or have the kit tested at the time the kit was collected.
- J. Be informed about the right to apply for victim compensation.

SECTION 6. Appropriation of State Funding

The [state] Legislature shall appropriate funds to carry out the provisions of this law.

SECTION 7. This act takes effect immediately.

SECTION 8. Definitions.

- A. "Accredited laboratory" means a DNA laboratory that has received formal recognition that it meets or exceeds a list of standards, including the FBI director's quality assurance standards, to perform specific tests, established by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic community in accordance with the provisions of the federal DNA identification act, 42 USC 14132, or subsequent laws.
- B. "Combined DNA Index System" (CODIS) means the Federal Bureau of Investigation's program of support for criminal justice DNA databases as well as the software used to run these databases.
- C. "DNA analysis" means the isolation of autosomal deoxyribonucleic acid (DNA) to develop DNA profiles that are eligible for entry into the Combined DNA Index System (CODIS); DNA samples taken from evidence containing DNA from a known individual or

of unknown origin; the determination of the DNA test results; and entry of resulting DNA profiles into CODIS.

- D. "Kit" means sexual assault evidence kit.
- E. "Law enforcement agency" means a police department, the office of a sheriff, the state highway patrol, a county or city prosecuting attorney, or a federal, state, or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest.
- F. "Medical forensic examination" means an examination of a sexual assault patient by a health care provider, ideally one who has specialized education and clinical experience in the collection of forensic evidence and treatment of these patients. The examination includes gathering information from the patient for the medical forensic history; an examination; coordinating treatment of injuries, documentation of biological and physical findings, and collection of evidence from the patient; documentation of findings; information, treatment, and referrals for STIs, pregnancy, suicidal ideation, alcohol and substance abuse, and other non-acute medical concerns; and follow-up as needed to provide additional healing, treatment, or collection of evidence.
- G. "Newly collected kit" refers to sexual assault evidence kits that are not part of the backlog or have been collected since timeframes and requirements for testing kits became law.
- H. "Non-investigatory" refers to a sexual assault evidence kit that is collected from a victim of sexual assault through a medical forensic examination where the victim elects, at the time of the examination, not to report the sexual assault offense to a law enforcement agency.
- I. "Previously unsubmitted sexual assault evidence kits" means any kit that has been held untested by medical facilities, law enforcement agencies, or accredited laboratories.
- J. "Sexual assault evidence kit" means a collection of human biological specimen(s) collected by a health care provider during a medical forensic examination from the victim of a sex offense.
- K. "Status" refers to the location and date/time when the sexual assault evidence kit transfers within the chain of custody.
- L. "Untested sexual assault evidence kit" means a human biological specimen(s) collected by a health care provider during a forensic medical examination from the victim of a sexually-oriented criminal offense that has not been through DNA analysis and has been held untested by medical facilities, law enforcement agencies, or accredited laboratories.

Addendum. *Other policies the Joyful Heart Foundation recommends considering.*

SECTION 1: *Statute of Limitations for Sexual Assault*

- A. (Option 1) Eliminate the statute of limitations for sexual assault.
- B. (Option 2) If a DNA profile is generated from the analysis of a sexual assault evidence kit, the related case can be reopened at any time after the commission of the offense, regardless of the statute of limitations on the crime.

SECTION 2: *Compensation for Victims*

- A. When a renewed investigation into a previously reported sexual assault crime is initiated by a law enforcement agency after DNA testing or other evidence has revealed the identity of the offender, any victim or secondary victim of such crime committed by such offender may be eligible to apply within two years for victim compensation even if the deadline for reimbursement application has passed.

SECTION 3: *Evidence Retention*

- A. All sexual assault forensic evidence kits, including non-investigatory kits shall be safely stored in a manner that preserves evidence for a duration of 50 years or the statute of limitations, whichever is longer.

SECTION 4: *Law Enforcement Training*

- A. All law enforcement investigators, first responders and 911 shall complete evidence based, victim centered and trauma informed sexual assault training.