



# **Comprehensive Rape Kit Reform: A Legislative Handbook**

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# Understanding The Rape Kit Backlog

## What is a Rape Kit?

Every 92 seconds, someone is sexually assaulted in the United States. In the immediate aftermath of a sexual assault, a victim may choose to undergo a medical forensic examination to collect DNA evidence left behind in the assault. A doctor or nurse will conduct the examination, which can last between four and six hours. During the exam, the victim's body is photographed and swabbed for biological evidence. The examiner collects and preserves this evidence in a sexual assault evidence kit, often referred to as a "rape kit." Survivors can elect to have a kit collected but not report their assault to law enforcement. These kits are referred to as "anonymous" or "unreported" kits. However, if the survivor reports the assault to law enforcement, the kit should be picked up by law enforcement and subsequently submitted to a crime lab.

At the lab, analysis can yield a DNA profile that is uploaded to local, state, and national DNA databases. Through this process, DNA evidence can identify unknown assailants, link crimes together, and exonerate the wrongfully convicted.

The problem: many of these kits are never tested and unconscionably languish in storage for years.

## What is the Backlog?

The rape kit backlog is a term used to refer to both rape kits stored by law enforcement agencies that have not been submitted to crime labs, as well as kits awaiting testing at crime labs nationwide. Generally, kits in law enforcement storage are referred to as both "unsubmitted" and "untested." Kits in crime lab storage are referred to as "untested" or "awaiting testing." The Joyful Heart Foundation defines a backlogged kit as one that has not been submitted to an accredited public or private crime lab for testing within 30 days of being booked into evidence. All backlogged kits are collectively known as the "rape kit backlog."

Because many jurisdictions do not have systems for tracking or counting rape kits, we cannot be sure of the total number of untested kits sitting in police and crime lab storage facilities around the country. However, experts estimate there are hundreds of thousands of untested kits. To date, **more than 225,000 untested kits** have been uncovered by investigative reporters and through The Accountability Project, a Joyful Heart initiative that uses public records requests to uncover the number of untested kits in municipalities across the country.

## Why Test All Kits?

Every single kit represents a survivor who underwent a four-to-six-hour rape kit collection process to collect evidence because they were told it could bring them justice and healing. Notably, the backlog may contain anonymous kits and kits connected with a reported crime, but Joyful Heart does not advocate submitting or testing anonymous kits until a survivor has given their consent to testing.

Of those rape kits connected to a crime reported to the police, all kits should be tested regardless of how long it has been since the sexual assault. Here's why:

- **DNA in rape kits can identify serial rapists.** Testing rape kits can yield evidence in the form of a DNA profile, which can be entered into local, state, and national DNA databases containing DNA from offenders. By testing every kit connected to a reported crime, more DNA profiles will be developed and uploaded to these databases, meaning more DNA from crime scenes will be linked, identifying serial rapists.
- **Serial rapists' DNA can be found in kits in both acquaintance and stranger rape cases.** Serial rapists tend to assault both acquaintances and strangers. Testing every rape kit, even if the suspect is known, will determine if the attacker's DNA matches DNA from another case. As more sexual assault cases are pursued, more offenders are apprehended, and future crimes are averted.
- **DNA in rape kits can connect different crimes.** Offenders who commit sexual assault are often engaged in other crimes, such as burglary and homicide. DNA from rape kits can match DNA from other crime scenes and provide leads for investigators to follow.
- **Communities save money by testing kits and prosecuting offenders.** In Cuyahoga County, Ohio, officials, as of November 2019, tested over 7,000 backlogged kits, investigated every lead, engaged survivors, and prosecuted cases. Through this testing, serial criminals were taken off the streets and future crimes were averted, saving the county \$38 million.
- **Federal best practices call for testing all kits.** The National Institute of Justice's July 2017 report, "National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach," outlines 35 nationwide recommendations for handling rape kits. In this report, the federal government strongly recommends all rape kits connected to a reported crime be submitted to a lab for DNA analysis.
- **Testing all kits sends a powerful message to survivors and offenders.** If a community tests all kits, offenders will know law enforcement is serious about sexual assault and using the evidence they left behind to apprehend and prosecute them. More importantly, rape kit testing sends a message to survivors that they—and their cases—matter.

## Why Does the Backlog Exist?

The backlog of untested rape kits is a failure of the criminal justice system to take sexual assault seriously, prioritize the testing of rape kits, protect survivors, and hold offenders accountable. There are several contributing factors that create a backlog.

### ***Bias against sexual assault victims***

Law enforcement officers must use their discretion every day and inevitably, bias plays a role in how cases are handled and survivors are treated.

- **Victims are disbelieved.** Research has shown that members of law enforcement disbelieve victims of sexual assault more than victims of any other type of crime, and they often blame them for the crime.
- **Existing biases.** In many jurisdictions, law enforcement officers must individually decide if a rape kit is to be tested, enabling existing biases to impact case outcomes. If a law

enforcement officer does not believe the victim was sexually assaulted because of existing biases against the victim's race, gender, sexual orientation, profession, or other classifications, the officer may choose not to send the victim's kit to a crime lab for testing.

- **Historical unwillingness to prioritize sexual assault crimes.** Law enforcement agencies often fail to dedicate the time and resources other crimes receive to sexual assault cases. Too often, sex crimes units are under-resourced and inadequately staffed. This lack of resources hinders detectives' ability to investigate every case thoroughly and may lead them to discard a case they may not perceive as prosecutable. Leadership is also central to the way a department handles sexual assault cases. If department leaders do not prioritize rape cases, it is highly likely these cases will be neglected.

### ***Knowledge gaps and lack of training***

A lack of training and understanding about sexual assault and its impact on survivors, sex offenders, and forensic DNA can all impact whether a kit is submitted for testing:

- **Lack of understanding of how trauma impacts memory and behavior.** Research has demonstrated that trauma impacts memory, behavior, and reactions. A traumatizing experience, such as a sexual assault, can lead survivors to present to law enforcement a wide range of behaviors and with a non-linear timeline of the assault. This might include having trouble recalling details, laughing, responding stoically, and otherwise acting differently than what an untrained officer might consider as "typical." This lack of knowledge often leads to a detective closing a case as "unfounded" because they find it false or baseless, and the associated kit is not sent for testing.
- **Erroneous interpretation of victim "cooperation."** Law enforcement professionals who are not trained on victimization and the neurobiology of trauma often erroneously classify survivors as "uncooperative" because survivors manifest trauma in ways unrecognizable to untrained officers. When a victim has been labeled as "uncooperative," the case can be closed and kits are not sent for testing. However, survivors may need time to process an array of emotions from the trauma before they feel ready to speak with law enforcement. They may also have privacy and safety concerns they would like to address before filing a police report. Many survivors also disengage from the criminal justice process due to poor treatment from law enforcement.
- **Lack of training about the power of DNA.** Law enforcement agencies and prosecutors may not be aware of the power of DNA and DNA databases to solve and prevent crime. Some do not fully understand which kits can be sent for testing. For example, kits from unfounded cases can be sent to a lab by reopening the case.
- **Lack of training about sex offenders and their criminal patterns.** In order to make informed determinations about sexual assault cases, law enforcement professionals should understand how sex offenders behave. Perpetrators of sexual assault use shame and fear to lead victims to think that no one will believe them. Perpetrators may purposefully target vulnerable populations, such as children, drug users, the homeless, non-English-speakers, and/or sex workers. Research shows acquaintance rapists are often serial offenders, and may also commit crimes against people they don't know.

- **Whether the identity of the perpetrator is known.** Many jurisdictions only test kits in cases where the assailant is unknown, in the hope of identifying a suspect through DNA evidence. Rape kit testing, however, has significant value beyond identifying an unknown suspect. DNA evidence can identify connected cases, identify serial offenders, and exonerate the wrongfully convicted.

### ***Lack of resources***

On average, it costs between \$500 and \$1,500 to test one rape kit. Many kits never make it to a crime lab in the first place and instead spend years—even decades—sitting untested in police storage facilities. A lack of essential funding at multiple levels is often a factor in why kits go untested:

- **Police resources.** Law enforcement agencies often lack the technology to track untested rape kits, as well as the personnel needed to ship or transport untested kits to a crime lab in a timely manner. Many also lack the staffing resources necessary to investigate or follow up on leads that arise from the rape kit testing.
- **Crime lab resources.** Public crime labs throughout the country have struggled to maintain sufficient funding and personnel in recent years, as technology has advanced and the demand for DNA testing has grown. In addition to rape kit evidence, crime labs may receive DNA samples from hundreds, or even thousands, of crime scenes each year. As a result, many labs have exceedingly long turnaround times—sometimes years—for testing DNA evidence, including rape kits.

### ***Lack of rape kit handling policies or updated policies***

Policies standardize rape kit handling processes and ensure uniformity in handling crime evidence.

- **Lack of law enforcement policies.** Most jurisdictions do not have clear, written policies for testing rape kits. This results in decisions being made on a case-by-case basis, without any guidelines, meaning an individual detective may have discretion over whether to send a kit for analysis.
- **Lack of crime lab policies or the adherence to dated policies.** Public crime labs across the country increasingly recognize the need to update their DNA testing policies to reflect innovations in the fields of forensic science and criminal justice. In years past, many labs had narrow rape kit submission policies, some of which prohibited the submission of rape kits for DNA testing in cases in which the identity of the perpetrator is known to the victim. As more experts advocate for the value of testing all kits, including kits in cases with known perpetrators, these labs are shifting their policies to accept all kits.
- **No clear communication.** In some jurisdictions, a lack of clear communication between crime labs and law enforcement agencies has led to misunderstandings about what types of kits can be submitted for testing.

# Legislative Reform

Eliminating the rape kit backlog will take a coordinated effort and deep commitment at all levels of government across the United States. End The Backlog is an initiative of the Joyful Heart Foundation dedicated to this crisis. Since 2010, we have maintained one clear, ambitious goal: to eliminate the existing backlog of untested rape kits across the U. S. and prevent a backlog from ever happening again.

Achieving this goal requires bringing all of the stakeholders—federal, state, and local governments; law enforcement professionals; prosecutors; forensic analysts; victim advocates; survivors; and others—to the table to evaluate existing processes and institute new requirements for the handling of sexual assault cases. Fundamentally, it requires a meaningful cultural shift in criminal justice institutions nationwide: toward survivor-centric, trauma-informed practices that prioritize the needs of survivors throughout the criminal justice process. The system should be transparent, accountable, and respectful of survivors' needs.

## The Six Pillars

To ensure that a backlog never develops again, laws must change in every state to codify best practices. Joyful Heart's six provisions, or pillars, together constitute comprehensive rape kit reform. Undoubtedly, implementation must be monitored to ensure that the law is being carried out as intended and continuously refine the law, but the first step is enacting all six pillars.

The six pillars align with federal best practices as outlined in the National Institute of Justice's report, *National Best Practices for Sexual Assault Kits: a Multidisciplinary Approach*, and have been reviewed by survivors, law enforcement, crime lab personnel, victim advocates, medical professionals, DNA experts, prosecutors, and victims' rights experts.

1. **Annual statewide inventory of untested kits:** A recurring count of all untested rape kits enables stakeholders to understand the scope of the problem and monitor progress.
2. **Mandatory testing of backlogged kits:** Eliminate the existing backlog by requiring law enforcement agencies to submit all previously untested kits to the lab and requiring the kits to be tested.
3. **Mandatory testing of new kits:** Prevent future backlogs by requiring law enforcement agencies to promptly submit all newly collected kits to the lab, and requiring the lab to test these kits within a specific time frame.
4. **Statewide tracking system:** Ensure that hospitals, law enforcement, and labs are using the same system to track rape kits. Build in a mechanism for survivors to check the status of their kits throughout the process, from collection to analysis.
5. **Victims' rights to notice:** Grant victims the right to receive information about the status and location of their rape kit, and require that victims be informed if their kit will not be tested and prior to destruction.
6. **Funding for reform:** Appropriate state funding to address these issues.

Additional policies to consider include:

- Expressly articulating the **intent of the law**;
- Including **clear definitions** for all terms used in the law;
- Eliminating or otherwise reforming the **statute of limitations** for relevant crimes;
- Reforming policies to ensure **victims are not paying for the medical and legal processes**; and
- Requiring law enforcement and prosecutors to undergo **sexual assault response training**.



# Model Legislation

## Annual Statewide Inventory

By conducting an annual inventory of untested rape kits, states can strengthen accountability, monitor progress toward eliminating the backlog, and send a message to survivors that they matter. A thorough count of rape kits currently in the possession of medical facilities, law enforcement agencies, and crime laboratories uncovers the current number of untested kits, provides a full picture of rape kit handling and testing procedures across the state, and guides the legislature in appropriating resources to eliminate the backlog.

### *Inventory legislation should:*

- Require the initial inventory be completed within 180 days, and annually thereafter.
- Require medical facilities, law enforcement agencies, crime labs, and any other entities, such as rape crisis centers, in the state that handle rape kits to participate in the inventory.
- Describe the information to be reported, such as the date each kit was collected and the reason it was not submitted to a crime lab for testing.
- Be clear that all untested rape kits must be counted, including kits collected past the statute of limitations.
- Specify that anonymous kits be counted separately and should not be sent for testing.
- Require the production of public, annual reports of the results, including a list of any agencies that failed to participate in the inventory.

To date<sup>1</sup>, **28 states and Washington, D.C.** have laws requiring one-time, annual, or periodic inventory of untested rape kits:

#### **One-time (12)**

Colorado  
Delaware  
Florida  
Indiana  
Iowa  
Maryland  
Minnesota  
Nevada  
New Jersey  
Tennessee  
Texas  
Virginia

#### **Recurring (17)**

Alaska  
Arizona  
Arkansas  
Georgia  
Hawai'i  
Idaho  
Illinois  
Kentucky  
Louisiana  
Massachusetts

New York  
North Carolina  
Oregon  
Pennsylvania  
Utah  
Washington, D.C.  
Wyoming

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<sup>1</sup> Information is current as of January 2020.

## MODEL LANGUAGE: Annual Statewide Inventory of Rape Kits

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

Within 180 days of enactment of this law, and thereafter annually, all medical facilities, law enforcement agencies, crime laboratories, and any other facilities that receive, maintain, store, or preserve sexual assault evidence kits (“kits”) shall submit a report containing the following information to [the appropriate state agency]:

- A. The total number of all untested kits in possession of each the medical facilities, law enforcement agencies, crime laboratories, and any other facilities that receive, maintain, store, or preserve kits (“entity”).
- B. For each kit:
  - a. Category of the kit:
    1. Sexual assault was reported to law enforcement; or
    2. Victim chose not to file a report with law enforcement (“anonymous” or “unreported”)
  - b. Status of the kit:
    1. Medical facilities: date when the kit was reported to law enforcement, and date when the kit was picked up by law enforcement;
    2. Law enforcement: date the kit was picked up from a medical facility, date when the kit was submitted to a crime laboratory, and for any kit not submitted to a crime lab, the reason(s) the kit was not submitted;
      - 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 law enforcement and from which agency the kit was received; date when the kit was tested; date when the resulting information was entered into CODIS [and other relevant state or local DNA databases], and the reason(s) a kit was not tested or a DNA profile was not created.
- C. The total number of kits in possession of the entity [for more than 30 days or beyond the statutory time frame for kit submission and testing].
- D. The total number of kits destroyed and the reason(s) for destruction.
- E. The [appropriate state agency] shall compile the data from the reports in a summary report. This summary report must include a list of all agencies or facilities that failed to participate in the inventory. 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 the appropriate legislative committees and leadership.

## Mandatory Submission and Testing Requirements for Previously Untested (Backlogged) Kits

Sexual assault survivors whose kits have languished for years—sometimes even decades—deserve to have their kits tested. Even if the statute of limitations has lapsed, survivors may be able to file civil lawsuits against their offender and testing could identify the offender. Additionally, victims who had a DNA match but whose cases are past the statute of limitations, may provide an impact statement at sentencing should their offender be convicted of another crime and at parole hearings if the offender is incarcerated.

*Testing backlogged kits legislation should:*

- Require all rape kits stored outside of law enforcement agencies (for instance, hospitals or rape crisis centers) be submitted to the local law enforcement agency.
- Require the governor's office clearly identify who is in charge of storing kits before and after testing
- Require law enforcement to submit all untested kits, including those past the statute of limitation, within 180 days.
- Set a deadline for the crime laboratory to complete analysis once a kit has been submitted to the lab of no later than 90 days.
- Allow public crime labs to outsource unsubmitted kits for speedier testing if it is unable to meet the specified testing deadline.
- Encourage labs to attempt other forms of DNA testing if a DNA profile is not created from one single sample in the rape kit or one DNA testing method.

To date, **9 states** across the country require the submission and testing of backlogged kits by law:

Colorado  
Georgia  
Illinois  
Massachusetts  
New York  
North Carolina  
Ohio  
Pennsylvania  
Texas

**MODEL LANGUAGE: Mandatory Submission and Testing Requirements for Previously Untested (Backlogged) Rape Kits**

- A. Within 90 days of enactment of this law, all previously untested kits in medical facilities or other facilities that collect kits shall be submitted to the appropriate law enforcement agency.
- B. Within 180 days of enactment of this law, each law enforcement agency shall submit all previously untested kits, including those past the statute of limitations, to the accredited public crime [laboratory or laboratories].
  - a. Anonymous or unreported kits are exempted from this section unless the victim files a report and consents to the testing of their kit. Anonymous kits shall be safely stored [by law enforcement or crime lab] in a manner that preserves evidence for a duration of [20 years or the statute of limitations, whichever is longer].
  - b. 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 accredited public crime [laboratory or laboratories] shall test all previously untested 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 [other relevant state or local DNA databases].
    - i. With the goal of generating a CODIS-eligible DNA profile, if a laboratory is unable to obtain an autosomal CODIS-eligible DNA profile, the laboratory should evaluate the case to determine if any other DNA-typing results could be used for investigative purposes.
  - 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 accredited public crime [laboratory or laboratories] is [are] unable to meet the deadline specified above, kits shall be outsourced for testing to an accredited private crime laboratory.

# Mandatory Submission and Testing Requirements for Newly Collected Kits

After a sexual assault, survivors, as well as the public, expect the evidence recovered during the forensic exam to be carefully handled and expeditiously tested. To keep the promise to survivors and prevent future backlogs, states must mandate deadlines for the submission and testing of newly collected rape kits.

*Newly collected kit testing policies should:*

- Establish time frames for each step of the process:
  - Hospitals must notify the appropriate law enforcement agency within 24 hours of the collection of a new kit.
  - Law enforcement must pick up the kit from the hospital within three business days of notification.
  - Law enforcement must submit the kit to the lab for analysis within seven days of picking up the kit from the hospital.
- Require the state crime lab to test the kit within 30 days of receiving the kit from law enforcement.
- Allow state crime labs to outsource testing to private laboratories if it cannot meet the deadline established by the law.
- Retain and store kits associated with a reported crime that is uncharged or unsolved for 50 years or the length of the statute of limitations, whichever is longer.
- Retain and store anonymous or unreported kits for 20 years or the length of the statute of limitations, whichever is longer.
- Codify a cold case review process to address kits from unfounded cases
- Require law enforcement to notify the lab of arrests and convictions within 15 days

To date, **30 states and Washington, D.C.** mandate the timely submission and testing of newly collected kits:

|             |                |                  |
|-------------|----------------|------------------|
| Alaska      | Kentucky       | Oregon           |
| Arizona     | Maryland       | Pennsylvania     |
| Arkansas    | Massachusetts  | South Dakota     |
| California  | Michigan       | Tennessee        |
| Colorado    | Montana        | Texas            |
| Connecticut | Nevada         | Utah             |
| Florida     | New Mexico     | Virginia         |
| Georgia     | New York       | Washington       |
| Hawai'i     | North Carolina | Washington, D.C. |
| Idaho       | Ohio           |                  |
| Illinois    | Oklahoma       |                  |

**MODEL LANGUAGE: Mandatory Submission and Testing Requirements for Newly Collected Rape Kits**

**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 kit from medical facilities within three business days of notification.
  - b. Submit newly collected kits for testing to the accredited public crime [laboratory or laboratories] within seven days of taking possession of the kit.
    - 1. Anonymous kits are exempted from this section unless the victim files a report and consents to the testing of their kit. Anonymous kits shall be safely stored [by law enforcement or crime lab] in a manner that preserves evidence for a duration of [20 years or the statute of limitations, whichever is longer].
    - 2. 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 kit(s) within seven days of notification.
  - d. Kits associated with a reported crime that is uncharged or unsolved should be preserved [by law enforcement or a crime lab] [for 50 years or the length of the statute of limitations, whichever is longer].
- C. The accredited public crime [laboratory or laboratories] shall test all 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].
    - i. With the goal of generating a CODIS-eligible DNA profile, if a laboratory is unable to obtain an autosomal CODIS-eligible DNA profile, the laboratory should evaluate the case to determine if any other DNA-typing results could be used for investigative purposes.
  - b. In cases where testing has resulted in a DNA profile, the [laboratory or laboratories] 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 accredited public crime [laboratory or laboratories] is [are] unable to meet the deadline specified above, untested kits shall be outsourced to an accredited private crime laboratory.

# Rape Kit Tracking System

States should call for the implementation of a statewide tracking system to follow the path of a rape kit throughout the entire process: from the hospital, to the local law enforcement agency, throughout the analysis process at the lab, to final disposition. All states should ensure legislation requires the creation of a secure victim access portal through which survivors can obtain information about their kit and receive critical updates.

*Rape kit tracking legislation should:*

- Convene a multidisciplinary task force on the rape kit handling process to develop recommendations for establishing a statewide tracking system.
- Ensure the system tracks the status of the kits from the collection site throughout the criminal justice process
- Allow victims to access the system anonymously and receive updates regarding the location and status of their kit.
- Instruct law enforcement agencies, medical facilities, crime laboratories, and any other facilities that receive, maintain, store, or preserve kits to fully participate.
- Require all previously untested kits to be entered into the system.
- Ensure anonymous kits remain anonymous in a tracking system.
- Mandate CODIS upload.

To date, **23 states** have enacted legislation requiring the creation of a rape kit tracking system:

|               |                |
|---------------|----------------|
| Arkansas      | Montana        |
| California    | Nevada         |
| Connecticut   | New Hampshire  |
| Hawai'i       | New York       |
| Idaho         | North Carolina |
| Illinois      | Ohio           |
| Indiana       | Oklahoma       |
| Kentucky      | Oregon         |
| Maryland      | Texas          |
| Massachusetts | Utah           |
| Michigan      | Virginia       |
| Missouri      | Washington     |

## MODEL LANGUAGE: Tracking System for Rape Kits

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

- A. Within 90 days of enactment of this law, [the appropriate state agency], shall convene a multidisciplinary task force on the rape kit handling process. The task force shall:
  - a. Develop recommendations for establishing a statewide electronic kit tracking system.
  - b. Identify and pursue state and federal funding to establish the tracking system, including grants.
  - c. Be comprised of members that include survivors, law enforcement professionals, crime lab personnel, prosecutors, victim advocates, victim attorneys, and sexual assault nurse examiners [or 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 the 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 kits to update the status and location of the kits.
  - c. Allow victims to access the system anonymously and receive updates regarding the location and status of their kit.
- 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 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 kits.
- G. All previously untested kits shall be entered into the system.



## Victims' Right to Notice

Sexual assault survivors want and deserve information about the status of their cases. In 2016, Joyful Heart conducted a research study on victim notification, which found access to information about the status of their cases can promote healing for survivors of sexual assault. States should ensure survivors' rights to notice are established in law.

*Victims' right to notice legislation should:*

- Grant survivors the right to be notified, upon request, about the status of their rape kit, including notification about when the kit is submitted to the lab, if a DNA profile is obtained, when the kit is entered into the DNA database, and when a match occurs.
- Ensure survivors receive notification at least 60 days before the destruction of the kit.
- Allow survivors to be granted further preservation of the kit.
- Require each law enforcement agency to designate a trauma-informed liaison between the agency and the victim.

To date, **22 states and Washington D.C.** have passed laws establishing victims' rights to be informed:

|               |                  |
|---------------|------------------|
| California    | New York         |
| Connecticut   | Oregon           |
| Hawai'i       | Pennsylvania     |
| Idaho         | Texas            |
| Illinois      | Utah             |
| Kentucky      | Vermont          |
| Maryland      | Virginia         |
| Massachusetts | Washington       |
| Michigan      | Washington, D.C. |
| Minnesota     | West Virginia    |
| Nevada        |                  |
| New Hampshire |                  |
| New Mexico    |                  |

## MODEL LANGUAGE: Victims' Right to Notice

### SECTION 5. *Victims' Right to Notice*

- A. Under this section all victims of sexual assault shall have the right to:
1. 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.
  2. Information, upon request, of the location, testing date, and testing results of a kit; whether a DNA profile 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, all in a manner of communication designated by the victim.
  3. Be informed when there is any change in the status of their case, including if the case has been closed or reopened.
  4. Receive written notification, upon request, from the appropriate official with custody of a victim's rape kit not later than 60 days before the date of the intended destruction or disposal.
  5. Be granted further preservation of the kit or its probative contents.
  6. Designate a person of the victim's choosing to act as a recipient of the information provided under this subsection.
  7. Be informed about how to file a report with law enforcement and have their kit tested in the future. If the victim chose not to file a report when the kit is first collected.
  8. Be informed about the right to apply for victim compensation.
- B. The [appropriate state agency] will ensure that statewide policies and procedures for law enforcement shall be adopted concerning contact with victims and notification concerning kits. The policies and procedures shall be trauma-informed and survivor-focused and shall require:
1. Each agency to designate at least one person, who is trained in trauma and victim response, to receive all inquiries concerning kits and to serve as a liaison between the agency and the victim.
  2. Victims of sexual assault be provided with the contact information for the designated liaison(s) at the time that a kit is collected.
  3. In advance or at the beginning of the medical forensic examination and law enforcement interview, medical professionals, victim advocates, law enforcement officers, or prosecutors shall provide victims with a physical document developed by [appropriate state agency] identifying their rights under law, including the rights granted under this section. This document shall also be available in at least [the two most commonly spoken languages in the state, after English].

## Appropriating Sufficient Funding for Reforms

This work takes political will and significant funding. Resources are necessary to test kits, investigate cases, prosecute offenders, and provide survivors with ongoing support services. Federal funding is currently available for jurisdictions working to eliminate their backlogs (see Addendum D), but the state must ensure it is fully funding reforms.

- 21 states passed bills that grant state funds towards ending the backlog. These states granted \$84.7 million to end the backlog and test over 129,412 kits<sup>2</sup>.
- The funding bills targeted ending the backlog, funding crime labs, implementing relevant reforms, state budget appropriations, and testing future kits.
- On average, the 18 states granted \$4.7 million on average to end the backlog, ranging from \$300,000 in Hawai'i to \$11 million in Texas and Michigan.
- Spending per kit was \$644 on average, ranging from \$154 per kit in Hawai'i to \$1,807 per kit in Colorado.
- The states spent \$0.84 per person on ending the backlog, ranging from \$0.05 per person in New York to \$3.66 per person in Alaska.

So far, **21 states** have appropriated funds for rape kit reform, including:

### **One-Time (11)**

Alaska  
California  
Colorado  
Idaho  
Illinois  
Kentucky  
Maryland  
Massachusetts  
New Mexico  
North Carolina  
Oregon

### **Ongoing (10)**

Arizona  
Connecticut  
Florida  
Hawai'i  
Michigan  
Nevada  
New York  
Texas  
Utah  
Washington

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<sup>2</sup> Data on the number of kits and/or amount of appropriation is missing for Connecticut, Illinois, and Oregon. Massachusetts inventory does not reflect an accurate number. Spending per kit numbers reflect results from the remaining 18 states.

# Additional Provisions to Consider

## Intent of the Law

The purpose of an intent section is to give the public and the people responsible for implementing the law a clear vision of the goals of the legislation. Where permissible in state legislative drafting rules, intent sections can provide an explanation of the problem and the proposed solution. It might also include statistics and state-specific information.

### **MODEL LANGUAGE: Intent of the Law**

#### **INTENT OF THE LAW**

The legislature finds that, when tested, DNA evidence from rape kits can be an incredibly powerful tool to solve and prevent crimes. It can identify unknown assailants, confirm known suspects, identify serial offenders by linking crimes together, and exonerate the wrongfully convicted. 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 wrongfully convicted, and holding offenders accountable.

## Definitions

Different interpretations of standard terms can result in people and entities failing to comply with rape kit reform laws. Defining terms reduces the chance for misunderstanding or “lack of clarity” to be cited as an excuse to ignore the law.

Common terms to define include:

- “accredited laboratory”
- “Combined DNA Index System”
- “DNA analysis”
- “kit”
- “law enforcement agency”
- “medical forensic examination”
- “Anonymous” or “unreported”
- “previously unsubmitted sexual assault evidence kits”
- “status”

## MODEL LANGUAGE: Definitions

### SECTION X. *Definitions.*

- A. “Accredited laboratory” means a DNA laboratory that has received formal recognition that it meets or exceeds a list of standards, including the Federal Bureau of Investigation (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. “Anonymous kit” or “unreported kit” refers to a 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.
- C. “Combined DNA Index System” (CODIS) means the FBI’s program of support for criminal justice DNA databases as well as the software used to run these databases.
- D. “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.
- 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; collection of evidence from the patient; 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 kits have been collected after time frames and requirements for testing kits became law.
- H. “Previously untested sexual assault evidence kits” means 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.
- I. “Sexual assault evidence kit” or “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.
- J. “Status” refers to the location and date/time when the kit transfers within the chain of custody.

## Statute of Limitations

Rape is a crime with a lifelong, profound impact on survivors. To ensure survivors of rape and sexual assault have access to justice and offenders are held accountable for their crimes—no matter how much time has passed—states should eliminate the statute of limitations for rape or enact a DNA exception, which allows prosecution to commence when identification of the offender has been made through DNA testing.

### MODEL LANGUAGE: Statute of Limitations for Sexual Assault

#### SECTION X. *Statute of Limitations for Sexual Assault*

(Option 1) Eliminate the criminal and civil statutes of limitations for sexual assault.

(Option 2) Extend the criminal and civil statutes of limitations for sexual assault.

(Option 3) 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.

## Compensation for Victims

In many states, victims of crimes are eligible to receive reimbursement for out-of-pocket expenses associated with their victimization. Applications for reimbursement must be submitted within a specific period of time following the crime. These time limits may preclude survivors in cases with renewed investigative activity who did not apply for victim compensation funds at the time of the crime from receiving compensation. The submission and testing of previously untested rape kits—and resulting new action in these cases—may bring up counseling or other needs for survivors. Survivors should not have to bear the burden of these costs alone due to a delay outside of their control.

States should ensure survivors whose kits were left untested remain eligible for reimbursement funds by enacting clear exceptions to the existing application period. Such exceptions should include a clear explanation of what constitutes “appropriate cause” for the exception, including any renewed investigation initiated by law enforcement into a previously reported crime.

### MODEL LANGUAGE: Compensation for Victims

#### SECTION X. *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 or moved the case forward, 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 the reimbursement application has passed.

## Law Enforcement Training

Law enforcement officers should undergo trauma-informed sexual assault response training to understand how trauma impacts behavior and memory; learn how to minimize victim retraumatization; recognize and mitigate bias; postpone judgment regarding the validity of a case until a thorough investigation is completed; and acquire trauma-informed investigative techniques.

### **MODEL LANGUAGE: Evidence Retention**

#### **SECTION X. *Law Enforcement Training***

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

# Addendum

## A. Language Examples As Written From the States

### Mandatory Submission and Testing Requirements for Previously Untested (Backlogged) Kits<sup>3</sup>

#### **Pennsylvania [P.L. 142, No. 27](#) – Complete backlog testing within three years**

*A laboratory shall complete the testing or analysis of the evidence as soon as possible, but no later than three years from the date of submission of the evidence to the laboratory.*

#### **Texas [S.B. 1636](#) – Complete backlog testing within three years (September 1, 2014)**

*Not later than September 1, 2014, ... the Department of Public Safety of the State of Texas shall, as provided by Sections 420.042 and 420.043, Government Code, as added by this Act, analyze or contract for the analysis of, and complete the required database comparison regarding all sexual assault evidence submitted to the department under Subdivision (2), Subsection (a) of this section.*

#### **Colorado [H.B. 13-1020](#) – Submit to lab within 120 days**

*On or before one hundred twenty days after the effective date of this section, each law enforcement agency shall forward to the Colorado Bureau of Investigation or other accredited crime laboratory the forensic medical evidence identified on the inventory submitted to the Colorado Bureau of Investigation.*

#### **Illinois [P.A. 096-1011](#) – Submit to lab within 180 days**

*Within 180 days after the effective date of this Act, appropriate arrangements shall be made between the law enforcement agency and the Department of State Police, or a laboratory approved and designated by the Director of State Police, to ensure that all cases that were collected prior to the effective date of this Act and are, or were at the time of collection, the subject of a criminal investigation, are submitted to the Department of State Police, or a laboratory approved and designated by the Director of State Police.*

#### **Ohio [130 S.B. 316](#) – Submit to lab within one year**

*A law enforcement agency shall review all of its records and reports pertaining to its investigation of any offense specified in division (B)(1) of this section as soon as possible after the effective date of this amendment. If the law enforcement agency's review determines that one or more persons may have committed or participated in an offense specified in division (B)(1) of this section or another offense committed during the course of an offense specified in division (B)(1) of this section and the agency is in possession of a sexual assault examination kit secured during the course of the agency's investigation, as soon as possible, but not later than one year after the effective date of this amendment, the agency shall forward the contents of the kit to the bureau of criminal identification and investigation or another crime laboratory for a DNA analysis of the contents of the kit if a DNA analysis has not previously been performed on the contents of the kit.*

<sup>3</sup> Ordered by strength of adherence to best practices.



## Mandatory Submission and Testing Requirements for Newly Collected Rape Kits

### **Georgia [S.B. 304](#) – Hospitals must notify police upon victim request**

*When a forensic medical examination is performed, evidence is collected, and the alleged victim has requested that law enforcement officials be notified, the individual performing such exam, or his or her designee, shall notify the appropriate law enforcement agency of the collection of such evidence.*

### **Pennsylvania [P.L. 142, No. 27](#) – Police must collect from hospitals within 72 hours**

*The local law enforcement agency shall take possession of the sexual assault evidence within 72 hours of receiving notice.*

### **New York [S08236](#) – Police must submit to the lab within ten days**

*Each such police agency and prosecutorial agency shall submit any sexual offense evidence kits in its custody or control to an appropriate forensic laboratory within ten days of receipt.*

### **Kentucky [16 R.S. S.B. 63](#) – Test within 90 days by 2018 and 60 days by 2020**

*The department shall analyze and classify all sexual assault evidence collection kits it receives. In cases where a suspect has been identified, the department may give priority to analysis and classification of sexual assault evidence collection kits where the reference standard for comparison is provided with the kit. Except as provided in subsection (3)(e) of this section, by July 1, 2018, the average completion rate for this analysis and classification shall not exceed ninety (90) days, and by July 1, 2020, the average completion rate for this analysis and classification shall not exceed sixty (60) days.*

### **North Carolina [H.29](#) – Police must notify the lab of arrests and convictions within 15 days**

*A law enforcement agency that receives an actionable CODIS hit on a submitted DNA sample shall provide electronic notice to the State Crime Laboratory as follows: (1) Detailing any arrest of a person made in connection with the CODIS hit, no later than 15 days after the arrest. (2) Detailing any conviction of a person resulting from the CODIS hit, no later than 15 days from the date of conviction.*

## Tracking System for Sexual Assault Evidence Kits

### Oklahoma [S.B. 967](#) – Sexual assault collection kits

*The tracking system shall:*

- (1) Track the location and status of each evidence collection kit through the criminal justice process, including the initial collection of evidence for the kit in a forensic medical examination performed at a health care facility, receipt and storage of the kit at a law enforcement agency, receipt and analysis of the kit at an accredited crime laboratory, and storage and destruction of the kit after the applicable evidence is analyzed;*
- (2) Allow a health care facility performing a forensic medical examination of a survivor, law enforcement agency, accredited crime laboratory, prosecutor or other entity providing a chain of custody for an evidence collection kit to update and track the status and location of the kits;*
- (3) Allow a survivor to anonymously track or receive updates regarding the statute and location of the survivor's evidence collection kit.*

### Utah [H.B. 200](#) – Statewide sexual assault tracking system

- (1) The department shall develop and implement a statewide tracking system by July 1, 2018, that contains the following information for all sexual assault kits collected by law enforcement:*
  - (a) the submission status of sexual assault kits by law enforcement to the Utah Bureau of Forensic Services;*
  - (b) notification by the Utah Bureau of Forensic Services to law enforcement of DNA analysis findings; and*
  - (c) the storage location of sexual assault kits.*
- (2) The tracking system shall include a secure electronic access that allows the submitting agency, collecting facility, department, and a victim, or his or her designee, to access or receive information, provided that the disclosure does not impede or compromise an active investigation, about the:*
  - (a) lab submission status;*
  - (b) DNA analysis findings provided to law enforcement; and*
  - (c) storage location of a sexual assault kit that was gathered from that victim.*

### Washington [H.B. 2530](#) – Statewide tracking system

*The statewide sexual assault kit tracking system must:*

- (a) Track the location and status of sexual assault kits throughout the criminal justice process, including the initial collection in examinations performed at medical facilities, receipt and storage at law enforcement agencies, receipt and analysis at forensic laboratories, and storage and any destruction after completion of analysis;*
- (b) Allow medical facilities performing sexual assault forensic examinations, law enforcement agencies, prosecutors, the Washington State Patrol Bureau of Forensic Laboratory Services, and other entities in the custody of sexual assault kits to update and track the status and location of sexual assault kits;*
- (c) Allow victims of sexual assault to anonymously track or receive updates regarding the status of their sexual assault kits; and*
- (d) Use electronic technology or technologies allowing continuous access.*

## Victims' Right to Notice

### Utah [14 H.B. 157](#) – Rights to case information and designated recipient

*Victims of sexual offenses have the following rights:*

- (ii) the right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence;*
- (iii) the right to be informed whether a DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index System;*
- (iv) the right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and*
- (v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection.*

### Oregon [16 S.B. 1571](#) – Process and protocol for victims' inquiry

*No later than January 1, 2017, each law enforcement agency within this state shall adopt policies and procedures concerning contact with the victims and the provision of information to victims concerning sexual assault forensic evidence kits. The policies and procedures must include:*

- (a) A requirement that the agency designate at least one person within the agency to receive all telephone inquiries concerning sexual assault forensic evidence kits and to serve as a liaison between the agency and the Department of State Police.*
- (b) A requirement that, at the time that a sexual assault forensic evidence kit is collected, a victim be provided with the contact information of a person described in paragraph (a) of this subsection.*
- (c) Provisions allowing sexual assault victims to request and receive information concerning sexual assault forensic evidence kits, including but not limited to 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.*
- (d) A requirement that a person described in paragraph (a) of this subsection provide, in response to a victim inquiry concerning a sexual assault forensic evidence kit, any information the victim requests in a manner of communication designated by the victim, as soon as possible and within 30 days of the inquiry, unless the agency declines to provide the information pursuant to paragraph (e) of this subsection.*
- (e) Provisions allowing the agency to decline to provide information that interferes with the investigation or prosecution of a case.*
- (f) A procedure that allows a sexual assault victim to provide the agency with written authorization for a designee to access information on the victim's behalf.*
- (g) Provisions allowing a victim to contact a person described in paragraph (a) of this subsection to request that an untested nonanonymous kit be reclassified as an anonymous kit, or an untested anonymous kit be reclassified as a nonanonymous kit, and a requirement that the agency notify the department of the reclassification.*

## Intent of the Law

### Idaho [H.B. 528](#) – Power of DNA

*The legislature finds that DNA evidence is a powerful law enforcement tool that can identify unknown suspects, connect crimes together and exonerate the innocent. It is the intent of the legislature that rape kits are tested in a timely manner to advance public safety.*

### New Mexico [16 S.M. 050](#) – Incidence of sexual assault in the state

*WHEREAS, reports of sexual assaults in New Mexico have increased sixty-two percent since 2003, and from 2003 through 2012, state funding for services for survivors of sexual assault has not increased to meet the increase in reports; and*

*WHEREAS, sixty-six percent of incidents of sexual violence in New Mexico are committed against children and adolescents, which is twelve percent higher than the national average; and*

*WHEREAS, one in four women and one in twenty men in New Mexico experience an attempted or completed rape in their lives, and eighty-three percent of those attempted or completed rapes are not reported...*

## Statute of Limitations for Sexual Assault

### Indiana [119 Act No. 94](#) – Discovery of evidence through DNA analysis

*A prosecution for rape as a Level 3 felony that would otherwise be barred under this section may be commenced not later than five (5) years after the earlier of the date on which:*

- (1) the state first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis;*
- (2) the state first becomes aware of the existence of a recording (as defined in IC 35-31.5-2-273) that provides evidence sufficient to charge the offender with the offense; or*
- (3) a person confesses to the offense.*

## Compensation for Victims

### **Delaware [Title 11, Chapter 90](#) – Exceptions to existing victim compensation rules**

*13a. Notwithstanding the provisions of paragraph 10 of this section or any other provisions of this chapter to the contrary, where:*

- 1. Further investigation into a previously reported crime is initiated by a law-enforcement agency;*
  - 2. An offender appears in any judicial or administrative proceeding regarding a criminal charge, conviction, or sentence, including but not limited to a trial, appeal, post-conviction relief, mediation, penalty, parole or pardon hearing;*
  - 3. The offender is released from incarceration; or*
  - 4. The death penalty is imposed pursuant to § 4209 of this title;*
- any victim or secondary victim of such crime committed by such offender may apply for reimbursement as set forth in paragraph (13)b. of this section.*

*b. A victim or secondary victim may apply for reimbursement under the circumstances set forth in paragraph 13a. of this section for the following:*

- 1. The cost of mental health counseling services, not to exceed 50 sessions;*
  - 2. Reasonable expenses incurred due to attendance at criminal proceedings;*
  - 3. Expenses for essential personal safety property, not to exceed \$1,500;*
- provided that such costs are incurred within 1 year prior to, or within 2 years after, the opening of such investigation, the date of such judicial or administrative proceeding or the release or execution date of the offender.*

## B. Testing Rape Kits Stops Serial Rapists

Major cities like Cleveland, Detroit, and Memphis have discovered thousands of backlogged kits in storage, and have taken action. These jurisdictions are testing their kits, submitting eligible DNA profiles into the national database (CODIS), and investigating and prosecuting resulting cases.

As of January 2020, testing backlogged rape kits and following up on leads in only two cities—Cleveland and Detroit—has resulted in the identification of more than **1,320 potential serial rapists**. These serial offenders have committed crimes across at least 40 states and Washington, D.C. They have not just committed rape—many have been linked to other violent crimes, as well.

The following case studies illuminate the fact that **rapists are often serial offenders** and that DNA is one of the best tools we have to keep communities safe.

### Case Study: Seattle, Washington

In 2015, the Washington Association of Sheriffs and Police Chiefs (WASPC) surveyed law enforcement agencies and announced a backlog of 5,881 untested kits across the state. The Attorney General's Office reported 6,460 untested kits in 2018. Washington legislatures enacted laws to test the backlogged and the new kits, establish a sexual assault survivors bill of rights, and create a tracking system. As of September 2018, there were 658 registered users through the pilot tracking program.

#### ***Cold Case Conviction***

Darin Lamont Bolar had two child rape convictions from 1993. He is linked to a string of violent and sexually aggressive crimes involving both child and adult victims, domestic violence, second degree robbery, third degree theft, and fourth degree assault and obstructing a police officer. A rape kit taken in 2007 from a 14 year-old survivor was tested in 2017, matching his DNA from earlier sexual assault crimes.

Bolar was not convicted in 2006-2008 groping attacks, as the rape kit was not tested until 2017. He was convicted in 2014 for domestic violence assault and now is charged with sexual assault for the 2007 rape case.

### Case Study: Virginia Beach, Virginia

In 2014, the State of Virginia enacted a law that required law enforcement agencies to report the number of untested rape kits in their possession to the Virginia Department of Forensic Science (DFS). The report found that there were at least 2,269 untested rape kits in the state. Through an award from the Manhattan District Attorney's Office, the state began testing its backlogged kits, leading to over **80 matches to DNA profiles** that were already collected.

#### ***Cold Case Conviction***

In 1984, Ruben Carroll Slade raped two women over the span of three weeks. Both women submitted to rape kits, but their kits went untested for 30 years. In 2014, when the kits were finally tested, DNA found in the rape kits matched Slade's profile that was already in the database for another crime. On February 5<sup>th</sup> 2018, Slade pleaded guilty to the crimes, and later that year was sentenced to serve two concurrent life terms for two counts of rape. Like many serial rapists, he also has prior convictions for robbery, five counts of burglary, three counts of grand larceny, shoplifting and probation violation.

## **Case Study: Cleveland, Ohio**

In 2011, the Ohio Attorney General launched the Sexual Assault Kit Testing Initiative, which incentivized law enforcement agencies across the state to submit all untested kits in storage to the state crime lab. The lab has tested 7,015 kits from Cuyahoga County alone, resulting in the identification of **839 serial sex offenders**. One rapist has been linked to **17 victims**.

### ***Cold Case Conviction***

Former Lake County Probation Officer Nathan Ford has been linked to at least 15 rapes since the early 1990s. Ford was first convicted of raping seven women and one child in 2006. In 2015, newly analyzed DNA evidence from untested rape kits connected Ford to an additional seven rapes.

Ford is serving 138 years in prison for his 2006 convictions. Since the launch of the Ohio Sexual Assault Kit Testing Initiative, Ford has been linked to 14 additional assaults.

## **Case Study: Detroit, Michigan**

In 2009, the Wayne County Prosecutor's Office discovered **11,341 untested rape kits** in a Detroit Police Department storage facility. As of November 2019, Detroit has tested 11,137 kits, resulting in 2,616 DNA matches and the identification of **824 suspected serial sex offenders**. The Wayne County Prosecutor's Office has obtained 214 convictions, and DNA from the testing of these kits has been linked to crimes committed in 40 states and Washington, D.C. 219 cases are actively investigated, while 289 are awaiting investigation. 3,397 investigations are completed as of January 2020.

### ***Cold Case Conviction***

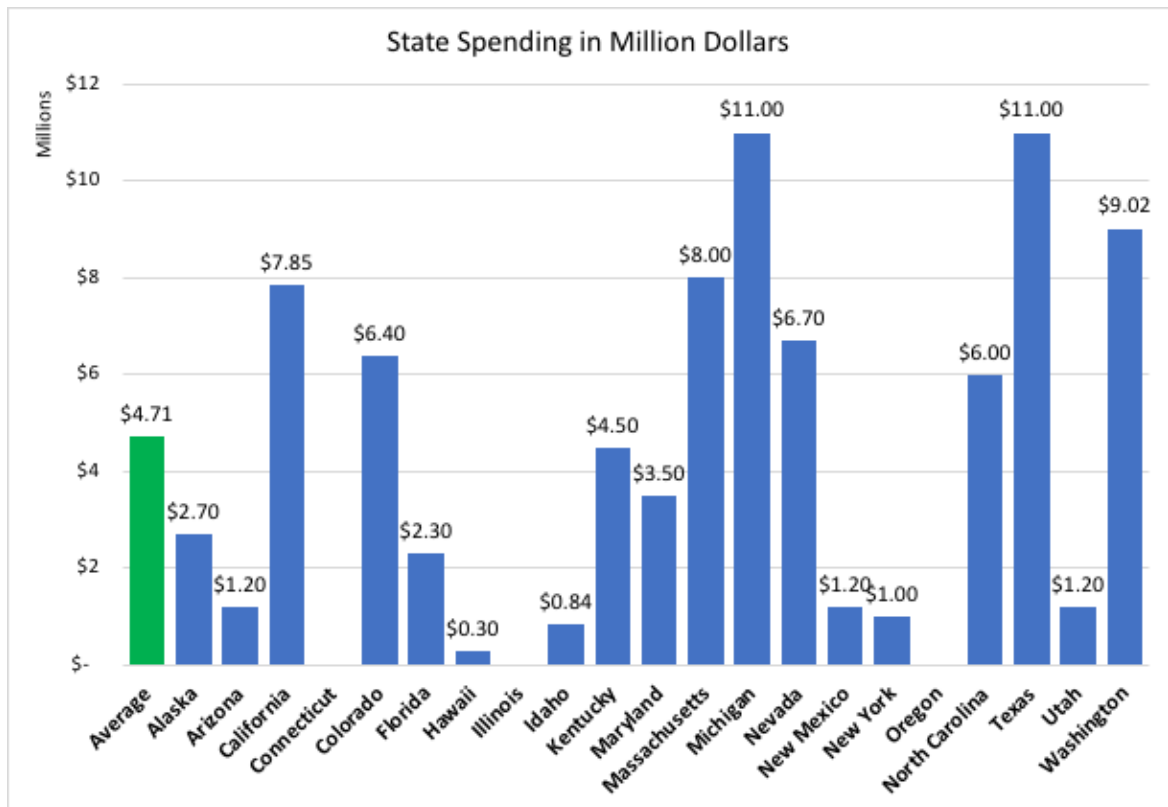
In 2003, DeShawn Starks sexually assaulted two women in Detroit. Both women submitted to rape kits, but their kits were not tested and their cases were not investigated until a decade later. In 2013, Starks sexually assaulted two more women in Detroit. Both women submitted to rape kits, and their kits were tested, and the DNA hit linked the case to another crime.

Ten years after Sparks' 2003 crimes, Detroit tested all of these kits as part of its backlog elimination initiative, and DNA linked Starks to both crimes. Had the kits been tested following collection, at least two sexual assaults could have been prevented. Sparks is currently serving a sentence of 45-90 years in prison.

## C. State Investments

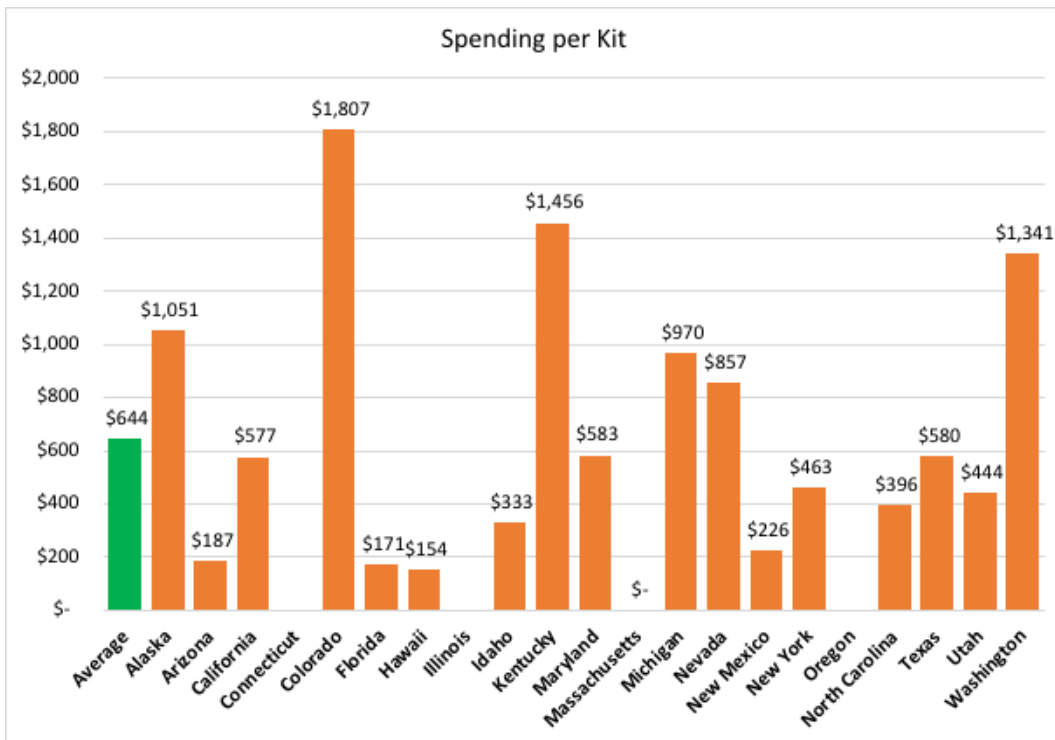
The Joyful Heart Foundation calls for sufficient funding throughout the criminal justice system to ensure survivors are engaged and supported, and crime labs, law enforcement, prosecutors, and victim advocates have the resources necessary to test rape kits, investigate cases, support survivors, and prosecute offenders. Data below provide a guideline for states to appropriate sufficient funding based on their population size.

- Since 2013, 21 states passed bills that grant state funds towards ending the backlog. These states allocated \$84.7 million to end the backlog and test over 129,412 kits.
- Types of bills included senate bills, appropriations bills, house bills and direct changes in the state budget.
- The bills targeted ending the backlog, funding crime labs, implementing relevant reforms, state budget appropriations, and testing future kits.
- The state investments create a safer environment and positive impact on over 200 million Americans, more than half of the population.
- These states granted \$4.7 million on average to end the backlog, ranging from \$300,000 in Hawai'i to \$11 million in Texas and Michigan.

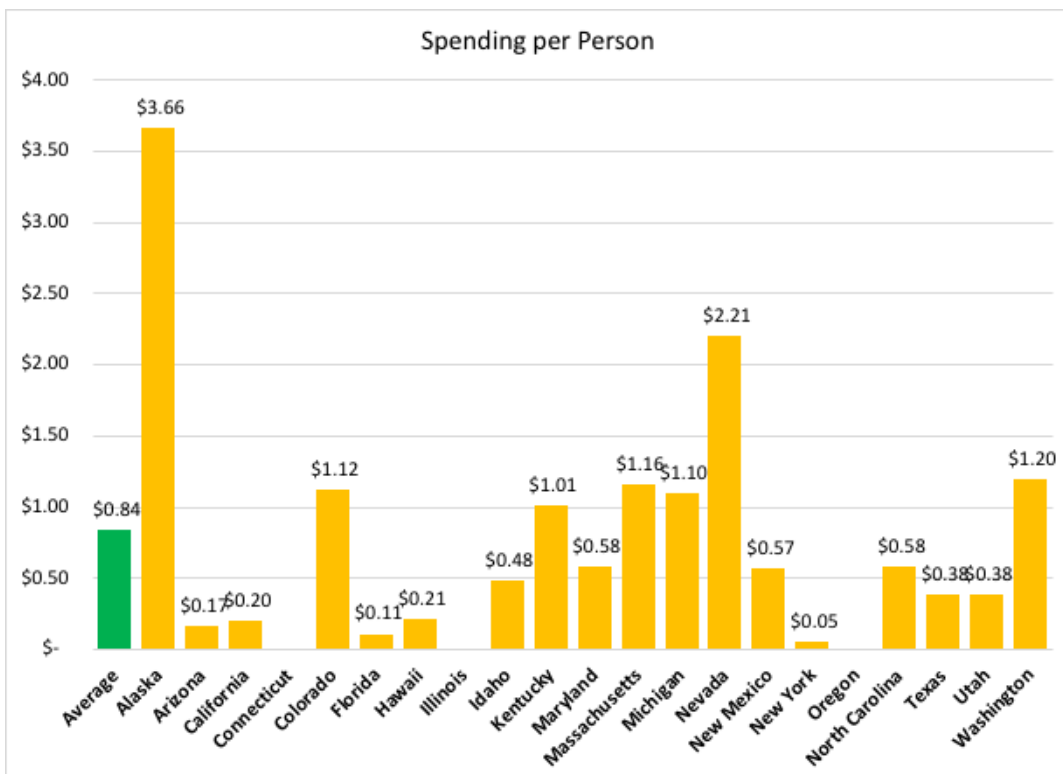




- On average, the 17 states spent \$644 per kit on ending the backlog, ranging from \$154 per kit in Hawai'i to \$1,807 per kit in Colorado.



- On average, the states spent \$0.84 per person on ending the backlog, ranging from \$0.05 per person in New York to \$3.66 per person in Alaska.



## D. Federal Funding Available

As states and local jurisdictions enact legislation and update policies to reform practices around rape kit handling and testing, the need for funding to implement a multi-disciplinary response will increase. Federal funding is currently available for jurisdictions working to eliminate their backlogs.

Most jurisdictions have failed to prioritize funding for testing rape kits, which costs an average of \$600 to \$1,500 per kit. Rape kit reform can be costly: jurisdictions must count and test kits; expand investigation, prosecution, and laboratory capacity; implement victim notification and re-engagement protocols; and employ a multi-stakeholder approach to reform.

The federal government has a key role to play in investing in justice for survivors, accountability for perpetrators, and safety for America's communities.

Below is an overview of some of the federal funding options available to jurisdictions.

### **Sexual Assault Kit Initiative (SAKI)**

After years of advocacy for dedicated federal funding to assist jurisdictions seeking to clear their backlogs of untested rape kits, Joyful Heart helped in 2014 to unlock significant funding to address the rape kit backlog nationwide through the Sexual Assault Kit Initiative (SAKI). SAKI is administered by the Bureau of Justice Assistance (BJA) and provides funding through a competitive grant program to test kits, investigate and prosecute cases, and re-engage survivors.

- Programs funded: Testing of backlogged kits, investigating and prosecuting cases connected to the backlog, supporting victim re-engagement with the criminal justice system, developing tracking systems, training law enforcement, conducting research on outcomes of testing kits, and expanding the collection of lawfully owed offender DNA.
- Additional information: [www.sakitta.org](http://www.sakitta.org)
- Deadlines: Solicitation usually opens in the spring and grantees are typically announced in September.

### **Sexual Assault Forensic Evidence-Inventory, Tracking, and Reporting (SAFE-ITR)**

SAFE-ITR grants provide governments funding to implement an evidence management program to inventory, track, and report untested and unsubmitted rape kits.

- Programs funded: Evidence management programs (tracking systems) to inventory, track, and report rape kits.
- Additional information: [www.nij.gov/topics/forensics/lab-operations/Pages/safe-ittr.aspx](http://www.nij.gov/topics/forensics/lab-operations/Pages/safe-ittr.aspx)
- Deadlines: Solicitation usually opens in the spring and grantees are typically announced in September.

### **DNA Capacity Enhancement and Backlog Reduction (may be known as “Debbie Smith”)**

The Debbie Smith program provides funding to support public crime laboratories' work to build capacity and process DNA evidence. This act designates \$151 million in funding per year through Fiscal Year 2019.

- Programs funded: DNA evidence processing and capacity building.
- Deadlines: Solicitation typically opens in the spring.

**Coverdell National Forensic Science Improvement Grants Program (Coverdell)**

The Coverdell program awards grants to state and local jurisdictions to improve the quality and timeliness of forensic science and medical examiner or coroner services.

- Programs funded: Forensic evidence backlog reduction, training of forensic lab personnel, as needed, to eliminate such backlogs.
- Deadlines: Solicitation typically opens in the spring.

## E. Testing Rape Kits Saves Communities Millions of Dollars

Testing every rape kit connected to a reported crime makes communities safer. Furthermore, as research proves, **testing every kit also saves communities money.**

In 2016, the Begun Center for Violence Prevention Research and Education at Case Western Reserve University analyzed the cost of testing backlogged rape kits in Cuyahoga County, Ohio. Factoring in the cost of testing kits and other related expenses, the study calculated the overall cost effectiveness of testing 4,347 unsubmitted kits, engaging survivors, investigating every lead, and prosecuting cases. The study found that:

- Each kit tested produced an estimated net savings of **\$8,893** to the community.
- Cuyahoga County **saved \$38.7 million** by testing 4,437 backlogged kits, investigating every case, prosecuting offenders, and preventing them from committing future crimes.

In 2019, Dr Paul J. Speaker of West Virginia University conducted a study that demonstrates enormous economic returns for communities that invest state dollars to test kits swiftly.

- The study shows that processing every rape kit could be one of the most effective uses of state funds.
- Testing backlogged rape kits can produce an astounding **65,000% return on investment (ROI)**.

Other analyses show that testing rape kits produces positive returns on investment. Researchers have estimated that testing every rape kit could save states more than **\$400,000 per averted assault**. Additional research has found that adding the DNA of just one offender to DNA databases provides **savings to society that may be as high as \$20,000 per submission**.

Research is now confirming what cities and states around the country have already discovered: testing every rape kit and thoroughly investigating every reported rape is financially beneficial for communities. As more sexual assault cases are pursued, more offenders are apprehended, and future crimes are averted. Investing in testing backlogged kits and pursuing justice today will lead to safer communities and significant savings tomorrow.

## F. Resources

### *Talking Points*

#### General

- When tested, the DNA evidence from rape kits can be a powerful tool to solve and prevent crimes. DNA evidence can identify unknown assailants, link crimes together, and exonerate the wrongfully convicted.
- Testing every rape kit connected with a reported crime sends a message to survivors that they and their cases matter.
- Right now, hundreds of thousands of untested rape kits are in storage at law enforcement agencies nationwide. Because many jurisdictions do not have systems for counting or tracking rape kits, we do not know the full extent of the problem. To date, the Joyful Heart Foundation has identified at least 225,000 untested kits in jurisdictions across the country.
- Every untested rape kit is a missed opportunity to pursue justice for survivors and promote public safety in a community. If we allow rape kits to sit on shelves untested, cases go unsolved, serial rapists remain undetected, and wrongfully convicted people remain incarcerated—all while survivors continue to wait for justice.
- There are several reasons for the rape kit backlog. Most jurisdictions don't have laws or policies requiring the testing of all rape kits, leaving the decision of which kits to test up to individual police officers or prosecutors. These decisions are too often based on bias or victim-blaming, lack of knowledge about the power of DNA technology, and the limited resources available to law enforcement agencies and crime labs.
- Testing rape kits can yield evidence in the form of a DNA profile, which can be entered into local, state, and national DNA databases containing DNA from offenders. By testing every kit connected to a reported crime, more DNA profiles will be developed and uploaded to these databases, meaning more DNA from crime scenes will be linked, identifying serial rapists.
- Serial rapists tend to assault both acquaintances and strangers. Testing every rape kit, even if the suspect is known, will determine if the perpetrator's DNA matches DNA from another case. As more sexual assault cases are pursued, more offenders are apprehended, and future crimes are prevented.
- Comprehensive rape kit reform requires compliance from all disciplines involved in the chain of custody. The law must be clear that medical facilities, law enforcement, crime labs, and prosecutors must participate in reforms meant to bring a path to justice for

survivors of sexual assault.

## **Inventory**

- By conducting an annual inventory of untested rape kits, states can strengthen accountability, monitor progress toward eliminating the backlog, and send a message to survivors that they matter.
- A thorough count of rape kits currently in the possession of medical facilities, law enforcement agencies, and crime laboratories uncovers the current number of untested kits, provides a full picture of rape kit handling and testing procedures across the state, and guides the legislature in appropriating resources to eliminate the backlog.

## **Mandatory testing for newly collected kits**

- After a sexual assault, survivors expect the evidence recovered during the invasive and exhaustive forensic exam to be handled carefully and tested expeditiously. We must keep this promise to survivors.
- Establishing time frames for each step of the rape kit handling process helps prevent future backlogs.

## **Mandatory testing for previously untested (backlogged) kits**

- The federal government has established national best practices for handling rape kits that includes the recommendation to test every rape kit connected to a reported crime.
- Testing all kits connected with a reported crime sends a message to survivors that they and their cases matter.
- Anonymous or unreported kits must not be tested until the survivor has explicitly consented to testing. We must honor survivors' decisions about their kits.
- Every untested rape kit is a missed opportunity to promote public safety in a community and to bring a path to justice for survivors. When rape kits sit untested on shelves, cases go unsolved, serial rapists remain undetected, and wrongfully convicted people remain incarcerated—all while survivors continue to wait for justice.
- Serial rapists tend to assault both acquaintances and strangers. Testing every rape kit, even if the suspect is known, will determine if the perpetrator's DNA matches DNA from another case. As more sexual assault cases are pursued, more offenders are apprehended, and future crimes are prevented.

## **Tracking Systems**

- Tracking systems follow rape kits from collection to prosecution, bringing accountability and transparency to the rape kit handling process.
- A rape kit tracking system with a secure victim access portal allows survivors to access information about the status and location of their kits if and when they would like to do so.
- If packages can be tracked on Amazon.com through their journey, often across the country, rape kits can be tracked as they are collected and tested.

### **Victims' right to notice**

- Sexual assault survivors deserve access to information about their case and their kit.
- In 2016, the Joyful Heart Foundation conducted a research study on notifying victims about the status of their backlogged kit. Findings indicated that having access to information about the status of their cases can promote healing for survivors of sexual assault.

### **Funding and cost savings**

- Federal funding is available for jurisdictions to test kits, build rape kit tracking systems, investigate leads, prosecute cases, and re-engage survivors in the criminal justice system.
- The legislature should appropriate sufficient funding to implement comprehensive rape kit reform. Doing so demonstrates to survivors of sexual assault that they are a priority.
- Testing every rape kit and thoroughly investigating every reported rape is financially beneficial for communities. As more sexual assault cases are prosecuted, dangerous serial offenders are apprehended, averting costly future crimes.
- Investing in testing backlogged kits and pursuing justice today will lead to safer communities and significant savings tomorrow.

## ***Endthebacklog.org***

Joyful Heart is proud to have founded [www.endthebacklog.org](http://www.endthebacklog.org), the premier website for public research, information, and action on eliminating the rape kit backlog in the United States.

The website includes an [interactive map](#) of rape kit reform across the nation, easy-to-navigate guides on what is happening in your state, and an extensive [media archive](#) of news about the backlog from across the country.

The website provides resources for multiple stakeholders, including survivors, legislators, and reporters. The site features resources for legislators, including our [Drafter's Checklist](#) for rape kit reform and [best practice recommendations](#) from our research report on victim notification; resources for reporters, including [guidance from journalists](#) experienced in working with survivors; and [resources for survivors](#) of sexual assault, including a guide to [locating a rape kit](#). The site also features an [advocacy center](#) with action steps for grassroots engagement with supporters in all 50 states.

Connect with us on Twitter ([@ENDTHEBACKLOG](#)) and Facebook ([Joyful Heart Foundation](#)).