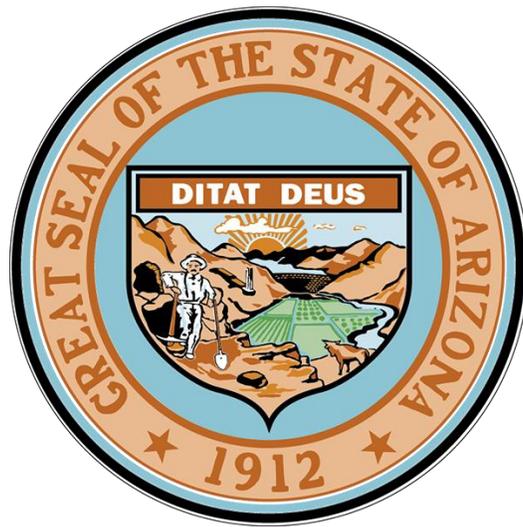


# **ARIZONA SEXUAL ASSAULT EVIDENCE COLLECTION KIT TASK FORCE**



**SEPTEMBER 30, 2016**



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## I. INTRODUCTION

On January 11, 2016, Governor Douglas A. Ducey established the Arizona Sexual Assault Evidence Collection Kit Task Force by Executive Order 2016-02. The Task Force is charged with multiple responsibilities, which include: documenting the location of all untested sexual assault kits in Arizona; providing legislative recommendations to ensure every kit is tested in a timely manner; developing statewide protocols; and recommending a statewide tracking system for sexual assault kits. The members of the Arizona Sexual Assault Evidence Collection Kit Task Force are:

- Colonel Frank Milstead (Co-Chairperson), Arizona Department of Public Safety
- Bill Montgomery (Co-Chairperson), Maricopa County Attorney
- Mark Brnovich, Arizona Attorney General
- Representative Kate Brophy McGee, Arizona House of Representatives
- Colleen Clase, Arizona Voice for Crime Victims
- Christina Corieri, Office of Governor Doug Ducey
- Sheriff Mark J. Dannels, Cochise County Sheriff
- Director Jesse Delmar, Navajo Nation Division of Public Safety
- Senator Katie Hobbs, Arizona State Senate
- Jessye Johnson, Arizona Coalition to End Sexual and Domestic Violence
- Todd Larson, HonorHealth
- Barbara LaWall, Pima County Attorney
- Senator Debbie Lesko, Arizona State Senate
- Representative Phil Lovas, Arizona House of Representatives
- Myriah Mhoon, Arizona Governor’s Office of Youth, Faith and Family
- Sheila Polk, Yavapai County Attorney
- Assistant Chief Mary Roberts, Phoenix Police Department
- Chief Pete Wingert, Paradise Valley Police Department

## II. DEFINITIONS

Jurisdictions throughout the nation use a variety of terminology (such as unsubmitted, unprocessed, untested, not analyzed, awaiting testing) to describe the sex crimes evidence kits identified during their inventory. For the purposes of the Task Force’s recommendations the following are definitions of terminology used throughout this document:

Backlog	A Sex Crimes Evidence Kit (SCEK) or other related evidence, from a case that is not unfounded and has not been tested for more than 30 days from when laboratory analysis was requested.
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CODIS	Combined Deoxyribonucleic Acid Index System (CODIS). It is the generic term used to describe the program and software supplied by the FBI to support criminal justice DNA databases used. CODIS links DNA evidence obtained from crime scenes, thereby identifying serial criminals. CODIS also compares crime scene evidence to database profiles, which includes convicted offenders and arrestees, thereby providing investigators with the identity of the putative perpetrator. In addition, CODIS can link DNA evidence obtained from unidentified human remains to relatives of missing persons and/or missing persons. The goal of CODIS is to provide investigative connection with felony sexual offenses or homicides.
CODIS eligibility	A term used to describe what is allowed to be entered and searched within the CODIS system. In order for DNA records to be eligible to be maintained and searched in the forensic indexes at NDIS or SDIS, they must be from crime scene evidence. The DNA records offered to NDIS and/or SDIS must also be attributable to the putative perpetrator. DNA records voluntarily provided solely for the purposes of elimination are not acceptable.
Non-report kits	Sex crimes evidence kits that are collected and documented during a medical forensic exam which a victim has not reported to law enforcement.
Sex crime & sexual assault	These terms are used interchangeably throughout this document, and mean any violation of A.R.S. § 13-1404 through 13-1406.01, 13-1409 through 13-1412, 13-1417 through 13-1419, and 13-1423.
SCEK	A sex crimes evidence kit (SCEK) is a collection of evidence gathered from the victim by a medical professional, often a specially trained medical forensic examiner. The type of evidence collected depends on what occurred during the assault. The contents of a kit vary by jurisdiction, but generally include swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers.
Tested	Forensic testing has been completed on one or more samples from the SCEK or other evidence. All of the samples in the SCEK may not have had DNA testing completed, as DNA analysis is performed only on the samples that test positive for DNA.
Trauma-informed	Responders have a fundamental understanding of the emotional, psychological and physical effects of trauma, and how these effects impact a victim's cognition, decision-making, memory and behavior.
Unfounded	At the conclusion of a reasonable law enforcement investigation, there is direct evidence which clearly and convincingly establishes that a crime did not occur.
Unsubmitted	A sex crimes evidence kit in the possession of the law enforcement agency that has not been submitted to a forensic laboratory for testing and analysis.
Untested	Refers to a sex crimes evidence kit (or other evidence) that is at a crime lab, but has not yet been through forensic testing.
Victim Centered	The victim's safety and needs are prioritized, and are the primary consideration for all responders throughout the criminal justice process and provision of services. A crime victim's constitutional and statutory rights are observed and protected throughout the criminal justice system.
YSTR or Y-Screening	An alternative laboratory process for testing of biological samples such as SCEKs for the presence of male DNA. This laboratory process is useful when dealing with mixtures containing female and male components.

### III. INVENTORY

The Task Force conducted a statewide survey of all law enforcement agencies throughout Arizona for unsubmitted sex crimes evidence kits and determined there are 6,424 unsubmitted sex crimes evidence kits across Arizona. Of these kits, 4,367 are in Maricopa County alone.

In reviewing the inventory, it is important to understand the history of why sex crimes evidence kits went untested or were not submitted to the crime laboratory for testing in the first place. Primary causes include limited resources for both police agencies and crime laboratories, investigative discretion and prosecutorial decision making. Over the past several years the demand for DNA testing has grown dramatically due to technology advancements, and state and municipal crime laboratories often struggle to maintain sufficient funding for personnel and equipment. Crime laboratories have to prioritize the many cases and crime scenes processed each year, which can create a backlog for DNA analysis. However, many sex crimes evidence kits never make it to a crime laboratory for testing. Law enforcement agencies struggle with personnel and resources for investigations and technology resources for evidence tracking. Although some agencies have policies in place for submitting sex crime evidence kits, in the past, the decision has generally been left to the discretion of the investigating officer. The practice of many jurisdictions was to submit the kit for testing only if the offender was unknown; therefore in cases where the offender was known, but there was a question of consent, kits were not submitted. Additionally, if it was determined that the case was not going to move forward with prosecution, kits were often not submitted for testing. Ultimately, agencies grappled with decisions on using limited resources to test kits on cases that were not continuing forward through the criminal justice process or where the offender was known to law enforcement. However, as outlined in this report, the importance for testing these kits is crucial for ensuring justice for victims and letting perpetrators know that they will be held accountable for their crimes.

There are various efforts underway that complement the work of the Task Force in addressing the unsubmitted and/or backlog of sex crimes evidence kits in Arizona. Similar to the Task Force, the Maricopa County Attorney's Office has a multidisciplinary working group to examine the issue of unsubmitted kits and make recommendations for Maricopa County. The Maricopa County Attorney's Office is the recipient of a District Attorney of New York (DANY) grant for \$1.9 million. In addition, the Tempe Police Department received a separate DANY grant in the amount of \$363,000 to cover the remainder of its unsubmitted sex crimes evidence kits. Just prior to the submission of this report, the Maricopa County Attorney's Office and the Phoenix Police Department were awarded grants for approximately \$1.2 million and \$1.5 million respectively, which we anticipate will cover the remainder of unsubmitted and/or backlog of kits in Maricopa County.

The Tucson Police Department is also a recipient of their own DANY grant in the amount of \$1,038,000 which is currently being used to test 1,200 untested sex crimes evidence kits, leaving 908 remaining in their jurisdiction after the grant is fully expended.

There may be additional jurisdictions in the process of applying for grant opportunities, but it is unknown at this time what amounts may be awarded. As such, after the currently secured grants are expended there will be approximately 2,000 sex crimes evidence kits to test statewide.

The chart below contains the current statewide inventory of sex crimes evidence kits.<sup>1 2</sup>

	Agency	County	Unsubmitted SCEKs
Sheriff	Apache	Apache	25
PD	Eager	Apache	1
PD	Springerville	Apache	0
PD	St. Johns	Apache	0
PD	Benson	Cochise	0
PD	Bisbee	Cochise	0
Sheriff	Cochise	Cochise	1
PD	Douglas	Cochise	5
PD	Huachuca City	Cochise	0
PD	Sierra Vista	Cochise	32
PD	Tombstone	Cochise	0
PD	Wilcox	Cochise	8
Sheriff	Coconino	Coconino	11
PD	Flagstaff	Coconino	166
PD	Fredonia	Coconino	2
PD	Northern Arizona	Coconino	0
PD	Page	Coconino	21
PD	Williams	Coconino	0
Sheriff	Gila	Gila	0
PD	Globe	Gila	0
PD	Hayden	Gila	0
PD	Miami	Gila	0
PD	Payson	Gila	29
Sheriff	Graham	Graham	0
PD	Pima	Graham	0
PD	Safford	Graham	3
PD	Thatcher	Graham	0
PD	Clifton	Greenlee	2
Sheriff	Greenlee	Greenlee	0
Sheriff	La Paz	La Paz	5
PD	Parker	La Paz	0
PD	Quartzsite	La Paz	0
PD	Apache Junction	Maricopa	36
PD	Arizona State University	Maricopa	11

<sup>1</sup> The survey was distributed to law enforcement agencies under Arizona state law jurisdiction. Arizona also has several tribal law enforcement agencies, some of which participated in the survey voluntarily, whose sexual assault crimes are under the jurisdiction of federal prosecutors.

<sup>2</sup> The Maricopa County Attorney's Office (MCAO) has a working group in conjunction with their DANY grant. MCAO also conducted an inventory of law enforcement agencies in Maricopa County. Due to the timing of agencies responses, the inventory results may be different due to the submission of kits for testing after their initial response.

	Agency	County	Unsubmitted SCEKs
PD	Avondale	Maricopa	68
PD	Buckeye	Maricopa	35
PD	Chandler	Maricopa	186
PD	Eastern Arizona College	Maricopa	0
PD	El Mirage	Maricopa	7
PD	Gilbert	Maricopa	114
PD	Glendale	Maricopa	180
PD	Goodyear	Maricopa	53
Sheriff	Maricopa	Maricopa	283
PD	Maricopa Community	Maricopa	0
PD	Mesa	Maricopa	612
PD	Paradise Valley	Maricopa	0
PD	Peoria	Maricopa	129
PD	Phoenix	Maricopa	2,129
PD	Scottsdale	Maricopa	0
PD	Surprise	Maricopa	9
PD	Tempe	Maricopa	500
PD	Tolleson	Maricopa	15
PD	Wickenburg	Maricopa	0
PD	Bullhead City	Mohave	65
PD	Colorado City	Mohave	0
PD	Kingman	Mohave	0
PD	Lake Havasu	Mohave	12
Sheriff	Mohave	Mohave	0
PD	Holbrook	Navajo	0
Sheriff	Navajo	Navajo	0
PD	Pinetop - Lakeside	Navajo	1
PD	Show Low	Navajo	23
PD	Snowflake - Taylor	Navajo	6
PD	Winslow	Navajo	0
PD	Marana	Pima	21
PD	Oro Valley	Pima	0
Sheriff	Pima	Pima	392
PD	Pima Community College	Pima	0
PD	Sahuarita	Pima	0
PD	South Tucson	Pima	11
PD	Tucson	Pima	908
PD	University of Arizona	Pima	15
PD	Casa Grande	Pinal	29
PD	Central Arizona College	Pinal	5
PD	Coolidge	Pinal	0
PD	Eloy	Pinal	24

	Agency	County	Unsubmitted SCEKs
PD	Florence	Pinal	10
PD	Kearny	Pinal	0
PD	Mammoth	Pinal	0
PD	Maricopa	Pinal	11
Sheriff	Pinal	Pinal	6
PD	Superior	Pinal	0
PD	Nogales	Santa Cruz	16
PD	Patagonia	Santa Cruz	0
Sheriff	Santa Cruz	Santa Cruz	0
PD	Camp Verde	Yavapai	4
PD	Chino Valley	Yavapai	4
PD	Clarkdale	Yavapai	0
PD	Cottonwood	Yavapai	3
PD	Jerome	Yavapai	0
PD	Prescott	Yavapai	5
PD	Prescott Valley	Yavapai	1
PD	Sedona	Yavapai	1
Sheriff	Yavapai	Yavapai	31
PD	Yavapai Community	Yavapai	0
PD	AZ Western College	Yuma	0
PD	San Luis	Yuma	3
PD	Somerton	Yuma	0
PD	Wellton	Yuma	1
PD	Yuma	Yuma	82
Sheriff	Yuma	Yuma	56
<b>TOTAL</b>			<b>6,424</b>

#### IV. BEST PRACTICES

The intent of this section is to identify best practices to assist jurisdictions and organizations in the development of policies and protocols. This section addresses issues that arise in the course of working with sexual assault evidence. These recommendations represent the ideal approach, understanding that communities may be limited by funding, infrastructure or resources to implement this guidance in total.

The goal of this section is to provide a high level outline of best practices to improve the response from the time of the initial victim disclosure through any ultimate disposition of a case. To provide the highest level of service, with the victim always in mind, all involved disciplines including medical, law enforcement, victim advocates and forensic laboratories are encouraged to work together to process sex crimes evidence kits in a timely and effective manner.

The Task Force recognizes that it is of primary importance to use a victim centered and trauma informed approach in developing and recommending policies and procedures surrounding sexual assault crimes. This approach leads to the timely submission of evidence to forensic laboratories, enhances investigations, promotes speed in prosecutorial decision-making and ultimately reduces trauma to victims in the criminal justice system. These recommendations include best practices for protocols nationally and from other states.

#### A. MEDICAL FORENSIC EXAM

Collecting evidence is an important part of any investigative process and is increasingly sensitive in sexual assault crimes where the crime scene and the victim are one in the same. As such, a strong emphasis should be placed on supporting the victim throughout the evidence collection process, making the role of the medical forensic examiner a vital component in this process. Arizona uses a standard sex crimes evidence kit statewide for the collection of evidence in a medical forensic exam. This section is not intended to supersede existing medical forensic exam protocols, but provide standard guidelines for medical forensic exams. Medical care is the first and foremost duty of a medical forensic examiner and these recommendations do not seek to change or alter the provision of medical care.

Although victims are encouraged to report and cooperate with law enforcement in a timely manner in order to facilitate the successful investigation of the case, the decision to report a sexual assault to law enforcement rests with the victim. If the victim suffered a gunshot wound, knife wound or “other material injury which may have resulted from a fight, brawl, robbery or other illegal or unlawful act”, attending medical personnel must make a report to police pursuant to A.R.S. § 13-3806. The victim, however, retains the right to decline to speak with law enforcement, except under mandatory reporting situations where a child may be the victim of physical or sexual abuse or neglect.

As such, a medical forensic exam is a resource that is provided for all sexual assault victims including those who choose not to report. Under the provisions of the Violence Against Women Act (VAWA) of 2005, (U.S. Code § 3796gg), states must ensure that victims of sexual assault have access to a medical forensic exam, free of charge, even if the victim chooses not to report the crime to the police or otherwise participate with the law enforcement authorities or the criminal justice system. These non-reported kits afford victims access to medical care and allow important evidence to be collected, without forcing the victim to immediately decide whether to report the assault to law enforcement. Allowing victims a choice of reporting gives victims power and control over their participation in the criminal justice system. Medical forensic examiners should provide the victim with information on procedures in place for storage, tracking and the timeline for destruction of the kit.

Pursuant to A.R.S. § 13-1414, any medical or forensic interview expenses arising out of the need to secure evidence that a person has been the victim of a dangerous crime against children as defined in section 13-705 or a sexual assault shall be paid by the county in which the offense occurred. Medical providers are prohibited from billing the sexual assault victim for the cost of the exam, and the victim’s insurance cannot be billed for the cost of the medical forensic examination. A victim’s cooperation with police is not necessary for an exam to be paid for by the county. A sexual assault examination should be offered at no charge to the patient with a chief complaint of sexual assault that occurred within the last 120 hours. However, the victim retains the right to decline a medical forensic

exam. In cases where victims choose not to report the assault to law enforcement, jurisdictions shall store non-report kits in accordance with national best practice standards of one year.

For cases reported to law enforcement, federal privacy regulations created by the Health Insurance Portability and Accountability Act (HIPAA) require patients to give written authorization for a release of health information to non-healthcare providers. Written consent to release medical information can be obtained at the time of the examination, authorizing law enforcement and prosecution access to a copy of the medical record. The contracted medical provider will retain all original medical records indefinitely. Medical forensic examiners should have policies in place for the retention of records in accordance with the statute of limitations and other criminal justice needs. Policies should be put into place that not only comply with health information standards, but are useful to the needs of law enforcement.

In addition to the victim, the investigating agency must determine whether a forensic sexual assault examination should be conducted with the suspect through the individual's consent or a search warrant.

After the collection of evidence through the medical forensic exam, the hospital or exam facility shall notify the law enforcement agency and all evidence should be transferred to law enforcement. The Task Force recommends notification be made to the law enforcement agency as soon as possible, but ideally no longer than 24 hours.

## B. LAW ENFORCEMENT

Sexual assault is a traumatic experience that can cause victims to display a variety of emotional and behavioral responses; there is no typical reaction. It is vital that law enforcement conduct every sexual assault investigation from a victim centered and trauma informed approach; treating all victims with dignity and respect. Trauma may impact emotional reaction and memory. A sexual assault victim may be unable to provide a full account of the incident and the victim may be irritable, argumentative, not cry or have a flat affect, etc. Additionally, victims may become uncooperative, recant or decline prosecution, there is no typical reaction. Law enforcement should not perceive these vast victim behaviors as indication of a false report and should continue with a thorough evidence-based investigation. All sexual assault reports should be investigated until evidence proves otherwise. Law enforcement professionalism creates a positive environment that plays a key role in respecting the victim's trust and participation throughout the criminal justice process.

Law enforcement is often the first responder for victims of sexual assault and can be the first to explain the process of a medical forensic examination to the victim. If the victim has been assaulted within the last 120 hours, law enforcement officers should provide information to the victim about the option of having a medical forensic exam and the benefits of having the exam. Additionally, officers should advise the victim they have the right to receive a medical forensic exam even if they do not want to participate in the criminal justice process and that neither the victim nor their insurance carrier will be billed for the exam and evidence collection.

Post examination, the hospital or exam facility should notify the law enforcement agency as soon as possible, ideally no later than 24 hours in order to arrange for transfer of the sex crimes evidence kit to law enforcement. Law enforcement agencies should impound all sex crimes evidence kits into their

property and evidence storage system using a single term for a sex crimes evidence kit to ensure proper tracking and reports. Law enforcement agencies should submit the sex crimes evidence kit as soon as possible to a crime laboratory for analysis, ideally, no later than fourteen days after collection unless it is determined the case is unfounded or it is a non-report kit.

The only circumstances in which a sex crimes evidence kit should not be submitted to the laboratory for testing is if law enforcement determines the case is unfounded or a victim chooses not to report. In unfounded cases, law enforcement has determined a crime did not occur and the case is solved, therefore the sex crimes evidence kit would be destroyed, as it is not evidence in a crime. In cases where victims choose not to report the assault to law enforcement, jurisdictions shall store non-report kits for one year. For non-report kits where the jurisdiction is in question, the law enforcement agency whose jurisdiction includes the location of the medical facility that collected the kit, will take possession of the kit, absent further investigation that establishes the location where the crime occurred. Law enforcement agencies should impound non-report kits in a category that establishes the evidence as a sex crimes evidence kit but does not affect crime reporting statistics until a law enforcement agency has the opportunity to investigate. Prior to destruction of the sex crimes evidence kit, law enforcement will attempt to contact the victim to inform them of the destruction date and verify they do not want to assist in the criminal justice process. Providing this final notification ensures that the victim has an outlet to speak to law enforcement without the pressure of making the initial contact. This approach recognizes the effect that trauma has on the victim by providing an opportunity to report a crime later in the process.

In all other circumstances, law enforcement in Arizona should submit all sex crimes evidence kits for testing in every case in which a sexual assault is being investigated. Sex crimes evidence kits should be tested even if the identity of the suspect is known and regardless if the case is ultimately prosecuted. Testing all kits builds trust with victims who choose to undergo the medical forensic exam and report to law enforcement. Testing all kits can identify or confirm the suspect's identity and can link cases across jurisdictions to help identify serial and unknown offenders. The Task Force recommends all sex crimes evidence kits collected as evidence in a sexual assault case in Arizona be submitted to the crime laboratory for testing unless a determination is made by law enforcement that the case is unfounded or the victim has not reported.

### C. CRIME LABORATORY

Sex crimes evidence kits are processed by crime laboratories in order to generate a DNA profile from crime scene evidence eligible for the Combined DNA Index System (CODIS). CODIS is the system of DNA databases at the national, state and local levels for storing and searching DNA records contributed by federal, state and local forensic laboratories for criminal identification purposes. In the case of a sexual assault, a DNA profile of the suspected perpetrator (forensic unknown) is developed from the swabs in the sex crimes evidence kit. The forensic unknown profile attributed to the suspected perpetrator is searched against the local, state and national databases of convicted offender and arrestee profiles. In addition, the profiles are not only searched against other offender and arrestee profiles, but also other forensic unknown profiles in order to link cases together. If there is a candidate match in the convicted offender or arrestee index, the laboratory will follow the confirmation procedures and if confirmed, the offender hit will provide the identity of the suspected perpetrator to the submitting law enforcement agency.

All processing and analysis of sex crimes evidence kits should be done in accordance with the ISO 17025 standards for testing and calibration laboratories and the FBI's Quality Assurance Standards (QAS). Sex crimes evidence kits can be submitted to a state or municipal forensic laboratory who may outsource kits to a vendor laboratory should there be a substantial influx of case submissions, as anticipated to test these previously unsubmitted kits.

The FBI's Quality Assurance Standards require that DNA records are technically reviewed before being entered into CODIS or issuing a report. Thus, when the vendor laboratory completes the analysis of the sex crimes evidence kit samples, the vendor laboratory must review the resulting DNA records before a report is provided to the originating state or municipal forensic laboratory. The originating state or municipal forensic laboratory must then review the DNA case records to determine if the results are CODIS eligible and if so, is responsible for entering the information into the CODIS database and preparing any CODIS related reports. If outsourcing is used, it is important to verify the vendor laboratory's compliance with the FBI Director's QAS for forensic DNA testing laboratories and accreditation by an approved accrediting agency so that records generated by the vendor laboratory are eligible for upload into CODIS.

#### D. VICTIM NOTIFICATION AND ENGAGEMENT

While unsubmitted sex crimes evidence kits have been the focus, it is important to understand what a CODIS hit means for the investigation and how victims are notified. A CODIS hit is considered an investigative lead that still requires independent confirmation testing and comparison by the investigating law enforcement agency through a reference sample from the individual identified through the CODIS hit. Following up on these leads are a crucial part of the process. In addition to the identification of a suspected perpetrator, a CODIS hit may be beneficial for excluding potential suspects, reducing wrongful arrests, assisting in the exoneration of the wrongfully convicted, linking cases within a state and across the nation and providing validation to the victim.

As unsubmitted kits are tested, it is important for agencies to establish procedures for reconnecting with victims whose cases have grown cold in order to mitigate additional trauma to victims. Individuals that make the notification to victims should have training to understand the effect of trauma on survivors and the range of survivor responses. Victims should be given a choice about whether and when to receive information about their cases. Offering a victim a way to opt in or opt out of receiving information ensures they are in control of the process and maintains confidentiality and can help in setting appropriate expectations.

Law enforcement agencies should work with a multi-disciplinary team including victim advocates, crime laboratory personnel and prosecutors to establish a system of accountability to follow up on CODIS hits. Victim notification and engagement should be done with care and sensitivity using a trauma-informed approach. Depending how much time has passed since the assault, a victim may be in a very different stage of life and may not have disclosed past events to the people currently in her or his life. Law enforcement agencies should establish a victim notification protocol for informing victims of the status of their sexual assault cases and notifying them of the results of the laboratory testing.

## V. MODEL POLICY

The Task Force recommends that law enforcement agencies establish a specific policy for the investigation of sex crimes. The goal of this section is to provide minimum standards that should be included in an agency's policy in regards to the collection, submission and retention of sex crimes evidence kits to ensure best practice recommendations are followed.

### 1) MEDICAL FORENSIC EXAMINATION

#### A. UNDERSTANDING AND EXPLAINING THE EXAMINATION TO THE VICTIM

A sexual assault medical forensic examination typically includes a medical history, a physical examination, treatment for injury, and prophylactic treatment for pregnancy or sexually transmitted diseases. If a victim chooses, forensic evidence is also collected through the use of a sex crimes evidence kit. Sexual assault medical forensic examinations are typically performed by a medical forensic examiner, if available, or at a local hospital emergency room.

- a. Victims have a right to receive a forensic examination and have evidence collected, even if they do not want to participate in the criminal justice process.
- b. Medical facilities will perform an examination to any person stating they have been assaulted within the previous 120 hours.
- c. Victims cannot be billed for the examination and evidence collection. A.R.S. § 13-1414 requires the county to pay for all sexual assault examinations.

#### B. REFERRAL FOR MEDICAL FORENSIC EXAMINATION

If the victim has been assaulted within the last 120 hours, inform the victim of the option to have a medical forensic exam (i.e. medical care and treatment as well as potential evidence. *[insert contact information for forensic nurse examiner(s) in your jurisdiction]*). Inform the victim they cannot be charged for the examination. If necessary or requested, provide the victim with transportation to the examination.

#### C. EXAMINATION

Law enforcement should not be present when the medical forensic examiner is conducting the examination. However, if the examination is being conducted on an inmate, take appropriate safety measures including presence of an officer during the examination, if necessary.

### 2) SEX CRIMES EVIDENCE KIT

#### A. CHAIN OF CUSTODY

The department is responsible for maintaining the chain of custody for the sex crimes evidence kit after it has been collected from the medical provider. Obtain documentation of the chain of custody from the medical provider prior to taking possession of the kit.

#### B. DEPARTMENT RECORD NUMBER

If the sexual assault took place within the jurisdiction of the department, the department shall match the SCEK to an existing department record number or assign a number to the SCEK. If an investigation has not already begun, an investigator should be assigned to make contact with the victim as soon as possible.

### C. COLLECTION AND SUBMISSION

Victims of sexual assault have an expectation the evidence recovered during a medical forensic exam will be handled carefully and tested expeditiously. As such, notifications and timelines of each step below should be done as soon as possible, but ideally no later than the timeline outlined.

1. Medical forensic examiners to notify law enforcement to pick up the kit from the hospital or exam facility within 24 hours of kit collection.
2. Law enforcement agency to pick up kit from the medical forensic examiner within 72 hours after notification.
3. Law enforcement agency to submit kit to *[insert crime laboratory facility]* within 14 days of collection.
4. If it is determined the kit belongs to another jurisdiction the law enforcement agency shall notify and transfer the kit to the proper jurisdiction as soon as possible.
5. In cases where victims choose not to report the assault to law enforcement, jurisdictions shall store non-report kits for one year.
6. For non-report kits where the jurisdiction is in question, the law enforcement agency whose jurisdiction includes the location of the medical facility that collected the kit, will take possession of the kit, absent further investigation that establishes the location where the crime occurred.

### D. IMPOUNDING

1. Law enforcement agencies should impound all sex crime evidence into their property and evidence storage using a single identifying category to ensure proper tracking and reporting.
2. Law enforcement agencies should impound non-report kits in a category that establishes the evidence as a sex crimes evidence kit, but does not affect crime reporting statistics until a law enforcement agency has the opportunity to investigate.

### E. SUBMISSION GUIDELINES

The only circumstances in which a sex crimes evidence kit should not be submitted to the laboratory for testing is if law enforcement determines the case is unfounded or a victim chooses not to report. The presumption in favor of testing ensures sex offender DNA will be uploaded into state and federal law enforcement databases for appropriate use. Sex crimes evidence kits should be tested even if the identity of the suspect is known and regardless if the case is ultimately prosecuted. Testing all kits builds trust with victims who choose to undergo the medical forensic exam and report to law enforcement. Testing all kits can identify or confirm the suspect's identity and can link cases across jurisdictions to help identify serial and unknown offenders.

1. Unfounded Cases: Are cases after the conclusion of a reasonable law enforcement investigation, there is direct evidence which clearly and convincingly establishes that a crime did not occur. In unfounded cases, law enforcement has determined a crime did not occur and the case is solved, therefore the sex crimes evidence kit will be destroyed as it is not evidence in a crime.
2. Non-Report Cases: Kits will be stored for one year after collection. Prior to destruction of the sex crimes evidence kit, law enforcement will attempt to contact the victim to inform them of the destruction date and verify they do not want to assist in the criminal justice process. Providing this final notification ensures that the victim has an outlet to speak to law enforcement without the pressure of making the initial contact. This approach recognizes the

effect that trauma has on the victim by providing an opportunity to report a crime later in the process.

3. All other cases: Kits will be submitted to *[insert crime laboratory]* for testing as soon as possible, ideally within 14 days of collection.

#### F. STORAGE

The department is responsible for storing/preserving the SCEK after the completion of the forensic testing. The SCEK shall be stored in adherence with the law enforcement retention standards.

#### 3) **CODIS DNA HIT**

A CODIS hit is considered an investigative lead which still requires independent confirmation testing and comparison by the investigating law enforcement agency through a reference sample from the individual identified through the CODIS hit. Following up on these leads are a crucial part of the process. In addition to the identification of a suspected perpetrator, a CODIS hit may be beneficial for excluding potential suspects, reducing wrongful arrests, assisting in the exoneration of the wrongfully convicted, linking cases within a state and across the nation and providing validation to the victim.

#### A. VICTIM NOTIFICATION

Investigators should work with a multidisciplinary team including victim advocate organization and prosecutor to ensure victim-centered and trauma-informed notification. Victim notification of a CODIS hit should be done by law enforcement, victim advocate or designee who has training to understand the effect of trauma on victims and the range of victim responses. The individual responsible for notification will ensure the following:

1. Inform victim of a CODIS hit. Notification may be delayed if disclosure would interfere with investigation.
2. Make contact in a compassionate, respectful and empathetic manner.
3. Ensure the victim feels safe and in control. After initial contact, victims should be empowered to choose how they receive information about their case.
4. Provide complete information about the status of their case and who they can contact with questions and concerns throughout the process.
5. Protect privacy and confidentiality of the victim. Depending on the length of time since the assault, the survivor's family, friends and coworkers may not be aware of the crime.
6. Offer support and resources to connect with local victim service providers.

## VI. **TRACKING**

A tracking system is essential to ensure best practices are followed and all sex crimes evidence kits that are collected are submitted to the laboratory for analysis, with the exception of cases that are unfounded or the victim chooses not to report to law enforcement. The Task Force recommends that the state mandate the implementation of a tracking system that can follow the path of a sex crimes evidence kit throughout the entire process; from issuance, to the hospital or forensic examiner, to the responding law enforcement agency, through the crime lab and ultimately to the kit's final disposition, storage or destruction.

To implement a statewide tracking system the Task Force recommends the Department of Public Safety explore opportunities to contract with a vendor that is capable of providing evidence tracking services for sex crimes evidence kits statewide. The Department of Public Safety should report back to the Governor's Office the availability and cost of implementing a statewide tracking system.

## **VII. LEGISLATION**

A growing number of states are turning to legislation to address various topics surrounding the issue of unsubmitted or backlogged sex crimes evidence kits. The priority of the Task Force is to ensure all previously unsubmitted kits are tested and that moving forward, Arizona establishes a system of accountability throughout the sex crimes evidence kit process. The Task Force recommends legislation be enacted that requires all sex crimes evidence kits to be submitted to a laboratory for analysis unless a determination is made by law enforcement that the case is unfounded or the victim chooses not to report. The Task Force recommends a statewide tracking system be put in place to be used by medical forensic examiners, law enforcement agencies and crime laboratories to ensure accountability of all kits. Finally, the Task Force recommends legislation be enacted to require law enforcement agencies to perform an annual audit verifying sex crimes evidence kits in their property and evidence are present and in their specified location. It is important to note that the ability for law enforcement agencies and crime laboratories to implement newly enacted legislation and policies are dependent on whether additional resources and funding are also dedicated where required.

## **VIII. EDUCATION**

It is crucial that law enforcement, prosecutors and advocates are educated on the findings of this Task Force and the recommendations for best practices for sex crimes evidence kits are followed. As such, law enforcement, prosecutors and advocates should receive victim-centered, trauma informed training. Task Force members will work with stakeholders to identify and communicate available trainings.

## **IX. FUNDING**

The Task Force has divided the funding recommendations into two sections. The first section is intended to address funding for the previously unsubmitted kits identified across the state through the statewide inventory. The second section speaks to future funding necessary due to best practice recommendations as stated.

### **A. UNSUBMITTED KITS**

As discussed in Section III of this report a statewide inventory of unsubmitted sex crimes evidence kits resulted in 6,424 kits that were never submitted to the laboratory for testing. However, many jurisdictions have been successful in receiving grant funding to begin testing these kits. After the current grants secured are expended, we anticipate approximately 2,000 remaining kits to be tested. The Department of Public Safety will begin testing these remaining unsubmitted sex crimes evidence kits with the \$500,000 general fund appropriation received from Laws 2016, Chapter 117. This amount should cover approximately 625 sex crimes evidence kits.

Additional funding will be needed to cover the remaining kits after the appropriation is expended. The Maricopa County Attorney's Office and the Phoenix Police Department have indicated they will be applying for additional grant opportunities to help fund remaining kits in their jurisdiction. In addition, the Department of Public Safety will be exploring multiple opportunities to test these remaining kits which will include:

1. NIJ-FBI Sexual Assault Kit Partnership: The National Institute of Justice (NIJ) and the Federal Bureau of Investigation (FBI) formed a partnership to help address the issue of unsubmitted sex crimes evidence kits. The FBI will be a centralized testing laboratory for sex crimes evidence kits to be submitted from the nation's law enforcement agencies and public forensic laboratories. Each month, the FBI laboratory will process and test a limited number of previously unsubmitted kits while scientists at the NIJ collect and analyze data about the kits. Each agency is permitted to send no more than 30 unsubmitted sex crimes evidence kits per request.
2. District Attorney of New York Rape Kit Backlog Elimination Program (DANY): This grant is administered by the office of the Manhattan District Attorney and provides funding through a competitive grant program to help jurisdictions across the country test unsubmitted and/or backlogged sex crimes evidence kits.
3. Sexual Assault Kit Initiative (SAKI): This grant is administered by the Bureau of Justice Assistance and provides funding through a competitive grant program to support the comprehensive reform of jurisdictions' approaches to sexual assault cases resulting from evidence found in sex crimes evidence kits that have never been submitted to a forensic laboratory. The goal is to create a coordinated multidisciplinary response that ensures just resolution to these cases whenever possible through a victim-centered approach, as well as to build jurisdictions' capacity to prevent the development of conditions that lead to high numbers of unsubmitted sex crimes evidence kits in the future.

The Task Force recommends contracting with private laboratories to outsource any previously unsubmitted kits. However, even with outsourcing kits, several steps will need to be taken by state and municipal laboratories to review the work of the private laboratory before the DNA profile can be entered into CODIS. (*See attachment A*) The Task Force recommends additional funding for laboratories to complete the additional steps after outsourcing kits to private laboratories to ensure a backlog of cases waiting for review prior to entry in to CODIS does not occur. Further, after determining the amount of grant funding awarded, the Department of Public Safety, will report to the Governor's Office any additional funding needed to cover the remaining unsubmitted sex crimes evidence kits.

## **B. FUNDING FOR BEST PRACTICES**

Arizona has a total of nine crime laboratories; four state laboratories at the Department of Public Safety and five municipal laboratories in Phoenix, Mesa, Scottsdale, Chandler, and Tucson Police Department. A comparison of forensic scientist salaries across the state indicates that the Department of Public Safety is significantly below those of municipal laboratories, on average almost 25% lower. The scientists who leave the Department of Public Safety are typically experienced, highly trained personnel, while replacements require training. This results in the state paying significant funding to train forensic scientists and then that experience moves to another laboratory. In order to attract and

retain employees at the state's four laboratories, the Task Force recommends increasing forensic scientist and supervisor pay to a more competitive salary.

Lastly, additional funding will be required for crime laboratories as Arizona moves to a policy of testing all kits. The Department of Public Safety crime laboratories have already received an increase in more than 100% of submissions since the Task Force began its work. This increase is expected to level out after this peak, but will remain approximately 40% higher than the previous year's testing. The increase in testing will require additional resources for laboratory personnel and equipment. The Task Force recommends funding be provided to state and municipal laboratories for personnel and equipment to adequately handle the increase in evidence analysis.

## **X. TASK FORCE REVIEW**

Though the Task Force has worked diligently to involve many stakeholders when formulating this report, the Task Force understands that further review may be necessary after the practical application of the recommendations are realized. As such, the Task Force suggests its members reconvene six months after the report is submitted to discuss revisions that are needed based on stakeholder feedback.

## **XI. ACKNOWLEDGEMENTS**

In drafting this report the Task Force relied on not only the expertise of its members, but also other jurisdictions and organizations with knowledge on this subject. We would like to acknowledge the following organizations and resources that were used to contribute to this report:

- Department of Justice and Office of Justice Programs. *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach Draft*, 2016.
- International Association of Chiefs of Police. *Investigating Sexual Assault Model Policy and Guidelines*, 2005.
- National Institute for Justice. *Special Report, Down the Road: Testing Evidence in Sexual Assaults*, 2016.
- Michigan Domestic and Sexual Violence Prevention and Treatment Board. *Michigan Model Policy: The Law Enforcement Response to Sexual Assault*, 2015.
- Maricopa County Attorney's Office Sexual Assault Kit Working Group. *Draft Sexual Assault Kit Protocol*, 2016.
- End the Backlog. [www.endthebacklog.org](http://www.endthebacklog.org)

# ATTACHMENT A

*Crime Laboratory Flow Chart for  
Processing Sex Crime  
Evidence Kits*

