

# 10 Key Recommendations for Developing and Implementing a Sexual Assault Kit Testing Plan

The information in this brief applies to cold case sexual assaults as well as current case sexual assaults. Mentions of sexual assault apply to both types of sexual assault cases.

## 1. Assemble a team to create the testing plan.

Bring key individuals and organizations together to create the plan.

**Recommendation:** Involve a multidisciplinary team (MDT) with representatives from key disciplines, including sexual assault nurse examiners or other forensic medical practitioners, community-based victim advocates, system-based victim advocates (in law enforcement and/or prosecutor's offices), survivors, law enforcement, crime laboratory personnel/forensic scientists, and prosecutors. Additional MDT members to consider include state or local government or legislative representatives.

## 2. Make strategic considerations for submitting all sexual assault kits (SAKs) for testing.

Be prepared for differences of opinion between and within disciplines regarding priority of SAKs for submission to testing. Include your crime laboratory in discussions regarding testing options. Although research supports testing all SAKs and uploading all profiles that meet eligibility for entry into the Combined DNA Index System (CODIS), some team members may have concerns about the financial and logistical feasibility of a test-all policy.

**Recommendation:** Victims who decided to report anonymously<sup>1</sup> or are associated with unreported SAKs should have their choices respected, and the SAK should remain untested until the time the victim decides differently. Discuss how to proceed with cases where the police report indicates the victim did not choose to participate. Although the police report may describe the victim as “uncooperative” or declining to move forward, it is important for the MDT to discuss a plan to distinguish between the choice of the

victim and possible improper treatment and labeling from law enforcement. Efforts should be made to reach out to the victim to determine the possibility of reengagement with the criminal justice system or agreement to have the SAK tested. For more information about developing a victim notification protocol, see the SAKI Training and Technical Assistance (TTA) guidance document titled, [12 Key Questions to Guide Victim Notification Protocols](#).

### Tips to Consider

- ◆ Although there is evidence supporting the submit-and-test-all-SAKs approach, the funding and personnel available—along with the number of SAKs in the inventory—may determine whether a submit-and-test-all methodology is feasible at this time. If current resources will not allow for the testing of all inventoried SAKs, develop a long-term testing plan that is consistent with that goal and consider applying for additional funding. In addition to grant funding, agencies should look for more sustainable funding from their state legislature or other local funding sources. If additional staff or overtime pay are needed, consider which funding sources will allow for those challenges to be addressed.
- ◆ Start by submitting a subset of SAKs for testing. This will determine the timeframe and workflow of the entire process and provide an understanding of the staffing time necessary to review case materials and select SAKs based on the established selection criteria. See Recommendation 4 for more information about selection of SAKs for testing.
- ◆ Talk with your crime laboratory about its capacity to conduct forensic DNA testing on all submitted SAKs. Some crime laboratories test for serology first and will not proceed to DNA testing until law enforcement submits an additional request. Under a submit-and-test-all policy, all SAKs are submitted and tested for DNA.

## Testing Plan Options

### Submit-and-Test-All SAKs

All SAKs received by law enforcement are submitted to the crime laboratory and forensically DNA tested.

### Prioritize, Submit, and Test SAKs

Under this approach, all received SAKs are first prioritized and then submitted to the crime laboratory. If using this approach, identifying and determining a standardized system for reviewing cases and prioritizing submission are beneficial.

For more information about selecting SAKs for testing, see Recommendation 4.

## 3. Determine whether to include partially tested SAKs.<sup>2</sup>

A partially tested SAK is a SAK that has been subjected to serological screening only or that has previously been tested with DNA methodologies (e.g., Restriction Fragment Length Polymorphism or DQAlpha) that are not eligible for CODIS.<sup>5</sup>

### Serology Screening—Only SAKs

Oftentimes, partially tested SAKs are not forwarded for DNA testing for several reasons, including workflow capacity issues, policies that indicate DNA testing will not be conducted on serology-negative SAKs, and failure of an agency to submit a DNA testing request. Today's DNA testing technology is far more sensitive than the technology from a few years ago or for any serological methods. Therefore, previously tested samples with serology-negative results may yield a CODIS-eligible profile.

### DNA Methodologies Not Eligible for CODIS

SAKs that are not eligible for CODIS based on test results from older DNA technologies are encouraged to be retested with the current DNA technology to obtain a CODIS-eligible profile.

To effectively address a testing plan associated with partially tested SAKs, an agency should collaborate with their local testing laboratory. These SAKs could be stored at the crime laboratory or police property rooms; check with your agency or jurisdiction about the possibility of SAKs being stored in other locations.

**Note:** Partially tested SAKs are within the scope of SAKI's required inventory and may involve coordinating with your laboratory to obtain relevant information.

**Recommendation:** Submit SAKs that were tested with only serology, regardless of the serology results, for DNA testing.

**Recommendation:** Include partially tested SAKs in your SAK inventory and testing plan as though they are fully unsubmitted SAKs. However, ensure that you document these SAKs in their own category—that is, as partially tested SAKs—in order to understand (1) how many SAKs are previously unsubmitted and (2) how many are partially tested.

## 4. Determine how SAKs will be selected for testing.

The testing plan should provide guidance about submitting SAKs for laboratory analysis. There are two approaches to this—one for current SAKs and one for previously unsubmitted SAKs.

**Current SAKs:** The national recommendation is that SAKs should be submitted for testing as soon as possible, but no later than 7 business days from the collection of the SAK, or as specified by statute. In this situation, the SAKs are submitted for testing in a timely manner and therefore no selection is required prior to submission.

**Previously Unsubmitted SAKs:** Work with your MDT to decide how cases will be selected and which criteria to use. When selecting SAKs, be sure to (1) avoid further victimization and (2) review cases with statute of limitations (SOL) that may soon expire.

### Selection Options

#### Through Random Sampling

Key selection criteria, such as risk for SOL expiration, are outlined by the MDT, and then cases are randomly selected within those criteria groups.

**Recommendation:** If you have a research partner in your group, talk to that individual about the best sampling approach.

#### Through Review of Case Materials

SAKs are selected via a thorough standardized review of case materials or based on a list of predefined criteria—such as SOL expiration, stranger versus non-stranger, offenders who are not incarcerated versus those who are, and serial offenders. A thorough review can be time-intensive and requires knowledgeable, trained sexual assault investigators.

**Recommendation:** The MDT should discuss and decide upon the selection criteria. The MDT should document the decision rules for which SAKs will be selected for testing.

**Tip:** The language used in the testing plan is important because of the messages it will convey to survivors and the public. For example, the word “prioritized” may make some people feel that SAKs are being processed in a specific order based on their value. Have a conversation within the MDT about the terminology that should be used in the testing plan (e.g., prioritized, triaged, selected, tiered, and sampled).

### Victim-Offender Relationship

When looking at stranger and non-stranger SAKs, remember that one victim’s stranger assailant may be someone else’s known assailant. By testing non-stranger SAKs, investigative linkages can be made between stranger and non-stranger cases to identify serial offenders. Research focused on the prioritization of testing SAKs based on victim-offender relationship found that there was an equal chance of stranger and non-stranger SAKs producing a CODIS hit.<sup>2</sup>

## 5. Choose a laboratory for SAK testing.

Determine whether you will use a private, local, or state crime laboratory—or a combination of crime laboratories—to test all submitted SAKs.

**Recommendation for Outsourcing:** If considering entering into a contract with a private laboratory, discuss how many cases will be submitted monthly and what the turnaround time for results will be. Seek guidance from the private laboratory, your crime laboratory, and other subject matter experts to develop the wording for the technical specifications of performance within the contract to include exactly what will be tested and how the laboratory will communicate the testing results, as well as downstream considerations of courtroom testimony.

**Recommendation for state and local crime laboratories:** Complete a memorandum of understanding with your crime laboratory that outlines the number of SAKs to be submitted for testing each month, the turnaround time for testing, and expectations for communicating testing results.

## 6. Determine the best method for testing.

Communicate with the crime laboratory about the method of DNA testing to be used, and ensure the laboratory leverages all technologies available to achieve results.

**Recommendation:** Talk with the crime laboratory about any new technologies that should be considered and the pros and cons of each. Discussion topics should include the amount of time the new technology could save, and whether additional follow-up or discussion based on the results may be necessary. Ask the crime laboratory about the availability of Y-STR<sup>3</sup> testing, if applicable, and the process associated with this type of testing. Develop a communication plan with the crime laboratory to ensure that all testing methods are used when appropriate.

## 7. Prepare to submit SAKs for testing.

Whether you are outsourcing testing or using your local crime laboratory, it is important to maintain the chain of custody and follow the crime laboratory’s guideline for SAK submission.

**Recommendation:** Talk with your crime laboratory about the information that is needed for each submitted SAK. Develop a standardized system of logistics for this process, and consider writing a procedural document.

## 8. Verify the post-testing results.

It is important to verify with your crime laboratory that sufficient staffing exists for conducting the technical and administrative reviews from outsourced casework. If numerous SAKs will be outsourced, and hence need to be technically reviewed, discuss with your crime laboratory a plan to distribute staff time appropriately.

## 9. Receive CODIS hits and actions for follow-up.

Each MDT should discuss how the CODIS results will be distributed to each organization. The MDT should develop standardized procedures for notification, including designating specific people or units to be notified.

The MDT should develop a written CODIS hit follow-up policy, documenting the steps that should be taken for SAKs that have a CODIS hit.

**Recommendation:** This policy should cover who is responsible for conducting the follow-up investigation, as well as a guide outlining clear steps and timelines in conducting follow-up.

## 10. Conduct MDT review of testing policies and procedures.

Periodically, the MDT should discuss what is working well and what could be improved upon. The MDT should revisit the testing policies and make changes based on lessons learned. It is also important to revisit the SAK testing selection criteria and discuss any special circumstances.

This checklist is based on research conducted by Rebecca Campbell, PhD; Giannina Fehler-Cabral, PhD; Steven J. Pierce, PhD; Dhruv B. Sharma, PhD; Deborah Bybee, PhD; Jessica Shaw, PhD; Sheena Horsford, PhD; and Hannah Feeney, BA, as part of the Detroit Sexual Assault Kit (SAK) Action Research Project (ARP). For more information on the Detroit SAK ARP, please view the final report at <https://www.ncjrs.gov/pdffiles1/nij/grants/248680.pdf>.

### References:

1. According to End Violence Against Women International (EVAWI), the term “anonymous” is used to reflect the assumption that the victim’s identity will not be associated with the evidence, and is not dependent on where the evidence is stored, whether in exam facilities, crime laboratories, or law enforcement property rooms. <http://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=51>
2. Defined here as serology only or tested with antiquated DNA techniques, which prevent upload into CODIS.
3. Campbell, R.; Pierce, S. J.; Sharma, D. B.; Feeney, H.; Fehler-Cabral, G. (2016, April 12). Should Rape Kit Testing Be Prioritized by Victim–Offender Relationship? *Criminology & Public Policy*. doi: 10.1111/1745-9133.12205
4. Y-STR is an alternative Short Tandem Repeat (STR) test that MAY BE SUITABLE when traditional STRs fail (i.e., only low levels of male DNA are present). Although results are not CODIS-eligible, Y-STR profiles can be directly compared to any known suspects/persons of interest; the results are supported statistically and may provide investigative leads.
5. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. (2018, March 13). *National Sexual Assault Kit Initiative (SAKI) FY 2018 Competitive Grant Announcement*. Retrieved June 28, 2019, from <https://www.bja.gov/funding/SAKI18.pdf>

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