Addressing the Problem of Untested Sexual Assault Kits (SAKs)

Where Do We Start?

Rebecca Campbell, Ph.D.
Professor of Psychology
Michigan State University
Today’s Presentation

- PURPOSE: To provide succinct overview of key issues communities will face when resolving untested SAKs

- APPROACH: Empirically-based to share what we do and don’t yet know about these issues based on research & practice
Today’s Presentation

- TOPICS: Issues to be aware of regarding . . .
  - Terminology and definitions
  - Assessing scope of untested SAKs
  - Understanding underlying causes
  - Developing testing plans
  - Developing victim notification plans
  - Where to start??!!
Does it matter what we call this?
Does it matter what we call this?

“Backlogged kits”

“Unsubmitted kits”

“Untested kits”
Does it matter what we call this?

What’s in a name? That which we call a rose
By any other name would smell as sweet.

Shakespeare, *Romeo and Juliet*,
Act II, scene ii

Important to be **AWARE** of differences in terminology
Medical Provider Collects Kit → Police Pick Up Kit → Police Submit Kit for Testing → Kit is at the Lab for Testing
“BACKLOG”
“BACKLOGGED KITS”

Kit is at the Lab for Testing

Medical Provider Collects Kit → Police Pick Up Kit → Police Submit Kit for Testing → Kits that WERE submitted by the police to a forensic lab for testing, but the kit is still waiting to be tested

SOURCE: Nelson, 2010; Ritter, 2011
“BACKLOG”
“BACKLOGGED KITS”

Medical Provider Collects Kit → Police Pick Up Kit → Police Submit Kit for Testing → Kit is at the Lab for Testing

Kits that WERE submitted by the police to a forensic lab for testing, but the kit is still waiting to be tested

SOURCE: Nelson, 2010; Ritter, 2011
“UNTESTED KITS”  “UNSUBMITTED KITS”

Medical Provider Collects Kit — Police Pick Up Kit — Police Submit Kit for Testing — Kit is at the Lab for Testing

Kits that were NOT submitted for testing; placed in police property & remain there

SOURCE: Nelson, 2010; Ritter, 2011
Medical Provider Collects Kit → Police Pick Up Kit → Police Submit Kit for Testing → Kit is at the Lab for Testing

“UNTESTED KITS” → “UNSUBMITTED KITS”

Kits that were NOT submitted for testing; placed in police property & remain there

SOURCE: Nelson, 2010; Ritter, 2011
This is the focus of the SAKI Grant Program

PROBLEM HERE

Medical Provider Collects Kit → Police Pick Up Kit → Police Submit Kit for Testing → Kit is at the Lab for Testing

“UNTESTED KITS” → “UNSUBMITTED KITS”

Kits that were NOT submitted for testing; placed in police property & remain there

SOURCE: Nelson, 2010; Ritter, 2011
Assessing the Scope of the Problem
How Many Unsubmitted SAKs Are There In The U.S.?
Why Is This Hard to Figure Out?

National census → ALL law enforcement agencies to count ALL kits in police property

- Using the same terminology and definitions
- Using the same “count rules”
- For some agencies, this could require a manual count
- Lack of computerized systems for tracking evidence.
Alternate Approaches: Estimated Counts

- Nationally representative survey of state and local agencies, providing estimated counts

  - Cost effective for identifying scope and scale:

    - Nearly 1 in 5 unsolved sexual assault cases had forensic evidence that was unsubmitted.

    - Substantial proportion (41%) of unsubmitted sexual assault evidence with small and mid-sized agencies.

  - Precision of reporting dependent on agency’s ability to track evidence.

  - Not as useful for targeted agency-level analysis.

SOURCE: Strom & Hickman, 2010
Alternate Approaches: City-by-City Census

- Complete count of all SAKs in specific cities
  - FOIA/public records requests
  - Sometimes “self-initiated” in a jurisdiction
  - Compiled and tracked for public awareness
How Many Unsubmitted SAKs Are There In There in YOUR JURISDICTION?
Assessing Scope: Where To Start

- Multidisciplinary team

- Define & clarify:
  - Scope of count: agency, city, county, region, state
  - Nature of records: database or manual
  - Date range: from ____ date to ____ date
  - Kit status: tested or untested?
  - Case status: adjudicated or not adjudicated?
Assessing Scope: Resources

Step-by-Step Guides from the Detroit SAK Census
Assessing Scope: Resources

Lessons Learned

Guides from the

Detroit SAK Census

Lessons Learned:
Conducting a SAK Census

The take-home lessons from the Detroit SAK ARP based on
their experiences conducting a census of SAKs in police property.
“What we should have done, in twenty-twenty-nineteen, if only we'd known.”

1. Bring everyone to the table
   A review of kits will bring up complex legal,
   psychological, and evidentiary issues. Have a
   broad-based multidisciplinary team to ensure
   that diverse perspectives will be considered at
   every stage of the process.
   Consider including representatives from:
   a. Police
   b. Prosecution
   c. Forensic sciences
   d. Medical/nursing
   e. Systems-based advocacy
   f. Community-based advocacy

2. Formulate goals
   Establishing the goals of the project at the beginning will
   help streamline the process and save staffing time.
   Narrowly defined goals might include simply determining the
   number of untested SAKs.
   More expansive goals might focus on determining the number of SAKs and review each for SOL-risk, prosecution potential, and other such complex issues.

3. Clarify language and agree on terms to be used
   The extent to which team members can be consistent and precise in
   their language, planning and conducting the census will result in
   fewer opportunities for miscommunication.

Some Terms to Consider:
Submitted: the SAK was/was not submitted to a
laboratory for testing
Tested: the SAK was tested (for older kits, clarify
whether that testing included DNA analysis)
Adjudicated: the SAK is associated with a case that
has already been adjudicated (note: this should be
co-registered with testing status, as some cases may
have been adjudicated without the testing of the kit)
Backlogged: the SAK was submitted to a laboratory
for testing, but is still in queue at the lab to be tested
7. Start small

Review a small sample of kits, even as few as 10 kits/cases. This will help clarify goals, identify available resources, determine what information is hard to track down, and gauge what resources/staffing will be necessary in the future. Use the following steps to take one SAK and walk through it, start to finish:

Take one SAK and walk through it, start to finish

- Determine info on the outside of the kit
- Assess whether such info is important & should be included in the database
- Determine what other info needs to be tracked down according to the predetermined goals
- Determine where other info may be found
- Pull records for each test-run SAK and identify problems with this process
- Decide what fields from these additional sources should be included in the central database
- Track how many staffing hours went into “walking through” each SAK/case
Remember, each jurisdiction is unique.

What works for one, might not work for another

Resource guides provide ideas & lessons learned
Understanding Underlying Causes
Why Did This Happen?

Why Do So Many U.S. Cities Have Large Numbers of Untested SAKs?
There’s No ONE Reason
Underlying Reasons

- DNA testing did not exist!
- No policy regarding SAK testing
- No funding to test all SAKs
- Utility to investigation stage unclear
- Insufficient staffing to investigate and prosecute all cases
- Victim-blaming beliefs and misinterpreting signs of trauma

SOURCE: Campbell et al., 2016; Strom & Hickman, 2010
This complaint is deep. She tells this story.

No tears none!!! The times are off.

I talked with the Dr. All he found was

A little white discharge No Trauma!!!

Who can figure it?

Over.

Good luck.
THE COMPLT. TOOK A CAB HOME AFTER THE ALLEGED SEX ASSAULT. SHE CALLED A CAB, AND WAITED FOR IT. SHE DID NOT CALL HOME, DID NOT ASK FOR HELP WHILE WAITING FOR A CAB, DID NOT DIAL 911. THE COMPLT. HAS NOT TOLD HER MOTHER THE STORY AS OF MY INTERVIEW.

WHEN I BEGAN TO QUESTION WHY A CAB AND NOT HOME? WHY WAIT FOR CAB AND NOT ASK FOR HELP AT THE STORE WHILE WAITING... THE TEARS BEGAN TO FLOW, AND THE ATTITUDE SET IN.
Yes, you have to look back and identify what was problematic and why . . . And then you have to move forward . . . Think of this as an opportunity to make good, long-standing policies and practices.
Developing a Testing Plan
What’s the Best Plan for Testing Previously-Unsubmitted SAKs?
What’s the Debate?

DNA is only useful for stranger sexual assault cases, so stranger rape SAKs should be prioritized for testing (or only these SAKs should be tested)
What’s the Debate?

One person’s stranger is another person’s known friend, associate, partner→ so it is important to keep CODIS populated so it remains useful for investigations & prosecutions
What’s the Debate?

DNA is not useful for non-stranger sexual assault cases because the offender’s identity is already known.
Testing could show pattern of serial sexual offending through DNA matches/CODIS hits across multiple cases (he-said—she-said, she-said, she-said . . . )
What’s the Debate?

If the statute of limitations (SOL) has expired, testing SAK is not reasonable use of public funds.
What’s the Debate?

Case might *not* be SOL-expired, but if it is, evidence in other cases of prior bad acts (404b) may be allowable.
What’s the Debate?

If the victim is unwilling to prosecute, then it is not a reasonable use of public funds to test the SAK.
What’s the Debate?

Strong evidence that the “victim unwilling” designation in police report is often unreliable and inaccurate representation of victims’ intentions & wishes
What’s the Debate?

TEST ALL?
TEST SOME?
TEST SMART?
What’s the Debate?

TEST ALL?

TEST SOME?

TEST SMART?
What Does Research Say?

- No empirical evaluations of “test all” policies

- There has been one empirical evaluation of different prioritization plans
  - Merit in testing BOTH stranger and non-stranger SAKs
  - Merit in testing BOTH SOL-expired & unexpired SAKs

SOURCE: Campbell et al., 2015
Testing will yield a SUBSTANTIAL number of CODIS hits and serial sexual offenders

Jurisdictions struggle with how to manage & coordinate testing results & investigations

SOURCE: Campbell et al., 2015
Testing Plans: Where To Start

- Multidisciplinary team
- Assess resources available for testing
- Assess resources for coordinating post-testing investigations, prosecutions, victim advocacy
- Assess staffing needs and resources
- Check DNA exemption laws, and statute of limitations in your state
Testing Plans: Resources

Step-by-Step Guides from Developing the Detroit Testing Plan
Testing Plans: Resources

Lessons Learned from the Detroit Testing

Lessons Learned:
Developing a SAK Testing Plan

The take-home lessons from the Detroit SAK ARP based on their experiences developing and evaluating a SAK testing plan.

“Where do you start? How do you eat an elephant? One bite at a time.”

1. Bring everyone to the table
   If a multidisciplinary team was formed to plan & execute the SAK census, then those same individuals/organizations are well-positioned to guide the development of a testing plan. If the census was completed without the multidisciplinary team, then forming one for the testing phase is paramount. SAK testing raises complex legal, psychological, and evidentiary issues; representatives from police, prosecution, forensic sciences, medical/nursing, systems-based advocacy, and community-based advocacy, help ensure that diverse perspectives are considered.

2. Discuss the purpose & utility of SAK testing
   Explore how different team members think about the purpose and value of SAK testing. It’s likely that these opinions will be deeply-rooted in their profession & their discipline’s roles & responsibilities to society. It is not necessary to come to complete agreement on all issues; the team may “agree to disagree” on some issues and still move forward.

OPINIONS MIGHT INCLUDE:
- Testing is most useful in stranger assault cases.
- Testing is less useful in non-stranger cases because the identity of the assailant is already known.
- Testing can be useful in non-stranger cases to identify patterns of serial non-stranger assaults.
- Cases that are likely SOL-expired should not be tested to conserve limited testing resources.
- Cases that are likely SOL-expired should be tested in the event a CODIS hit links to a current case.
12. What happens after testing?

Devote appropriate attention to developing a plan for what happens after testing; starting small will likely help with this decision. The following are some key issues to consider:

- Who should be informed re: testing results?
- How will post-testing investigations be coordinated?
- How will case-to-case CODIS hits be handled?
- How will current caseloads be handled with these new/old cases being re-opened?
- Can a flexible process be developed to respond to highly time-sensitive cases?
Developing a Victim Notification Protocol
What’s the Best Way to Notify Victims and (Re) Engage Them?
VICTIM NOTIFICATION raises complex LEGAL ISSUES
VICTIM NOTIFICATION raises complex LEGAL ISSUES and . . . PSYCHOLOGICAL ISSUES
What Is Victim Notification?

Re-activation of assault memories

- Could trigger flashbacks and other symptoms
- Could exacerbate PTSD and/or other MH
- Could increase substance use/abuse
- Could trigger substance abuse relapse

SOURCE: Garfinkel & Liberzon, 2009; Roozendaal et al., 2009; Rubin et al., 2008
Key Guiding Principles

- Victim-Centered
- Trauma-Informed
“Victim Centered”

- The victim is at the center of all decisions regarding recovery and any involvement with the criminal justice system
- Victim’s choice, safety, & well-being is the focus
- The needs of the victim are everyone’s concern and a collective effort (not just victim advocacy)

“Trauma Informed”

- Attending to victims’ emotional safety AND physical safety
- Strengthening victims’ capacity to recover with information, resources, services, and support
- Educating victims, service providers, and the general community about the impact of trauma on survivors’ health and well-being.

SOURCE: National Center on Domestic Violence, Trauma & Mental Health (2011)
What Does Research Say?

- Limited research/evaluation to date on this

- Evidence that victim-centered, trauma-informed principles do work
  - Most victims NOT having adverse reactions to notification
  - Most victims DO choose to re-engage
  - Most victims DO connect/re-connect with services

SOURCE: Campbell et al., 2015
Victim Notification: Where To Start

- Multidisciplinary team

- Start developing your protocol as soon as possible; do not wait until testing is underway

- Assess resources and supports for survivors (before, during, after notification)

- Training for all notifying personnel on neurobiology of trauma and trauma-informed interviewing
Victim Notification: Resources

Step-by-Step Guide on How to Create a Victim Notification Protocol

Discussion Q5: Who should make the first contact with the victim?

- **Legal Investigator Only**
  - Pros: Simple, less overwhelming than having more than one person. Can provide resources for advocacy when appropriate. Able to discuss details about case.
  - Cons: Victims afraid of LE, not willing to talk to LE, or feel like they are in trouble. Reactivation of trauma worse if prior negative experience with LE. No other services immediately available.

- **Community-Based Advocate only**
  - Pros: Immediate crisis intervention and services for negative effects of reactivating trauma. Independence from legal system is less threatening.
  - Cons: Survivor may not want “crisis intervention” immediately. May not trust an advocate that is affiliated with the criminal justice system.

- **Legal System-Based Advocate only**
  - Pros: Immediate crisis intervention and services for negative effects of reactivating trauma. May be able to answer questions about case.
  - Cons: Survivor may not want “crisis intervention” immediately.

- **Investigator AND social worker/advocate**
  - Pros: Ability to answer questions about case immediately. Crisis intervention and services for negative effects of reactivating trauma.
  - Cons: Victims may feel overwhelmed by multiple people. May not want “crisis intervention” immediately.
Victim Notification: Resources

Step-by-Step Guide on How to Implement Victim Notification Protocol
Testing Plans: Resources

Lessons Learned

from the Detroit Victim Notification
11. Start small—and be flexible

Develop draft notification protocols, implement them with a small number of cases, evaluate them (either formally or informally through multidisciplinary team debriefings), make changes, and implement/re-evaluate the revised procedures. Because each sexual assault case is unique, the victim notification protocols should be flexible to accommodate unusual and/or urgent situations.
<Deep Breath> Now What?
Settle in and take the long view . . . This is a problem many years in the making, and it will take many years to fix it.

Form a multidisciplinary work group, like a SART

Team building and training
Lessons Learned
from the Detroit MDT
Multidisciplinary Teams: Resources

ONLINE LEARNING!!!

SANE-SART
ONLINE + CLINICAL

A POWERFUL LEARNING PROGRAM FOR PROVIDING SUPPORT AND JUSTICE TO SEXUAL ASSAULT VICTIMS.
Remember, each jurisdiction is unique.

What works for one, might not work for another

Resource guides provide ideas & lessons learned
THANK YOU !!
Q&A TIME