

National Conference of State Legislatures

~ Forensic Biology Backlogs and Untested Sexual Assault Evidence ~

The increased use of forensic analysis by state justice systems has led to challenges for laboratories in meeting demand for their services. According to the most recent [Bureau of Justice Statistics \(BJS\) report](#), at the end of 2009 there were 1,193,800 backlogged requests for forensic services. A backlogged request is usually defined as a request that has not been completed within 30 days of its submission to a forensic laboratory.

Forensic biology accounted for 76 percent (905,200 of 1,193,800) of the backlogged requests identified by BJS. Forensic biology practices include testing evidence for the presence of biologic material as well as processing DNA samples from casework (evidence obtained during the course of investigations) and convicted offender and arrestee sample submissions.

States Addressing Forensic Biology Backlogs

Several states have taken measures to address forensic biology backlogs. In 2011, Connecticut established a [Crime Lab Working Group](#) to address a 400 percent increase in the state's forensic biology workload. As part of its work, the group created guidelines to rein in the volume of forensic services requests from DNA casework. The general guidelines are: DNA analysis will not be performed on misdemeanors, low-level larcenies, or criminal mischief; one or two items can be tested for property crimes; five pieces of evidence can be tested for robberies and less serious assaults, and the number of samples tested in homicides and sexual assaults would be determined on a case by case basis. These guidelines have been in effect since January 2012.

At least two states have enacted laws aimed broadly at reducing the backlog for forensic biology. In 2005, Vermont's legislature required the state commissioner of public safety to report annually on any DNA backlog issues that may be occurring, including insufficient staffing or funding. In 2006, Tennessee enacted a law that created six new staff positions for forensic biologists specifically to aid in the reduction of the state backlog.

Untested Sexual Assault Evidence

State legislation has also focused on addressing untested medical exams (rape kits) from sexual assault cases. At least eight states—California, Colorado, Connecticut, Hawaii, Illinois, Maine, Michigan and Texas—have passed measures addressing sexual assault evidence issues. These laws can require state laboratories and law enforcement agencies to catalogue and/or submit for analysis any untested rape kits currently in their possession and/or charge a state entity or commission with preventing or mitigating future backlogs. The laws also set timelines for the submission and analysis of future collected sexual assault kits and improve communication between victims and the state officials handling their case.

Recent Legislation

In 2014, Indiana enacted a new law (SB 255) requiring the creation of a standard medical forensic examination kit for victims of sex crimes. Louisiana enacted a new law (SB 296), requiring law enforcement agencies in the state to identify their inventory of untested sexual assault kits and report them to the director of the Louisiana state police crime laboratory. By March 1, 2015, the law requires the Louisiana state police crime lab to prepare and submit a report to the chairman of the Senate Judiciary B Committee and the chairman of the House of Representatives Judiciary Committee on the status of untested sexual assault kits in the state.

Recent Legislation (cont.)

Michigan enacted a new law (HB 5445) setting time standards for the transfer and testing of sexual assault kits among health care facilities, law enforcement agencies and forensic laboratories. The new law requires that law enforcement agencies collect sexual assault kits from a healthcare facility within 14 days of being notified that it is ready to be received. Then law enforcement has an additional 14 days to transfer the sample to the department of state police or an accredited forensic laboratory. Once a sample is submitted to the department of state police or an accredited laboratory, the law requires it to be analyzed within 90 days. Another new Michigan law (HB 5313) requires the department of the attorney general to provide a work plan to address anticipated sexual assault litigation resulting from untested rape kits discovered by the state police during the closure of the Detroit crime lab. The spending plan must be approved by the state budget director.

Tennessee's new law (SB 1426) requires law enforcement agencies in the state to identify their inventory of untested sexual assault kits and report them to the Tennessee bureau of investigation. By Sept, 1, 2014, the Tennessee bureau of investigation is required to prepare and submit a detailed report on the status of untested sexual assault kits in the state to the Speaker of the Senate and Speaker of the House of Representatives.

Utah enacted a new law (HB 157) to improve a victim's ability to communicate with law enforcement about the status of their case and sexual assault evidence. The law creates victim's rights to be informed whether a DNA sample was able to be created from their sample submission, to know when their sample has been uploaded into the state DNA database and to know if their sample's profile matches another profile in the DNA database. The law also requires a law enforcement agency who intends to destroy or dispose of rape kit evidence to notify a victim in writing of their intention and inform the victim how to appeal the decision.

Virginia's new law (SB 658) requires law enforcement agencies in the state to identify their inventory of untested sexual assault kits and report them to the Virginia Department of Forensic Science by July 1, 2015.

In 2013, Colorado enacted a law (HB 1020) addressing untested rape kits. The new law requires the executive director of the Colorado Department of Public Safety to develop rules for evidence collection in sexual assault cases. It also requires every law enforcement entity in the state to disclose its present backlog of sexual assault evidence and make arrangements to have them tested or submit them to the Colorado Bureau of Investigation. To achieve these goals, the measure appropriated \$6,351,002.

In 2011, Hawaii's legislature adopted a resolution asking the state attorney general to develop a plan to better track and process rape kits. Their [findings and recommendations](#) were submitted to the legislature in 2013.

Benefits of Reducing Forensic Biology Backlogs

In 2010, the New Orleans Police Department requested the help of the Department of Justice with its backlogged sexual assault kits. Under their [joint project](#), between January 2011 and January 2012, 1006 sexual assault evidence kits were tested (830 untested kits existed at the beginning of the project and 178 kits were collected during the project). From the evidence, 256 DNA samples were created and analyzed in the Combined DNA Index System (CODIS), resulting in 139 hits to further investigations. From those hits, 40 cases were closed during the course of the project. Computer software known as the CODIS Hit Outcome Project (CHOP) assisted the project. CHOP software helps multiple personnel stay informed on the status of different pieces of evidence and can identify where systemic challenges are preventing evidence from being tested. When sexual assault and other biologic evidence remain untested, potential leads are unable to be pursued.

State Measures Addressing Forensic Biology Backlogs

State & Current Statute	Requires Training/ Standards for Examiners	Sample Submission Standards for Law Enforcement	Addresses Evidence Collection Protocols	Addresses Communication with Victims	Addresses Backlogged Medical Kits	Addresses Casework Backlog Generally
Alaska § 18.68.010	X		X			
Arkansas § 12-12-402		X	X			
California Penal Code § 680		X				
Penal Code § 13823.11		X	X			
Colorado § 24-33.5-113		X	X	X	X	
Connecticut § 19a-112a	X	X	X			
Florida § 395.1021			X			
Georgia § 17-5-71		X				
Hawaii HCR 99 (2011)			X		X	
Illinois § 725 ILCS 202		X			X	
§ 410 ILCS 70/6.4	X		X	X		
Indiana § 16-21-8-10		X		X		
SB 255 (2014)	X					
Kansas § 65-448		X	X			
Kentucky § 216B.400	X	X	X			

State & Current Statute	Requires Training/ Standards for Examiners	Sample Submission Standards for Law Enforcement	Addresses Evidence Collection Protocols	Addresses Communication with Victims	Addresses Backlogged Medical Kits	Addresses Casework Backlog Generally
Louisiana § 15:556	X	X	X			
SB 296 (2014)					X	
Maine §§3360-N, O	X					
Massachusetts Ch. 41 § 97B	X	X	X	X		
Michigan § 333.21527			X	X		
HB 5445 (2014)		X	X	X		
HB 5313 (2014)					X	
Missouri § 595.220			X			
New York Pub. Health § 2805-i		X	X	X		
Oregon § 147.403	X					
Pennsylvania § 10172.3	X		X			
South Carolina § 16-3-1350	X		X			
Tennessee § 38-6-103						X
SB 1426 (2014)					X	

State & Current Statute	Requires Training/ Standards for Examiners	Sample Submission Standards for Law Enforcement	Addresses Evidence Collection Protocols	Addresses Communication with Victims	Addresses Backlogged Medical Kits	Addresses Casework Backlog Generally
Texas Government Code § 420		X	X	X		
Crim.Pro. Code §56				X		
Health & Safety Code § 323	X					
Utah HB 157 (2014)				X		
Vermont T. 20 § 1946						X
Virginia SB 658 (2014)					X	
Wisconsin § 175.405		X				
Wyoming § 6-2-309			X	X		

Source: National Conference of State Legislatures, 2013.