



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Public Safety

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The Honorable Pete Kelly
President of the Senate
Alaska State Legislature
State Capitol Room 111
Juneau, AK 99801

The Honorable Bryce Edgmon
Speaker of the House
Alaska State Legislature
State Capitol Room 208
Juneau, AK 99801

Dear President Kelly and Speaker Edgmon,

In the pages that follow, you will find the results of a statewide inventory of sexual assault kits (SAKs) taken as evidence by law enforcement agencies, but not submitted to a laboratory for testing. This inventory was performed as required by SB 55 Omnibus Crime/Corrections passed in 2017. In addition, SB 55 asked the Department of Public Safety (DPS) to submit a plan to address the untested kits, and a plan to prevent a backlog of untested kits going forward. As you know, at the direction of Governor Walker and with his full support, DPS has been taking steps since 2015 towards gaining an understanding of the issues surrounding untested sexual assault kits, including researching and developing practices that will better serve victims and the public, and implementing and planning for meaningful reforms. Governor Walker remains in full support of efforts by the legislature to assist DPS in this important work, and in furthering the progress of the State of Alaska towards a more victim-centered and efficient criminal justice system.

Growing awareness of issues surrounding sexual assault evidence and enhanced technologies have contributed to a robust national discussion on this complex topic. In addition to the information required by SB 55, I have aimed to provide a general overview of developing national standards, a summary of work that has been done as a result of Governor Walker's

initiative, and a foundation for DPS' recommendations in an abbreviated format. Where applicable, I have included links to primary sources.

When discussing approaches for addressing unsubmitted SAKs, it will be useful to use consistent terminology. In this letter, the following terms are used:

Sexual Assault Kit (SAK): A set of items used by medical personnel or trained professionals for the preservation of physical evidence collected from a person, living or deceased, following an allegation or suspicion of sexual assault; they may come in a packaged box in more recent years or in bags, or as individual swabs in the past.

Unsubmitted SAK: SAKs that have not been submitted to a forensic laboratory for testing and analysis.

Backlog: Comprised of SAKs that have been sent to a crime lab for analysis but have not yet been tested.

For ease of reading, this letter will be broken into five sections:

I. Executive summary

II. Results of the statewide SAK inventory

III. Immediate and long term reform efforts by DPS

IV. Plan to address untested kits and other options

V. Conclusion

DPS is always available to answer any questions or recommend resources to further your understanding.

I. Executive Summary

Results of the statewide SAK inventory:

- **46 of 49** agencies submitted results in time to be included in this report; the inventories still pending would not likely alter statistical findings.
- **3484** SAKs were inventoried; of these, **3219** were in the possession of the **7** largest agencies.
- Dates each SAK was taken were reported; this information is available for review if requested.
- Some of the most common reasons reported for not testing kits include:
 - District Attorney's Office declined the case

- Awaiting a decision from the District Attorney's Office on whether the kit results were needed for evidence
- Case still under investigation
- Issue was consent, not assailant identity
- Evidence collected beyond the testing timeframe

Immediate and long term reform efforts by DPS:

- Starting January 2018, all newly collected SAKs statewide will be sent to the State Scientific Crime Detection Laboratory (SCDL) for testing or storage.
- If the submitting agency does not request testing of the SAK, an explanation of this decision will be required.
- The SCDL will identify strategies to track all kits through every phase of the criminal justice system; implementation of these strategies may be contingent on future funding options.
- The SCDL is constantly reevaluating its operation to ensure it remains current in technology and best practices; the SCDL is working towards implementing new best practice guidelines for SAKs issued by the National Institute of Justice (NIJ).

The DPS plan to address untested kits and other testing options:

- DPS plans to develop SAK testing policy based on recommendations made by the Sexual Assault Kit Initiative (SAKI) working group:
 - In 2016, at the direction of Governor Walker, DPS applied for and received a grant under the federal sexual assault kit initiative program (SAKI).
 - The SAKI working group is tasked with developing victim-centered best practices based on national standards and informed by local experts.
 - The working group is in year 1 of a 3 year grant; working group recommendations are ongoing throughout the life of the project, with a final report of recommendations expected by **June 30, 2019**.
 - Recommendations from the working group regarding other investigative practices will be considered for implementation throughout the grant project.
 - A second grant to conduct in depth research was also awarded; DPS, in conjunction with the selected researcher, will examine the correlation between characteristics of unsubmitted cases and case processing decisions. This is an important step to develop data-driven public policies.
 - The sexual assault examination is an important part of the criminal justice process, and an important opportunity to provide medical care and victim support, regardless of whether DNA collected is of evidentiary value for prosecution.

- Applying a “test all” policy to newly collected kits will require an additional \$204,000 for personnel costs and \$250,000 in chemicals and testing supplies. Total cost of this option is estimated to be \$454,000/year.
- The estimated cost of testing all previously unsubmitted kits at a private lab would be between \$2.2 and \$3 million.

II. Results of the Statewide SAK Inventory

In response to the passing of SB 55, I directed my staff to send a letter via US Postal Service notifying 49 law enforcement agencies of the statutory requirement to inventory untested kits and report the results of this inventory to DPS by September 1, 2017.

This letter notification was followed up by an email from the Alaska Police Standards Council, and then by phone calls and emails to individual law enforcement agencies as needed. Every agency made a good faith effort to comply with the inventory by the statutory deadline however; results from three small agencies are pending as of this writing. An inventory such as this can be labor intensive and a significant draw on personnel resources, particularly for our smallest departments composed of only one or two people. When the inventory is concluded by the final few agencies, the report will be updated. The results of the pending inventories are not expected to alter statistical findings.

The data showed that there were approximately **3,484** sexual assault kits in the possession of law enforcement agencies that had not been submitted to a laboratory for serological testing. Of these kits, 3,219, or approximately 92%, were in the possession of the seven largest agencies in the state (see *Figures 1 and 2* below).

As noted, although not required by SB 55, agencies were requested to provide additional information, including whether kits were taken from the victim or the suspect, whether the victim requested to remain anonymous, and the reason a kit was not submitted for testing. While agencies were supportive and cooperative, due to staffing and time constraints some departments could only provide the information required by the law. Accordingly, the information gathered in this regard should not be considered comprehensive. However, the data received was valuable and will be useful for the SAKI working group.

Participating agencies reported the primary reason for not testing a kit was that it was not needed or expected to be useful for prosecution. This could be because the case had been declined for prosecution, or because the disputed issue was whether the sexual contact was consensual, not whether it occurred. Other reasons included the case still being under investigation or awaiting a decision by the district attorney, or that the SAK was collected outside the timeframe when DNA

would be expected to be reliably identified by testing. Current SCDL policy, based on recent technological advancements, allows for analysis on some kits collected up to seven days after an assault.

The graphs below (Figures 1, 2 & 3) provide a more detailed summary of inventory results:

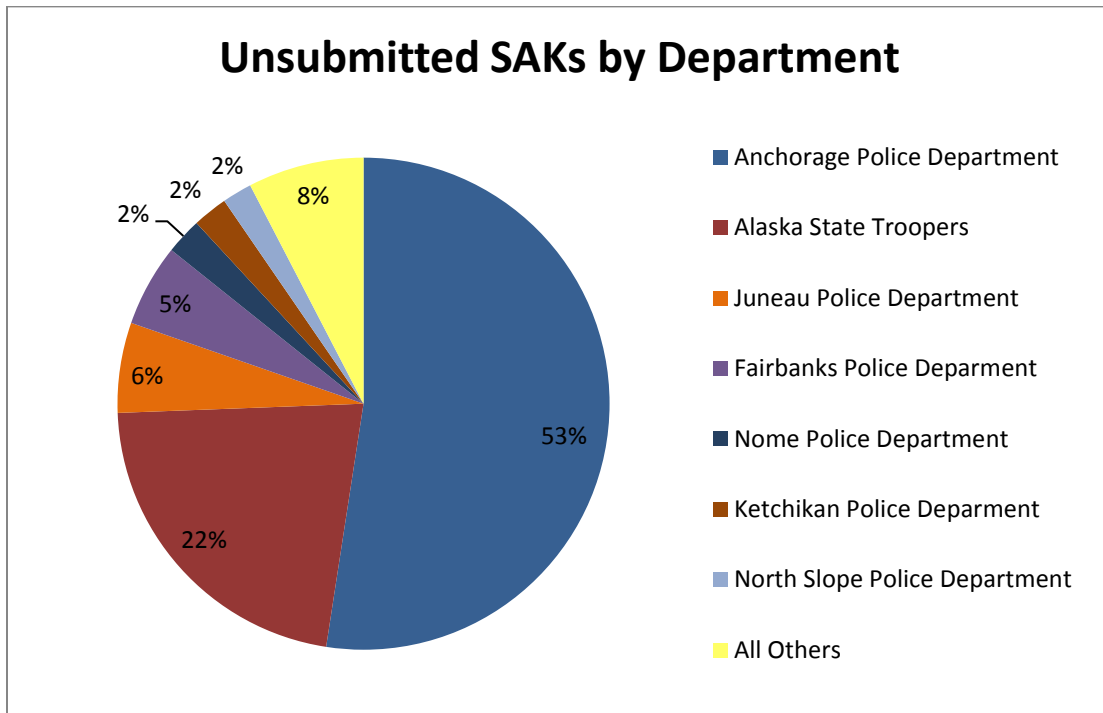


Figure 1: About 94% of SAKs belonged to 7 agencies.¹

¹ All other departments category is comprised of data from the following municipal or tribal police departments: Adak Police Department, Alaska Railroad Police, Alaska State Parks, Anchorage Airport and Fire, Bethel Police Department, Bristol Bay Police Department, Chickaloon Police Department, Cordova Police Department, Craig Police Department, Dillingham Department of Public Safety, Fairbanks Police and Fire, Fort Yukon Police Department, Galena Police Department, Homer Police Department, Hooper Bay Police Department, Kenai Police Department, Ketchikan International Airport Police, King Cove Police Department, Klawock Police Department, Kodiak Police Department, Kotzebue Police Department, Metlakatla Police Department, North Pole Police Department, Palmer Police Department, Petersburg Police Department, Sand Point Department of Public Safety, Seldovia Police Department, Seward Police Department, Sitka Police Department, Skagway Police Department, Soldotna Police Department, Unalaska Department of Public Safety, University Police Department, Anchorage, University Police Department, Fairbanks, Valdez Police Department, Wasilla Police Department, Whittier Police Department, Wrangell Police Department, Yakutat Police Department

Unsubmitted SAKs by Department

<u>Department</u>	<u>Police Custody</u>	<u>Lab Storage</u>	<u>Victim</u>	<u>Anon Victim</u>	<u>Suspect</u>	<u>Total</u>
Anchorage	1708	115	1623	66	200	1823
Alaska State Troopers	0	764	700	8	64	764
Juneau	206	0	176	8	30	206
Fairbanks	191	0	183	9	8	191
Nome	83	0	70	0	13	83
Ketchikan	80	0	61	5	19	80
North Slope	68	4	55	0	17	72

Figure 2: Breakdown of SAKs by 7 departments.

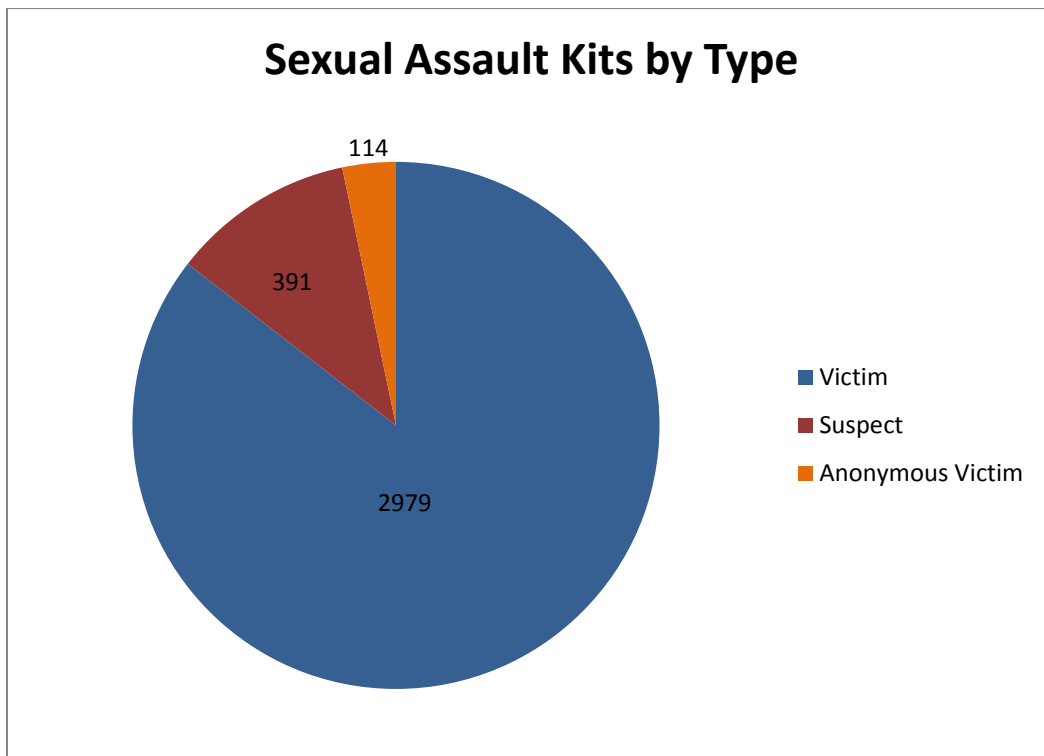


Figure 3: 3,484 previously unsubmitted SAKs were inventoried by 46 law enforcement agencies.

III. Immediate and long term reform efforts

The SCDL consistently evaluates their evidence processing protocols to ensure they remain current in technological methods, scientific research, and best practices. The SCDL continues to improve performance to meet the needs of agencies across the state. For example, the SCDL currently has 66 cases in queue for testing, with testing being completed, on average, within 144 days. Even only a year prior, that average was 334 days, or nearly a year, before testing was completed.

By January 2, 2018, the SCDL will request all agencies to submit newly collected sexual assault kits to the lab, and use the request for laboratory service form to indicate if the kits are submitted for analysis or storage only. The request form has been updated so that the submitting agency must indicate the reason, if analysis is not requested. Feedback on agency decision making in regard to testing is valuable for both local and national research into the issues around untested sexual assault kits. Additionally, capturing an explanation for the agency testing decision will preserve the initial reasoning if circumstances change, and will document a victim's wishes, when applicable, so these are known and respected.

Implementing this strategy will ensure all SAKs are in the possession of the SCDL for long term storage in a facility designed to best maintain the physical integrity of the evidence, including being controlled for temperature, moisture, and possible contaminants.

By January 2, 2018, the SCDL will start tracking the life cycle of all SAKs from distribution to agencies through return to the laboratory. The SCDL is researching mechanisms to track when kits are moved to other locations and costs associated with implementing this technology.

Implementing this strategy will ensure that a statewide inventory can be conducted and reported on with ease in the future. It will also assist in proper product inventory for supply orders, assist with case workflow, and ensure all SAKs are properly routed to the SCDL in a timely manner.

Additionally, the SCDL continues to strive to meet new national best practices for SAKs outlined by the NIJ in a report released August 8, 2017.² The report outlines 35 recommendations to provide guidance in developing victim-centered approaches to responding to sexual assault cases, and to support victims throughout the criminal justice process. The full

²National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach; U.S. Department of Justice, National Institute of Justice. Full report may be found here: <https://www.ncjrs.gov/pdffiles1/nij/250384.pdf>

report is available online for your review (link included in the footnotes). However, highlights of recommendations and the SCDL's efforts in this regard, include:

NIJ Recommendation: Establish minimum standards for a national sexual assault kit (SAK); until that time, states and territories should create a standardized SAK for sexual assault cases that addresses the minimum criteria in the National Adults/Adolescents Protocol.

SCDL Progress:

- Pediatric kit was developed with input from Cathy Baldwin-Johnson MD FAAFP Medical Director, Alaska CARES, Children's Place, and implemented in early 2015.
- Development of current sexual assault evidence collection kits was performed utilizing a survey of forensic labs across the country as well as the current scientific literature at the time in late 2013.

NIJ Recommendation: Guided by the victim history, sexual assault samples should be collected from any victim seeking care as soon as possible and up to five (5) days or longer post-assault. Regardless of the time frame, reimbursement should be provided for the medical-forensic exam.

SCDL Progress:

- The laboratory reviews current research related to sexual assault kit analysis and modifies collection information as needed. Most recently (September 2017) the laboratory has recommended new guidelines calling for collection up to 7 days post-assault, in certain circumstances. An invited group of partners and experts will be meeting to discuss considerations of this recommendation.
- DPS agrees that reimbursement should be provided for all medical-forensic exams conducted. The CDVSA Sexual Assault Response System (SARS) Leadership Team is reviewing this issue in terms of how reimbursements are currently being made in Alaska, are there regional areas or agencies that are not being reimbursed currently, and how other states are covering these costs. CDVSA has discussed this issue with community-based Sexual Assault Response Teams (SART) and with the Violent Crimes Compensation Board (VCCB) for solutions to ensure statewide reimbursement. More review and discussion is needed to developed a clear recommendation for future consideration.

NIJ Recommendation: Examiners should concentrate the collection of evidentiary samples by using no more than two swabs per collection area so as not to dilute the biological sample.

SCDL Progress:

- These changes were implemented with the 2013 kit redesign. The SCDL trained nearly 400 professionals on this new technique in 16 regionally held courses. The SCDL additionally trains between 80-100 professionals each year during biannual Sexual Assault Response Team courses on proper collection of biological samples.

NIJ Recommendation: Law enforcement agencies and laboratories should partner to use one evidence tracking system.

SCDL Progress:

- The SCDL coordinates evidence submission and testing with nearly 50 police agencies across the state. Each police agency utilizes an evidence tracking system of their choice with little overlap in choice software. Without significant legislative changes and the required funds to execute such a mandate, implementing a system to specifically track sexual assault kits is a means to more immediately address tracking issues related to that evidence. The SCDL has researched and heard proposals from multiple tracking software companies and will continue to evaluate the potential to implement a comprehensive tracking system within realistic budgetary parameters.

NIJ Recommendation: Law enforcement agencies should submit the SAK to the laboratory for analysis as soon as possible, ideally, no later than seven (7) business days from the collection of the SAK, or as specified by statute.

SCDL Progress:

- The SCDL recommends law enforcement agencies submit SAKs as soon as possible, and no later than 30 days. Officers completing investigative steps prior to submitting evidence for testing will help ensure a more efficient testing process. This is especially important regarding obtaining necessary standards for analysis. Obtaining samples from consensual partners and suspects is more time consuming in Alaska due to the large, rural geographical areas law enforcement cover. In addition, given that most evidence is sent to the SCDL via the U.S. Postal Service, it is most efficient for all the evidence related to an investigation to arrive together.

NIJ Recommendation: Law enforcement or laboratories should be responsible for the long-term storage of all SAKs, unless applicable law provides otherwise.

SCDL Progress:

- The laboratory recognizes that in the State of Alaska, the optimal solution is for the SCDL to store all sexual assault kits, and has been methodically migrating to this practice. In June 2012, the SCDL started retaining all sexual assault kits submitted to the laboratory. In February 2015, the laboratory started retaining all collected kits submitted from DPS, whether for storage or testing, and plans are currently in process to expand this to all agencies.

NIJ Recommendation: A comprehensive inventory should be conducted to determine the number, status, location, and individual descriptive information (e.g. unique kit identifier, date collected) for all SAKs.

SCDL Progress:

- A comprehensive inventory has been conducted for untested kits, but not for kits tested and returned to law enforcement agencies for storage in compliance with evidence retention standards.

NIJ Recommendation: Law enforcement agencies should perform an annual audit verifying that all SAKs in the property room are present and in their specified location.

SCDL Progress:

- While the SCDL complies with this recommendation, policies for each law enforcement agency may vary. By implementing SAK evidence tracking program, the SCDL will be able to obtain regular inventory lists. This will also reduce the strain on small municipal police departments, as complying with various state requests for data and information has personnel resource impacts.

NIJ Recommendation: All SAKs that the victim has consented to reporting to law enforcement should be submitted to the laboratory for DNA analysis.

SCDL Progress:

- This option is currently being investigated. Data obtained from a current research effort into DPS' untested sexual assault kits conducted by the SAKI workgroup will be vital to understanding the issues and making sound policy decisions that are victim-centered, Alaska specific, and make the most efficient use of state resources. Victim consent is an important aspect also

stressed by the Office on Violence Against Women (OVW).³ In order to ensure victim autonomy, anonymous reporting procedures must be established.

NIJ Recommendation: Law enforcement agencies should establish a system of accountability to ensure the timely follow-up on CODIS⁴ hits.

SCDL Progress:

- The current practice is for the laboratory to notify the investigating officer and Alaska Department of Law. The Department of Law does periodically follow up on hits reported by the laboratory to ensure accountability. It is recommended that this can be improved by incorporating this data into a SAK tracking system.

NIJ Recommendation: 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.

SCDL Progress:

- This is the current practice of the SCDL.

NIJ Recommendation: Forensic laboratories should have an evidence submission policy/protocol that includes prioritization of evidentiary items.

SCDL Progress:

- Cases submitted for biological screening and/or DNA testing are prioritized for analysis. Crimes against a person are given priority over property crimes, with the most severe offenses being placed ahead of other cases. Within a case, items are prioritized based on probative value and likelihood of yielding a DNA profile. The laboratory collaborates with the Department of Law to

³Sexual Assault Kit Testing Initiatives and Non-Investigative Kits White Paper (January 2017). U.S. Department of Justice, Office on Violence Against Women. Full document can be found here: <https://www.justice.gov/ovw/page/file/931391/download>

⁴ CODIS is the acronym for the Combined DNA Index System and is the generic term used to describe the FBI's program of support for criminal justice DNA databases as well as the software used to run these databases. An overview of CODIS can be found at: <https://www.fbi.gov/services/laboratory/biometric-analysis/codis>

ensure that analysis is completed in a timely manner for cases with pending court dates/deadlines or where there is an immediate threat to public safety.⁵

NIJ Recommendation: Laboratories should consider the volume of sexual assault cases and use business process improvement tools to review their input/output, identify where bottlenecks occur, and determine if a high-throughput approach to processing will achieve efficiencies.

SCDL Progress:

- The SCDL continually engages in process improvement. In September 2013, two experts from other state laboratory systems were consulted to assess current processes and recommend improvements. Those recommendations were implemented. Participation in the SAKI program has also provided opportunities to assess improvements in processes, such as *Direct to DNA*.

NIJ Recommendation: Laboratories should consider changing the order of processing the evidence by going to *Direct to DNA* and then, only if needed, proceed to serology.

SCDL Progress:

- The SCDL agrees with this recommendation and will be implementing the *Direct to DNA* process within the next 6 months. As DNA testing has become more sensitive than biological screening tests, some samples can be taken directly to DNA analysis (bypassing screening), allowing for faster processing and potentially more CODIS eligible profiles.

NIJ Recommendation: Laboratories should consider incorporating robotics and/or automation at each step of the DNA process for the most efficient high-throughput approach.

SCDL Progress:

- The laboratory has already implemented a number of robotics and automation at various stages of the analysis.

NIJ Recommendation: Laboratories should consider the use of standardized reporting templates, a paperless system, and specialized software to assist in the interpretation of DNA mixtures, to streamline interpretation and reporting of DNA results.

⁵Laboratory User's Guide (July 2017). State of Alaska Scientific Crime Detection Laboratory. Full document can be found here: <http://dps.alaska.gov/getmedia/c2be0205-f0ec-4ab0-be9e-a0ecfbec98fb/LUG-2017-R1.aspx>

SCDL Progress:

- Specialized software to assist in the interpretation of DNA mixtures has been purchased and is waiting for validation before implementation. It is anticipated that validation and implementation will take up to one year.
- A New Laboratory Information Management System (LIMS) is expected to be implemented January 2018. The new LIMS will allow reporting to be even more standardized than it already is and require less time on the part of the reporting analyst. The new LIMS system will also save analyst time in that some of the bench notes that are captured outside of the current LIMS system, are being incorporated into the LIMS. Standardizing these notes in LIMS will also facilitate faster technical and administrative reviews once a new process flow is established.

NIJ Recommendation: Jurisdictions that do not have evidence retention laws should adopt biological evidence retention policies/protocols that are victim-centered and preserve evidence from uncharged or unsolved reported cases for 50 years or the length of the statute of limitations, whichever is greater.

SCDL Progress:

- Alaska Statute 12.36.200 requires the preservation and retention of biological evidence collected in connection with the investigation of sexual assault in the first degree and sexual abuse of a minor in the first degree offenses for the period of time the case “remains unsolved” or 50 years. Current biological evidence retention laws have created a challenge for agencies to accommodate the secure storage of such evidence. With the proposal to store all sexual assault kits at the SCDL for a time frame that amounts to indefinite, storage space will become a pressing financial issue.

IV. Plan to address untested kits and other options

DPS recommends the following actions:

Option 1: Continue with the SAKI project. The SAKI working group is tasked with developing recommendations that are victim-centered, and are based on research data results and the expertise of a statewide group of representatives. This approach recognizes the complexity of the untested SAK issue, and is designed to produce informed and responsible policy that best meets the needs of Alaskans.

The inventory of SAK conducted as required by SB 55 is not the first effort in this regard. In late 2015, in response to concerns about untested sexual assault kits in Alaska, Governor Walker directed DPS to conduct an inventory of sexual assault kits in possession of the department, and to request other law enforcement agencies to inventory their own kits and report the results to DPS. Of course, participation in the 2015 inventory was voluntary — 28 of 49, or 57% of police departments, including the Alaska State Troopers, were willing and able to comply with this request.

In 2016, at the direction of Governor Walker, DPS applied for and received the SAKI grant funded by the Bureau of Justice Assistance (BJA). SAKI is a three year project funded by a \$1,090,450 grant. The BJA proposal states that while testing is *part* of the goal of the funding, the objective is a systematic evaluation of policies and practices. Therefore, the BJA caps use of funds for testing SAKs at 50% of the grant.⁶ This portion of the budget will be used to send SAKs to an outside private lab to test as many eligible DPS SAKs identified taken in the grant approved time period (1984-2015), until budget funds are expended; it is estimated that 375 SAKs in the Alaska State Trooper inventory of unsubmitted kits will be tested with these funds.

Another objective of the SAKI project is to support the DPS in accomplishing the following grant goals:

- Analyze some of DPS' SAKs as well as the tracking of the identified SAKs' progress from testing through final adjudication;
- Development of a regularly convened multidisciplinary team of experts to identify and address the individual, organizational, and systemic factors that lead to unsubmitted SAKs;
- Systematically review policies and practices related to sexual assault kit collection, storage, and testing;
- Recommend additional effective and sustainable practices for forensic evidence, investigating and prosecuting sexual assault cases, and supporting survivors of sexual assault;
- Hire a cold case sexual assault investigator to follow-up on SAKI cases that receive CODIS hits;
- Assign an assistant district attorney to partner with the investigator to maximize possible prosecutions; and
- Develop a victim notification protocol when testing of old kits will occur.

SAKI isolates the SAKs in DPS jurisdictional control for this project. DPS is the statewide law enforcement entity and often serves as support to other police entities in the state. DPS hopes to

⁶National Sexual Assault Kit Initiative (SAKI) FY 2016 Competitive Grant Announcement. The full document can be found here: <https://www.bja.gov/funding/saki16.pdf>

serve as a pilot project for other local jurisdictions once recommendations and policy changes are implemented. This allows smaller municipal police agencies to benefit from the DPS' learning curve and implement chosen changes in a way that is appropriate for their jurisdiction.

Funds were released for use in January 2017 and include the following progress so far:

- DPS has addressed a number of infrastructure issues in tracking, reporting, and reviewing cases for the project;
- DPS has assembled a multidisciplinary SAKI working group to study the issue of untested kits in Alaska, and develop victim-centered best practices based on national standards and informed by local experts;
- The working group has assembled seven times, developing protocols for case triage and victim notification to ensure all steps of the project are trauma informed. DPS will develop a SAK testing policy based on recommendations made by the SAKI working group;
- A contract has been established for analysis of SAKs beginning in 2018; and
- Working group recommendations are ongoing throughout the life of the project with a final report of recommendations expected by June 30, 2019.

Additionally, DPS applied for and was just awarded the FFY 17 SAKI grant in the amount of \$443,227. The primary goal of this second award is to test some additional SAKs as well as work with a research partner to examine characteristics of cases with unsubmitted SAKs versus submitted SAKs. Examining the correlating characteristics of these cases as well as determining the relationships that exist in decision making and case triage is important to develop data driven public policies.

It should also be understood that due to the time sensitive nature of collecting forensic evidence, exams are authorized with very little case information being collected beforehand; a "just in case" approach is utilized to minimize the inadvertent loss of evidence. As the investigation continues, a more informed decision can be made regarding the evidentiary value of testing for DNA.

The purpose of a forensic examination is not limited to the potential production of DNA evidence. For many victims, there is benefit in the process of actually receiving the examination. During that exam, a victim is connected with a specially trained medical professional who provides a thorough head-to-toe medical evaluation. It includes an in-depth medical interview, photographing of genital and non-genital injuries, testing for sexually transmitted infections, provision of prophylactics, and when appropriate, references to support resources.

For example, if a victim is sexually assault by her boyfriend, the exam is important both from a health aspect for the victim, as well as for evidence collection (e.g. injuries). However, analyzing

the swabs collected from the victim for DNA or the presence of semen does not answer any additional investigative questions in her case. Establishing non-consent will be required to hold the offender accountable, not establishing that semen was present from a previously consensual sexual partner.

With those considerations in mind, an area of significant needed improvement may be in the communication between medical providers or law enforcement officers and the victim. This includes ensuring the victim understands the purpose of the exam as well as why the SAK might be tested or not tested. If later determined that DNA testing is not needed as evidence for the case, there should be effort made to communicate this decision making process to a victim.

From the information gathered, an investigative or prosecutorial decision was made about the value of doing DNA analysis for the majority of previously unsubmitted SAKs. To answer questions about the validity of those decisions, those reasons must be captured. To help accomplish this, as noted above, the SCDL has changed their Request for Lab Services form to include a requirement to indicate those reasons.

It is the recommendation of DPS that the SAKI process be allowed to inform any policy or statutory changes. However, the following information is provided for the legislature to consider, should it chose to act prior to the completion of the SAKI process:

Option 2: Legislate a “test all” requirement for all SAKs.

A) Test all newly collected SAKs

Total cost of this option is estimated to be: \$454,000/year

Several states have implemented various versions of legislation resulting in a “test all” policy. Many of these laws are too new to evaluate for impact and efficacy. However, there is some inherent merit to this approach, as it simplifies the decision making matrix for investigators, prosecutors, and forensic scientists, by removing discretionary power.

Although simplified, a test all policy does not effectively utilize the available expertise to determine the most efficient use of the personnel and monetary resources of the state. This is an important consideration, particularly in a time of significant budget and personnel reductions.

The SCDL would require two additional forensic scientists to keep up with the increased number of SAKs on an ongoing basis under a test all policy. This will require an additional \$204,000 for personnel costs and \$250,000 in chemicals and testing supplies.

B) Test all 3,484 previously unsubmitted SAKs

Using the current contract amounts under the SAKI project, testing the remaining previously unsubmitted SAKs at private labs will cost between \$2.2 and \$3 million.

As previously noted, DPS received SAKI grant funds to test as many of their SAKs as they could after accounting for certain testing criteria. After taking grant funded tests into account, there will be approximately another 2,900 previously unsubmitted SAKs to be tested. The estimated cost of between \$2.2 and \$3 million to test these kits is based on the current contract cost charged to test SAKI eligible kits. The base price of testing is \$745.00 per kit, with a portion of the kits requiring more testing at additional expense. The most expensive add on is Y-STR testing, at a cost of \$ 1040.00.⁷

On average, it takes a forensic scientist one year to test approximately 100 kits. To work through the 2,900 previously unsubmitted kits in approximately 5 years, the SCDL would have to add 6 qualified forensic scientists on a long term non-permanent project basis. This is a specialized field; taking into consideration the national effort to test previously unsubmitted SAKs, forensic scientist with the required skill set are in very high demand. The SCDL has had difficulty hiring and retaining qualified scientists in this field in the recent past and has been instead hiring forensic scientists and providing the specialized training required, which is a costly and long term investment. Accordingly, it would be unlikely that the SCDL would be able to hire the sizeable, qualified staff required for this project. Contracting with a private lab to address just the unsubmitted kits would be more efficient and cost effective overall.

However, it should be noted that contracting with a private lab also brings potential additional unknown costs not accounted for in this estimate. Should a previously untested kit result in legal actions, compensation must be paid for the private lab's involvement in our criminal justice system. This includes consultation fees with the Department of Law to review case work, testimony fees for court either in person or via Skype, and travel fees, as examples.

We are frequently asked about "no cost" testing options. The Federal Bureau of Investigations (FBI), in partnership with the NIJ, has a program to test a limited number of previously unsubmitted SAKs without charge. However, we have been notified that the program is issuing a temporary moratorium on kit submissions, as the current testing queue has reached the project end date. The partnership, and any subsequent continuation of the program, is contingent on federal appropriations for FY 2018; funding decisions and program decisions are unknown at this time.

⁷ Price range and estimate for the cost of testing 2,900 kits is based on the current DPS contract with Bode Cellmark Forensics; additional contract detail is available by contacting DPS.

Even assuming the program continues and resumes accepting submissions, a participating agency could send no more than 30 unsubmitted SAKs per request⁸. Participation in the program could be helpful in testing a portion of Alaska's previously unsubmitted SAKs, particularly for agencies that have small inventories. However, for the agencies with the largest numbers of kits, assuming a modest 3-4 month turnaround between batches, exclusive submission to the FBI would be a very lengthy process. For APD, the agency with the most unsubmitted kits, it would take an estimated 15-20 years to test all kits in that fashion.

V. Conclusion

In summary, DPS, with the support of Governor Walker, will continue to develop a data informed best practices plan for the testing and retention of sexual assault kits, based on the work of the SAKI multidisciplinary work group. A plan, once developed, will be victim-centered, but will also utilize available expertise to maximize efficient use of personnel and financial resources. Support from the legislature in this process is of the utmost importance, and the diligent interest shown by our legislative partners is greatly appreciated.

I hope this summary report proves to be a helpful guide to this complex subject; as always, we are available to answer any further questions you may have, or discuss any concerns.

Sincerely,

A handwritten signature in black ink, appearing to be 'Walt Monegan', with a horizontal line extending to the right.

Walt Monegan
Commissioner

⁸An overview of the initiative can be found here: <https://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/nij-fbi-sak-initiative.aspx>