

2015 Preliminary Report

Washington
Sexual Assault Forensic Examination
Best Practices
Task Force

November 30, 2015

This document is the preliminary report to the Washington State Legislature and Governor as directed by SHB 1068, 2015 Legislature. For more information on the

Task Force's activities, please visit

<http://leg.wa.gov/JointCommittees/USAEK/Pages/default.aspx>.



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Part I. Objectives of the SAFE Best Practices Task Force.

The Sexual Assault Forensic Examination (SAFE) Best Practices Task Force, also referred to in this report as "Task Force," was created by Substitute House Bill 1068 in the 2015 legislative session. The Task Force is comprised of eighteen voting members representing a variety of perspectives and backgrounds in policy, law enforcement, forensics, prosecution, criminal defense, crime victims' advocacy and support, hospitals, education, and local governments.

The Task Force is required to review best practice models for managing all aspects of sexual assault examinations and for reducing the number of untested sexual assault forensic examination (SAFE) kits in Washington. To that end, the duties of the Task Force include, but are not limited to:

- Determining the number of untested SAFE kits in Washington;
- Researching the locations where the untested SAFE kits are stored;
- Researching, reviewing, and making recommendations regarding legislative policy options for reducing the number of untested SAFE kits;
- Researching in-state and out-of-state best practice models for collaborative responses to victims of sexual assault (from the point the SAFE kit is collected to the conclusion of the investigation), and providing recommendations regarding any existing gaps in Washington and resources that may be necessary to address those gaps; and
- Researching, identifying, and making recommendations for securing non-state funding for testing the SAFE kits, and reporting on progress made toward securing such funding.

The Task Force membership is undertaking its mission with a shared belief that Washington can improve the care of sexual assault survivors, do a better job coordinating multidisciplinary efforts to obtain justice, and reduce the number of sexual assaults. To achieve this, the Task Force aims to undertake its mission by working openly and collaboratively and by viewing the process through the eyes of sexual assault survivors.

The Task Force must meet at least twice annually until it expires on June 30, 2018. This preliminary report is due to the Legislature and Governor by December 1, 2015. A full report is due on September 30, 2016, and by September 30th of each subsequent year.

Part II: Unsubmitted SAFE Kits.

After a person has been the victim of a sexual assault, the person may undergo a forensic examination for the purpose of collecting any evidence that may have been left behind during the assault. The doctor or nurse conducting the examination preserves the evidence using a sexual assault forensic examination kit, also commonly referred to as a SAFE kit, sexual assault kit (SAK), or rape kit. After the examination, custody of the SAFE kit may be transferred to a law enforcement agency to be utilized during the investigation and subsequent criminal prosecution. Historically, law enforcement agencies and prosecutors have had the discretion to send SAFE kits to forensic laboratories for testing, but were not required to do so.

When a SAFE kits is tested, it can be a powerful tool to solve and prevent crime. Forensic evidence derived from a SAFE kit can identify an unknown assailant or confirm the presence of a known suspect. It can connect a suspect to other sexual assaults and crimes. It can also establish the innocence of a wrongly convicted person.

In recent years, it has come to light that many jurisdictions across the country are in custody of thousands of untested SAFE kits. There are two distinct but related categories of untested SAFE kits. The first includes SAFE kits in police evidence storage facilities, where kits are booked into evidence, but a detective and/or prosecutor does not



request forensic analysis. For the purposes of this report, this category will be referred to as unsubmitted SAFE kits. The second includes SAFE kits submitted to crime lab facilities for testing but remain untested due to capacity issues. For the purposes of this report, this category will be referred to as a testing backlog.

In Washington, local jurisdictions utilize the Washington State Patrol (WSP) Crime Laboratory for forensic testing. As of November 2015, there is not a considerable testing backlog. However, some cities have reported large numbers of unsubmitted SAFE kits. The exact number of unsubmitted SAFE kits statewide is unknown. Most jurisdictions do not have systems for tracking or counting unsubmitted SAFE kits.

There have been many reasons cited for not submitting SAFE kits for testing. For example, an individual victim might identify his or her assailant, and the assailant claims the interaction was consensual. In such cases, since the alleged assailant is known, it has been previously viewed as unnecessary to test a SAFE kit. In other cases, law enforcement might assess the case and decide it is unlikely to make an arrest regardless of the results of testing. Some jurisdictions often lack necessary resources to test all SAFE kits, and those jurisdictions have prioritized testing based on specific circumstances.

Jurisdictions in other states that have begun to count, track, and test all SAFE kits are seeing powerful results. In Cleveland, Ohio, 8,115 SAFE kits have been tested as of August 1, 2015, which have resulted in approximately 3,030 hits in the federal Combined DNA Index System (CODIS).¹ Furthermore, testing has identified more than 207 individual serial rape suspects responsible for at least 600 attacks in the Cleveland area.² Many advocates argue that these results justify a policy for testing all SAFE kits regardless of the circumstances of individual cases.

Whether or not testing all SAFE kits would generate the same results in Washington is unknown. There is limited available information about unsubmitted SAFE kits and the current status of related investigations. In an effort to fill the information gap and evaluate possible solutions, the Legislature created the Task Force and made other policy changes with the passage of SHB 1068 (Chapter 247, Laws of 2015).

Part III. New Requirements for Testing Kits in Washington.

In addition to forming the Task Force, SHB 1068 made key policy changes relating to SAFE kits. The bill requires a law enforcement agency to submit a SAFE kit to the WSP Crime Laboratory within 30 days of receiving it, provided that the victim has consented to the testing. Consent is not a condition of submission if the SAFE kit was collected from a non-emancipated minor. The new requirement to submit SAFE kits is prospective as of July 24, 2015, meaning it does not apply to previously unsubmitted SAFE kits.

The WSP Crime Laboratory must, subject to available funding, give priority for testing SAFE kits in the following order:

- active investigations and cases with impending court dates;
- active investigations where public safety is an immediate concern;
- violent crimes investigations, including active sexual assault investigations;
- post-conviction cases; and
- other criminal investigations and nonactive investigations, such as previously unsubmitted SAFE kits or recently collected SAFE kits that the submitting agency has determined to be lower priority based on their initial investigation.

¹ "What other places starting to test rape kits can learn from Ohio," Rachel Dissell, The Plain Dealer, September 10, 2015, see http://www.cleveland.com/rape-kits/index.ssf/2015/09/what_other_cities_about_to_test.html (accessed on November 4, 2015).

² Id.; "Serial rapists responsible for at least 600 attacks linked to untested evidence, authorities believe," Rachel Dissell, The Plain Dealer, March 21, 2015, see http://www.cleveland.com/rape-kits/index.ssf/2015/03/authorities_believe_serial_rap.html (accessed on November 4, 2015).



The WSP is required to compile information relating to the requests for testing submitted by law enforcement and report the following information annually to the Legislature and the Governor: The number of requests for testing SAFE kits and the law enforcement agencies that submitted those requests; and the progress made toward testing the SAFE kits, including the status of requests for testing made by each law enforcement agency.

This new requirement to submit all kits for testing should, if complied with, halt the potentially growing number of unsubmitted SAFE kits. However, it is likely to create a testing backlog, and it does not address the issue of previously unsubmitted SAFE kits.

Part IV. Task Force Activities.

Election of Co-Chairs. The Task Force elected Rep. Orwall and Rep. McCabe as co-chairs.

Meetings. The Task Force convened two meetings during the 2015 legislative interim, occurring on September 29 and November 13. Both meetings were open to the public.

The Task Force received testimony from the following experts on the following topics:

- Assistant Chief Mary Lentschke from the Houston Police Department and Irma Rios, Director of the Forensic Analysis Division at the Houston Forensic Science Center, on the challenges faced and overcome when testing previously unsubmitted SAFE kits and conducting related investigations;
- Jayann Sepich, Founder of DNA Saves, on sexual assault policy reform and the impact of mandatory collection of offender DNA upon arrest; and
- Terri Stewart, SANE Program Coordinator and Medical Training Coordinator at the Harborview Center for Sexual Assault and Traumatic Stress, on the current and best practices in Hospitals for conducting forensic examinations and supporting victims.

The Task Force reserved most of its time for roundtable discussion among its experienced membership. The Task Force explored the following areas of concern:

- Challenges associated with inventorying, tracking, and testing all SAFE kits in the possession of various entities across the state;
- Challenges with managing investigations of cases tied to previously unsubmitted SAFE kits;
- Availability of training related to supporting sexual assault victims;
- Role of victim advocates in sexual assault investigations;
- Monetary and other resource issues; and
- Current gaps and barriers to effectively responding to sexual assaults in Washington.

Memphis SAK Summit. The Task Force received an invitation to attend the Sexual Assault Kit Summit in Memphis, Tennessee on October 19-20. Four members, one non-member representing a member organization, and one staff member attended the Summit.

Several jurisdictions were represented at the Summit, including, for example, Memphis, Houston, Cleveland, New York City, Detroit, and Portland. Attendees met with peers of their profession which included law enforcement, prosecutors, victim advocates, laboratories, and administration. The Summit attendees discussed best practices in evidence collection, testing, investigation, administration, prosecution, community relations, and victim notification, advocacy, and treatment. Jurisdictions discussed the development of consistent measurement practices



to allow for simplified and clear reporting of individual jurisdiction and national progress toward testing SAFE kits, identifying perpetrators, and prosecuting cases.

Part V. Future Work Plan.

The Task Force developed a work plan for 2016. Members are tasked with taking action on various implementation goals and research projects in the following areas:

- 1. Evaluate approaches to inventorying and tracking SAFE kits in Washington.**
 - a. Review and implement technology for tracking of SAFE kits statewide.
 - b. Evaluate categories of SAFE kits.
 - c. Consider prioritization models for testing previously unsubmitted kits.
- 2. Evaluate the funding gaps and possible funding sources.**
 - a. Activities and entities requiring funding.
 - i. Resources for victims.
 - ii. Sexual assault nurse examiner services.
 - iii. Community advocates.
 - iv. Crime laboratory.
 - v. Investigations and possible pilot programs or regional grant programs.
 - b. Possible sources.
 - i. Public-private partnerships.
 - ii. Federal funds.
 - iii. State funds.
 - iv. FBI/NIJ testing program for previously unsubmitted kits.
 - v. Capitalizing on or reorganizing current resources.
- 3. Review current practices and consider best practice models for responding to sexual assault.**
 - a. Hospitals.
 - b. Prosecutors.
 - c. Law enforcement.
 - d. Collaboration between entities.
 - e. Victim notification.
- 4. Consider standardized practices.**
 - a. Guidelines for submitting SAFE kits to the crime laboratory for testing.
 - b. Centralized resources and services to rural areas.
 - c. Community protocols.
 - d. Retention and storage of kits.
 - e. Consider the state's next steps after testing of all SAFE kits (arrestee DNA collection).
- 5. Promote and fund specialized training for responding to sexual assaults.**
 - a. Specialized training.
 - i. Hospitals.
 - ii. Law enforcement.
 - iii. Prosecutors.
 - iv. Educators.
 - b. Victim-centered approach.
- 6. Conduct public outreach and education.**
 - a. Reaching out to small agencies across the state.
 - b. Promoting a shift in culture in responding to sexual assault.
 - c. Managing expectations and curtailing the CSI effect.

The Task Force will focus its efforts on assessing the current inventory of unsubmitted SAFE kits and possible new testing backlog, testing all SAFE kits in Washington, and reviewing current practices and best practices for responding to sexual assaults. The Task Force will collaborate with its member organizations and local jurisdictions on non-legislative solutions and evaluate the need for legislative solutions in the 2017 legislative session.