



Sexual Assault Forensic Examination (SAFE) Best Practice Advisory Group

June 9, 2021 Virtual Meeting

Meeting Notes

Members in Attendance: Flora Diaz, Sen. Manka Dhingra, Michelle Dixon-Wall, Alicia Eyer, Leah Griffin, Josalun Hasz (on behalf of Sen. Ann Rivers), Kate Hemann, Ali Hohman, Rep. Gina Mosbrucker, Rep. Tina Orwall, Ben Santos, Nicole Stevens, Terri Stewart, Rick Torrance

Participants: Antoinette Bonsignore, Jennifer Burkdoll, Sahar Fathi, Simone Grant, Adam Hall, Marty Hill, Gursneh Kaur, Heather McLeod, Nicole Minas, Kelly Richburg, Sgt. Pamela St. John, Tara Wolfe

1. Call to Order

Fourteen members (or designees) were present, which is a quorum. By unanimous consent, the Advisory Group adopted the agenda for June 9, 2021. By unanimous consent, the Advisory Group approved the notes from the April 28, 2021 meeting.

2. Updates

Kristina Hoffman, though unable to make the meeting, provided the attached slides on the progress of testing sexual assault kits (SAK).

Kate Hemann noted that the Attorney General's Office received a one-year no-cost extension of the federal Sexual Assault Kit Initiative (SAKI) grant due to the COVID-19 pandemic. She also mentioned that she is working with Washington Association of Sheriffs and Police Chiefs to distribute funds to local agencies for refrigerators for SAK storage.

Regarding the lawfully owed DNA project, there were seven CODIS matches in March, as well as one in April, and three offender hits. The three offender hits involved an offense that was not chargeable, a solved robbery, and a 2013 home invasion in Los Angeles. Simone Grant, a new SAKI investigator with the Attorney General's Office, is tracking the hits. In addition, one offender required to provide DNA refused to do so – the case is being reviewed by Stevens County.

3. Report-Out: Highlights from the 2021 SAKI Assembly of Cities

Several attendees participated in the SAKI Assembly of Cities virtual conference hosted by the National SAKI Training and Technical Assistance Program from April 27-29. Antoinette Bonsignore put together a guide to the conference sessions. Staff will check back with conference organizers about sharing resources from the conference with the Advisory Group.

Marty Hill reflected on how impactful it was to hear from a panel of three survivors about their experiences being notified about changes in the status of their cases. He also described finding value in a session about understanding and responding to secondary trauma experienced by professionals working in the sexual assault field.

Marty Hill's comments about secondary trauma resonated with a number of Advisory Group participants. Ben Santos noted that the King County Prosecuting Attorney's Office (KCPAO) developed a [wellness survey](#) for staff in the sexual assault and domestic violence units, which was well-received and helps when asking for resources for staff support. KCPAO has also been training supervisors about the importance of self-care and encouraging staff in weekly meetings to exercise self-care. These measures were instituted because deputy prosecuting attorneys are facing double the number of cases as they had pre-COVID. Given the backlog of cases, it is difficult for prosecutors to spend time with victims and build relationships. Michelle Dixon-Wall also noted the importance of normalizing conversations about vicarious trauma and self-care, beginning with defining self-care and acknowledging that vicarious trauma cannot be prevented, only mitigated.

Ben Santos also expressed concern because some of the best detectives, prosecutors, and paralegals are beginning to leave this work. Sergeant Pamela St. John, newly assigned to the Sexual Assault Unit at the Seattle Police Department, also noted that staffing is minimal at this point. Terri Stewart remarked that Sexual Assault Nurse Examiners (SANEs) are also burning out due to COVID and hospitals are facing staffing issues.

Participants shared resources, including the work of Laura van Dernoot Lipsky (see: <https://traumastewardship.com/>) and the *Compassion Fatigue Workbook* by Francoise Mathieu. Ben Santos volunteered to reach out to his colleague who developed the wellness survey about speaking to the task force at a future meeting.

4. Discussion on Public Apology

The Advisory Group picked up on a conversation the group started at the end of 2019 regarding issuing a public apology to sexual assault survivors for the state's failures to test SAKs prior to reforms in recent years. The conversation is resuming now because all SAKs will be tested by the end of 2021. Representatives Orwall and Mosbrucker and Leah Griffin, in particular, have been working on this issue for some time. Leah Griffin expressed concern about an apology featuring Reps. Orwall and Mosbrucker, as they are leading efforts to fix the problem. However, Rep. Mosbrucker stated that she didn't mind owning that the state failed sexual assault survivors and stressed the importance of taking responsibility. Rep. Orwall indicated that she envisioned describing discovering the atrocity and sharing the progress made to fix the broken system. Rep. Mosbrucker expressed the need to also share information about resources, so survivors know where to turn to learn the status of their SAK. Terri Stewart added that it would be useful to include information about where people can go for services following a sexual assault.

Michelle Dixon-Wall shared survivor feedback that she gathered when the Advisory Group previously discussed the public apology. She indicated that it is essential to describe the plan of action and what has changed, not just issue a subjective apology. Kate Hemann echoed this view, adding that the public apology may generate mistrust if it does not address the systems improvements that have been made to ensure that history does not repeat itself. Michelle Dixon-Wall also stressed the importance of being transparent about the CODIS hits that have occurred since the testing of the SAK backlog – what trauma could have been avoided if the kits were tested initially?

In addition to a video, participants discussed writing an op-ed and amplifying the message with a Twitter Town Hall.

Next Steps:

- The legislators will reach out to their communications teams to develop a budget for producing and distributing this announcement.
- Kate Hemann and staff will discuss the AGO role internally.
- Rick Torrance will follow-up with information about any resources that OCVA may be able to provide.

5. Discussion on Reimbursement for Sexual Assault Exams Across State Lines

Tara Wolfe provided information that the Office of Crime Victims Advocacy (OCVA) gathered about payment for forensic exams across state lines (see attached). Obtaining reimbursement for these exams can be challenging, as every state runs their Crime Victims Compensation (CVC) program differently. The federal formula grant program, STOP Violence Against Women, only provides grants to states that incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault. But beyond that, states may opt to pay for different expenses and structure their programs differently. Despite federal and state rules, victims may be billed, insurance may be billed, or the hospital may write off the expense rather than deal with the hassle of obtaining reimbursement across state lines. Terri Stewart noted that this is particularly a problem in border areas. Senator Dhingra asked about the scope of this issue.

Tara Wolfe raised several potential remedies, including a federal fix, pact between states to grant reciprocity, or a reform to Washington's program, administered by the Department of Labor and Industries, to pay wherever the crime takes place. CVC is currently prohibited from paying for exams if the assault occurred out of state. If the state were to pay for exams for residents who were assaulted out of state, it would be necessary to obtain residency information. Currently, the CVC inquires about where the crime occurred, but not where the victim resides. Hospitals may gather that information, but may not be able to release it.

Next Steps:

- Leah Griffin volunteered to reach out to her Congressional contacts about a federal fix.
- Tara Wolfe will follow-up with the Crime Victims Compensation Program to find out if they can revise their form to obtain the address of the victim.
- Alicia Eyler will reach out to hospitals to attempt to get data from a wider sample of hospitals regarding how often they face this problem.
- Michelle Dixon-Wall will consult with the National Alliance to End Sexual Violence and state coalitions to learn if any information has been gathered about how other states are handling this issue.

6. Discussion on Case Attrition

Antoinette Bonsignore shared an idea to expand case reviews beyond the lens of training to assess why cases are not being charged. Kate Hemann asked about the objectives of additional review and whether closed or open cases would be reviewed. Ben Santos noted that the approach would differ depending on whether the focus was on enhancing the investigation of that particular case prior to a charging decision (e.g., considering additional people to interview) vs. improving future investigations. Ben Santos also expressed concern about any case reviews of open cases. He also questioned how meaningful a review of open cases would be if the objective is to determine why a charging decision was not made.

Antoinette Bonsignore indicated that the objective of assessing why cases are being declined could potentially be met by reviewing charging/decline memos for closed cases. Reviewers would bring an external perspective, determining if there are any patterns in declined cases, such as alcohol, drug use, or other “risky behavior” by the victim, victims’ membership in a marginalized group, or victim characterized as “not cooperative”. Leah Griffin also shared a survivor perspective that alcohol- and drug-facilitated sexual assaults are under-charged. In an expanded program, reviewers could make broader recommendations than CJTC’s case review program, which is limited to training recommendations.

7. Discussion of Future Agenda Items/Potential Recommendations to Explore

Terri Stewart reminded the Advisory Group that Washington’s federal funding for SANE training expires on September 30, 2021. The training budget is \$200,000 to \$250,000 annually. SANE training has not received consistent state funding since 2008-2009. Representative Mosbrucker indicated that she would like to bring forward a SANE proposal next legislative session with input from the Advisory Group. Terri Stewart offered to reach out to SANEs, particularly those who practice in small, rural communities, to provide feedback during a roundtable discussion at the next meeting. Michelle Dixon-Wall noted that sexual assault coalitions in many other states have a technical assistance provider specifically to address SANE issues.

Other issues that were raised for future exploration:

- Survivor standing in court
- Material witness warrants, which can result in survivors being arrested/jailed
- Long wait times for cases to progress through the courts
- DOJ’s [innovative prosecution grant program](#), which potentially could be used to fund a public education campaign aimed at dispelling rape myths

ANECDOTES

Sexual Assault Examination Payments Across State Lines
Washington State Department of Commerce, Office of Crime Victims Advocacy
May 2021

FOLLOW UP

As part of OCVA's response to the issue of sexual assault exam payments across state lines, Tara Wolfe, Program Manager for the Sexual Assault Medical Forensic Examination VOCA Initiative, contacted grantees in May 2021 to collect information about their experiences regarding reimbursements for sexual assault exams where the patient had been assaulted outside the state of Washington.

Four grantees responded, representing large sexual assault nurse examiner (SANE) programs in eastern and western Washington. Responses include:

- Instances range from "several" to "quite a lot."
- All respondents said their hospital/clinic usually or always "writes off" costs. For example, as charity care.
- For hospitals/clinics willing and able to attempt reimbursement by another state, results are varied:
 - Oregon: rarely
 - Nevada: refused
 - Idaho: never
 - Montana: never
 - California: no response from victim/witness staff (local jurisdiction assistance required)
 - Out of country: no successful attempts known
- This is an issue especially for programs near the border of other states or countries, including Canada. This may also affect programs near ports, including airplane or cruise ship.

PROBLEM

This is a problem because it increases the chance that a victim will be billed for the sexual assault exam. It may also create a disincentive for hospitals/clinics to offer sexual assault exams knowing that payments across state lines are rarely successful. Finally, it is not within the spirit of the law to create a confusing web of different guidelines from state to state resulting in no reimbursement for this vital service.

CONTEXT

Hospital/clinic billing procedures are complicated. The nurses and managers who responded to the questionnaire are aware that the Washington State crime victims compensation program does not reimburse for these exams and the difficulty in obtaining reimbursements from other states. For

more details regarding the billing process, it is recommended that hospital/clinic billing staff be consulted.

REMINDER

Per the federal law Violence Against Women Act, victims do not have to make a report to law enforcement in order to obtain a sexual assault exam and should not be billed for this service. All states and territories must certify that they are in [compliance](#) with these requirements in order to remain eligible for STOP Grant funds from the federal government Department of Justice, Office on Violence Against Women. Washington State certifies compliance and offers [information](#) for sexual assault victims and service providers.

OCVA Sexual Assault Medical Forensic Examination VOCA Initiative Grantees:

Providence Intervention Center for Assault and Abuse, Snohomish County
Lutheran Community Services Northwest Spokane, Spokane County
Partners with Families and Children, Spokane County
Mary Bridge Children's Hospital, Pierce County
Harborview Abuse and Trauma Center, King County
Providence St. Peter Sexual Assault Clinic, Thurston County
Children of the River, Puyallup Tribe of Indians

CONTACT

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MEMO

Sexual Assault Examination Payments Across State Lines
Washington State Department of Commerce, Office of Crime Victims Advocacy
November 2019

DESCRIPTION

A great deal of confusion surrounds the payment for sexual assault medical forensic exams across state lines. Who should pay for these exams? How should payment be handled? This is a known problem and the [International Association of Forensic Nurses](#), a national training and technical assistance provider, is assessing and addressing the issue. In the meantime, possible strategies in Washington State to address the gap in payment for sexual assault forensic examinations when the examination occurs in Washington State but the assault occurred in different state include:

- Amend state law. [RCW 7.68.170](#) requires the state to pay for costs incurred by a hospital or other emergency medical facility for the examination of the victim of a sexual assault. The [Crime Victim Compensation \(CVC\) program](#) at the Department of Labor and Industries makes these payments. However, per RCW 7.68.020 section 6, CVC only pays for examinations for assaults that occur in Washington State. Specifically, section 6 defines criminal acts as acts that are "...committed or attempted in this state." Add an exception to section 6 that requires CVC to cover sexual assault examination costs regardless of where the assault occurred. If the assault occurred outside the state, and the victim obtained an exam in Washington State, then Washington State CVC may attempt to seek reimbursement from the state where the assault occurred.
- Amend federal law. [USC 3772\(a\)\(1\)](#) states that sexual assault survivors have the right "...not to be prevented from, or charged for, receiving a medical forensic examination." However, it does not address which state is responsible for payment when the assault occurs in one state and the examination in another. Require state Crime Victim Compensation programs to cover all sexual assault forensic examinations regardless of where the assault occurred.

Additionally, more outreach and communication between the Department of Labor & Industries Crime Victims Compensation program, medical staff, and victims would reduce additional trauma for victims of sexual assault by reducing improper billing procedures by hospitals and potential out of pocket costs for victims:

- Provide additional staff and funding to the CVC program to conduct outreach and education about CVC benefits and reimbursements; liaison between hospital billing departments, insurance, and sexual assault victims; and coordinate with other states' compensation programs.

BACKGROUND

Washington State law prohibits victims from incurring out of pocket costs for sexual assault examinations:

RCW 7.68.170: No costs incurred by a hospital or other emergency medical facility for the examination of the victim of a sexual assault, when such examination is performed for the purposes of gathering evidence for possible prosecution, shall be billed or charged directly or indirectly to the victim of such assault. Such costs shall be paid by the state.

WAC 296-30-170: Who is required to pay for sexual assault examinations? When a sexual assault examination is performed for the purpose of gathering evidence for possible prosecution, the costs of the examination must be billed to the crime victims compensation program. We are the primary payer of this benefit. The client is not required to file an application with us to receive this benefit and may not be billed for these costs. If the examination includes treatment costs or the client will require follow-up treatment, an application for benefits must be filed with us for these services to be considered for payment.

The federal formula grant program, STOP Violence Against Women, administered by Department of Commerce has a similar mandate:

A state is not entitled to funds under the STOP Program unless the state or another governmental entity “incurs the full out-of-pocket cost of forensic medical exams for victims of sexual assault” and “coordinates with health care providers in the region to notify victims of sexual assault of the availability of rape exams at no cost to the victims.”

A person who is sexually assaulted outside of the state and obtains an exam in Washington State will not have their sexual assault exam paid for by the Crime Victims Compensation program administered by the Department of Labor & Industries. State law limits victim compensation to crimes occurring within the state. Furthermore, CVC may pay for exams obtained in other states for sexual assaults that occurred in Washington State only if the medical facility in the other state agrees to become a Washington State “crime victim provider” and accept Department of Labor & Industries payment rates.

The Office of Crime Victims Advocacy (OCVA) is committed to ensuring that victims do not incur out of pocket costs for a sexual assault exam. OCVA will continue to identify fund sources and work with Department of Labor & Industries Crime Victim Compensation program, medical facilities, and victims to cover the cost of payments across state lines. However, this arrangement cannot be guaranteed in perpetuity. A permanent fix regarding sexual assault examination payments across state lines is still needed.

KEY STAKEHOLDERS

Washington State Department of Labor & Industries
Congressman Derek Kilmer
Senator Patty Murray
Representative Tina Orwall
Representative Gina Mosbrucker
Washington State Hospital Association
Washington Coalition of Sexual Assault Programs

CONTACT

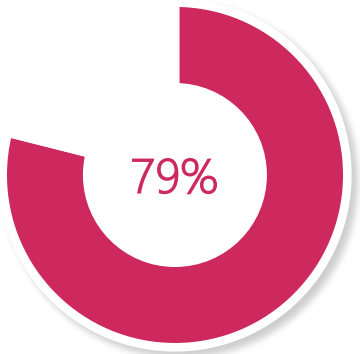
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SAK Testing Progress

- June 2021-

1. FACILITATE THE TESTING OF 9,232 HISTORICAL SAKS BY DEC. 1, 2021



Phase 1: Outsource

As of 5/31/21, 7,289 SAKs have been shipped to and received by one of 3 vendor labs. 1,943 SAKs remain to outsource over the next 6 months.



Phase 2: Test

As of 5/31/21, 5,844 SAKs have been tested by the vendor labs and WSP now has a copy of the results and their lab report for review. The results then need to be reviewed by WSP, and if eligible, uploaded into CODIS.

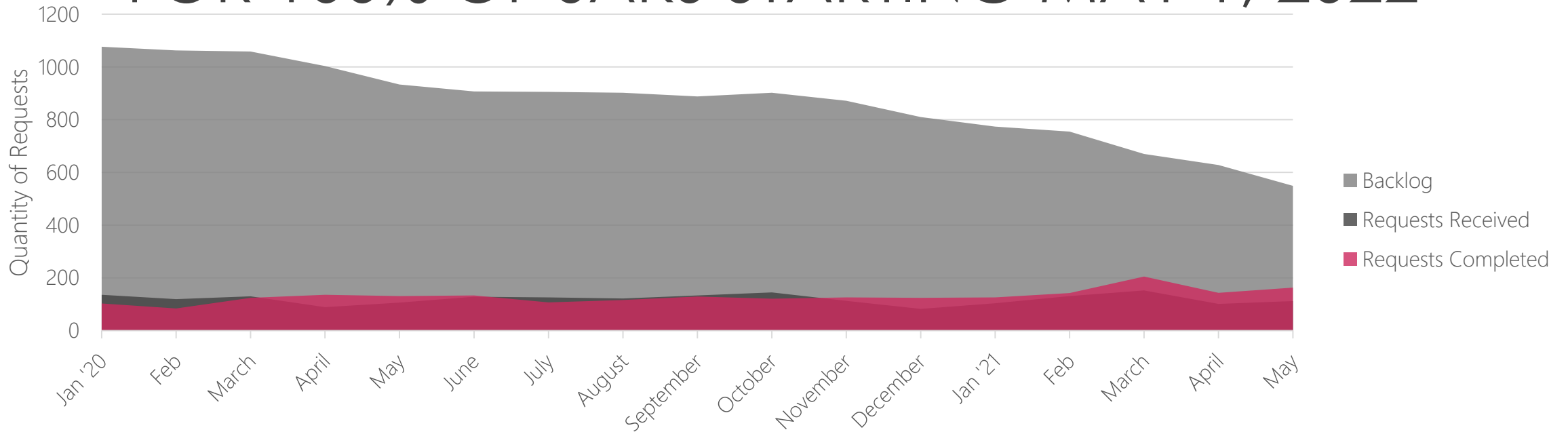


Phase 3: Review

As of 5/31/21, 4,419 SAKs have had their test results reviewed by WSP and any eligible DNA profiles have been uploaded to CODIS. 1,782 DNA profiles have been uploaded, resulting in 668 hits to individuals, and 138 hits to another case.



2. ACHIEVE A TURNAROUND TIME OF ≤45 DAYS FOR 100% OF SAKS STARTING MAY 1, 2022



SAKs that are submitted as part of active investigations ("STR-SAKs") are prioritized for testing. These kits are tested in-house by the regional WSP DNA labs.

54%

Had testing completed within 45 days or less in 2021 (YTD)



8 new scientists & 2 technicians

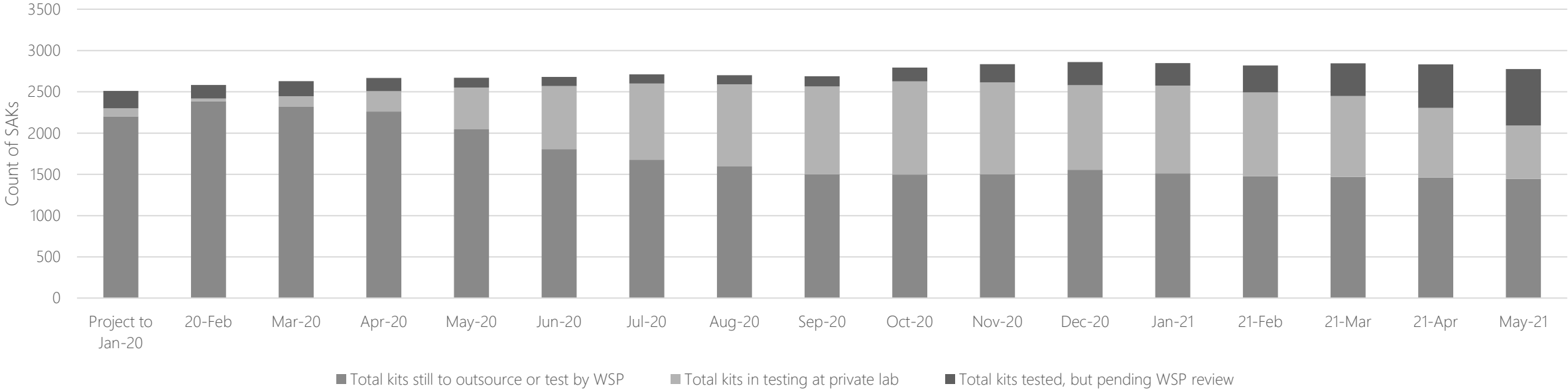


May 2022 Deadline



TESTING OF SAK-2 KITS IN WA

SAK-2 Backlog Over Time



SAKs that are submitted as part of inactive investigations ("SAK-2s") are tested in-house by the new WSP high-throughput lab or are outsourced to a vendor lab.

48% Of backlog has been outsourced and is in progress
25% has been tested but awaiting review



8 new scientists & 1 technician



May 2022 Deadline

