

Annual Report to the Legislature and Governor

Washington Sexual Assault Forensic Examination
Best Practices Advisory Group

December 2021



This document is the annual report to the Washington State Legislature and Governor as directed by Substitute House Bill 1166 (2019). For more information on the Sexual Assault Forensic Examination Best Practices Advisory Group's activities, please visit <https://www.atg.wa.gov/task-forces#SAFE>.



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Washington House of Representatives

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Washington Senate (Served through Sept. 2021)

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EXECUTIVE SUMMARY

To bring justice to sexual assault survivors, in 2015, the Washington State Legislature instituted reforms to the state's response to sexual assault, including coordinating multidisciplinary efforts to address the backlog of untested sexual assault kits (SAKs), which preserve evidence left behind from an assault. To that end, the Legislature established the Sexual Assault Forensic Examination Best Practices Advisory Group (the Advisory Group) to reduce the number of untested SAKs in Washington and to review best practice models for managing all aspects of sexual assault investigations. This report addresses the progress the Advisory Group has made in 2021, offers recommendations for legislative action, and outlines the Advisory Group's plans for 2022. The Advisory Group's authorizing language expires on December 31, 2021; however, given that work remains to improve the response to sexual assault, members recommended continuing the group.



The Advisory Group's 2020 recommendation, and other policy priorities, were acted upon.

- ✓ Various sex offense statutes no longer contain a marital requirement. This change prevented out-of-state offenders from avoiding registering as sex offenders upon moving to Washington.
- ✓ As part of the 2021 Legislative Session, Advisory Group members advised on House Bill 1109, which requires law enforcement agencies and prosecutors' offices to provide status updates for cases involving previously untested SAKs, expands the Criminal Justice Training Commission's case review program, and enhances the "Survivor Bill of Rights."



The Advisory Group's 2021 Activities

Monitored the SAK Supply Chain and Testing Progress

- Tracked the supply and distribution of SAKs across the state and identified several ongoing issues, as well as new COVID-related strain on the supply chain.
- Monitored the progress of testing the SAK backlog. **Washington is over halfway through testing the backlog** – 5,129 of 9,232 SAKs have been tested since 2016. 2,099 new DNA profiles have been uploaded into the database and there were 794 "hits," meaning the DNA profile from the SAK matched a DNA profile in the database.¹

Published Guidelines for Victim Notification

- Published best practice guidelines for notifying victims about developments in their cold case using a victim-centered, trauma-informed approach.

Examined Access to Critical Sexual Assault Nurse Examiner (SANE) Services

- Discussed different approaches to increasing access to and availability of SANEs and the critical services they offer. Needs include sustainable funding for training and statewide coordination, as well as measures to retain SANEs in the face of vicarious trauma and burnout.

Explored Best Practices for the Investigation and Prosecution of Sexual Assault Crimes

- Discussed opportunities to enhance training for prosecutors of sexual assault cases.



Recommendations

1. Provide funding for a statewide SANE training, continuing education, scholarship and retention program.
2. Enhance the collection of lawfully-owed DNA by establishing protocols for collecting DNA from qualifying offenders who will not serve a term of confinement.
3. Provide reimbursement for all SAK exams, including when the assault happened outside of the state.
4. Increase training opportunities for prosecutors of sexual assault cases, including hands-on learning opportunities for prosecutors to hone trial skills, as well as apply best practices for interacting with victims.
5. Reauthorize the Advisory Group.



The Advisory Group's 2022 Plans

- Continue monitoring testing of the backlog of SAKs and the collection of lawfully-owed DNA.
- Develop a patrol officer reference card to promote victim-centered, trauma-informed interactions between law enforcement and survivors and provide tools for law enforcement to help connect survivors to advocates and other critical services.
- Monitor resources for SANE training and continue discussing a coordinated, comprehensive, statewide approach to increasing access and availability of critical SANE services.
- Build on 2021 research for training prosecutors involved in sexual assault cases.
- Continue monitoring the supply chain of SAKs and determine whether a central entity for SAK purchasing and distribution is needed, as well as other opportunities to ensure hospitals have consistent access to Washington-specific SAKs.
- Discuss vicarious trauma for disciplines involved in the response to sexual assault.
- Explore additional opportunities for case reviews to provide insights on case attrition.



Photo courtesy of WSP



INTRODUCTION

In 2015, the Washington State Legislature instituted reforms to the state's response to sexual assault, including coordinating multidisciplinary efforts to identify and resolve systemic barriers contributing to a backlog of untested SAKs and establishing mandatory testing requirements for SAKs. A SAK, used by a medical professional performing a forensic examination, preserves any evidence left behind from an assault. Prior to 2015, law enforcement agencies and prosecutors had the discretion to submit SAKs to forensic laboratories for testing, but were not required to do so.

Untested or unsubmitted SAKs are those that have been booked into evidence by law enforcement, but not submitted to a crime lab for testing. In contrast, an unreported SAK is one that has been collected from a survivor who has chosen not to report the sexual assault to law enforcement.

The Sexual Assault Forensic Examination Best Practices Task Force (now the "Advisory Group") was formed to bring together law enforcement, victim advocates, survivors, hospitals, prosecutors, and legislators to reform processes around sexual assault forensic examinations to bring justice to survivors of sexual assault. The Advisory Group is focused on removing barriers to information-sharing and establishing a system that prioritizes the experiences of survivors. In 2019, the Washington State Legislature established the Advisory Group within the Office of the Attorney General through Substitute House Bill 1166. The Advisory Group's mission is to reduce the number of untested SAKs in Washington and to review best practice models for managing all aspects of sexual assault investigations. The duties of the Advisory Group include:

Completed Duties of the Advisory Group

- Determining the number of untested SAKs in Washington;
- Making recommendations regarding legislative policy options for reducing the number of untested SAKs;
- Making recommendations for securing non-state funding for testing SAKs, and reporting on progress made toward securing such funding; and
- Developing policies on the storage, retention, and destruction of unreported SAKs as well as protocols for engaging with survivors associated with unreported SAKs.

Ongoing Duties of the Advisory Group

- Researching best practice models for collaborative responses to survivors of sexual assault from the point the SAK is collected to the conclusion of the investigation and prosecution of a case, and providing recommendations to address any gaps in Washington and resources that may be necessary to address those gaps;
- Monitoring implementation of state and federal legislative changes;
- Collaborating with the Legislature, state agencies, medical facilities, and local governments to implement reforms pursuant to federal grant requirements; and
- Making recommendations for institutional reforms necessary to prevent sexual assault and improve the experiences of sexual assault survivors in the criminal justice system.

The Advisory Group submitted a preliminary report and work plan in 2015 and full annual reports with recommendations in 2016, 2017, 2018 (available at: <http://leg.wa.gov/JointCommittees/Archive/SAFE/Pages/default.aspx>), 2019 (available at: <https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/PressReleases/SAFE%20Report%202019.pdf>), and 2020 (available at: <https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/SAFE%20Report%202020%20V3.pdf>). The reports contain information about the Advisory Group's activities, relevant legislative and policy changes, and recommendations to the Legislature and Governor for institutional reforms needed to improve the care of sexual assault survivors and reduce the number of untested SAKs.



ADVISORY GROUP 2021 ACTIVITIES

The Advisory Group's 2020 recommendation was acted upon.

- ✓ REMOVED THE MARITAL REQUIREMENT TO ADDRESS PUBLIC SAFETY CONCERNS

In 2021, the Legislature passed Senate Bill 5177, eliminating proof of nonmarriage as an element of a sex offense and closing a legal loophole that allowed convicted sex offenders to avoid registering when they move to Washington. Before Senate Bill 5177, the effects of which were immediate, some sex offenders who moved to Washington did not have to register in the state, including child rapists and those who were deemed a high risk to sexually reoffend within the community at large. Without this change, out-of-state sex offenders were only required to register in Washington if their offense was deemed comparable to an offense for which registration is required in Washington. Many states do not require proof that the perpetrator is not married to the victim at the time of the offense as an element of a sexual assault and these crimes could be deemed not comparable to Washington crimes—even if the offenses were against children who are obviously far too young to be married to the offender.

Advisory Group 2021 Activities

Over the course of four meetings in 2021, the Advisory Group:

Monitored the SAK Supply Chain and Testing Progress

- Tracked the supply and distribution of sexual assault kits across the state and identified several ongoing issues, as well as new COVID-related strain on the supply chain.

Hospitals and clinics across the state that provide forensic examinations for victims and survivors of sexual assault purchase SAKs from a nationwide supplier. For several years, the supplier has manufactured kits specific to Washington state that include a tracking label, pursuant to RCW 43.43.545 – Washington's statewide sexual assault kit tracking system. Survivors can follow the results of a kit and law enforcement can track results to assist with investigations and crime prevention. Most recently, due to COVID-related labor shortages, Washington state SAKs have been intermittently backordered causing nurses and hospital administrators to scramble in an effort to meet the demand for forensic examinations which cannot happen without a SAK. Advisory Group members will continue to closely track the supply chain of kits and determine ways to mitigate the risk of a statewide shortage of SAKs, and long term solutions to the issue.

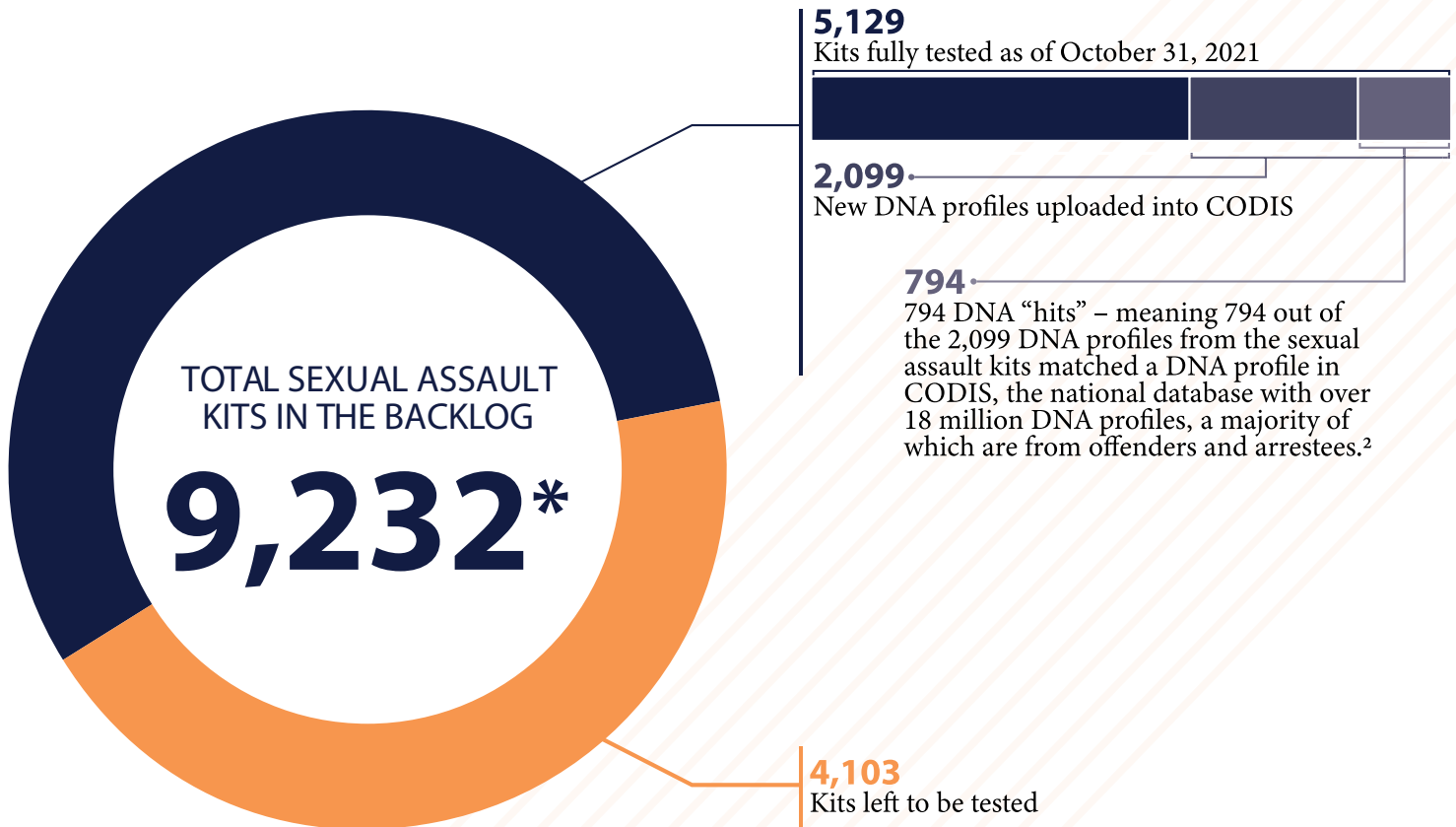
- Monitored the progress of testing the SAK backlog.

The backlog refers to SAKs that had not been submitted to a crime lab for testing prior to the 2015 statute requiring law enforcement agencies to submit SAKs for testing, as well as those that had not been submitted for testing in 2018 when the Attorney General's Office conducted an inventory. Based on data collected by the Washington State Patrol Crime Lab, it is estimated that our state's total backlog was approximately 9,232 SAKs. Since 2015, the Crime Lab has worked diligently with local law enforcement agencies to submit nearly all of the SAKs for testing. As of October 31, 2021, testing and review of the Combined DNA Indexing System (CODIS) has been completed on 5,129 of those SAKs. From these SAKs tested, 2,099 new profiles have been uploaded into the CODIS database. There were 794 DNA "hits," meaning the DNA profile from the SAK matched a DNA profile in CODIS.



Photo courtesy of WSP

With 4,103 SAKs left to be tested, our state is over halfway through testing the backlog and is expected to complete testing by December 31, 2022.



**9,232, or nearly all of the kits, have been submitted for testing. However, until all of the kits have been received and verified by the Washington State Patrol Crime Laboratory, these numbers are subject to change.*

Published Guidelines for Victim Notification

- Published best practice guidelines for notifying victims about developments in their cold case using a victim-centered, trauma-informed approach.

The guidelines were distributed to Advisory Group members and their respective organizations and offer clear guidance, including a script and a template letter, for the purpose of building trust with a victim and ensuring all aspects of the interaction are handled with care and intentionality.

Examined Access to Critical SANE Services

- Engaged in a roundtable discussion with SANEs across the state to discuss barriers to supporting victims and survivors who present at, or are referred to, a hospital for care following a sexual assault.

A main focus of the discussion was the lack of a sustainable source of funding for SANE training and the absence of a coordinated statewide effort to ensure access and availability of SANEs, as well as the support needed to retain SANEs due to issues like burnout and vicarious trauma.

Explored Best Practices for the Investigation and Prosecution of Sexual Assault Crimes

- Discussed opportunities to enhance training for prosecutors of sexual assault cases.

Advisory Group members discussed existing training requirements for prosecutors and the need for more interactive and collaborative learning to build on skills involved in prosecuting sexual assault cases.

Continued Gathering Information about Charges and Prosecutions Resulting from Testing the Backlog of SAKs.

Cold cases are being solved as a result of the Attorney General's Sexual Assault Kit Initiative and legislative appropriations to test the backlog of SAKs.

Warning: The following section contains graphic descriptions of sexual assault

Convicted & sentenced

- **State v. Lay (King County):** Jonnie Lay and another man kidnapped the adult female victim in downtown Seattle, drove her to an open field, threatened to kill her if she did not comply, and repeatedly raped her. Afterwards, Lay forced the victim into the backseat of the car, and raped her again, holding a screw driver to her throat. He then attempted to force the victim into prostitution, and when she resisted, he threw her out of the car. The victim made her way to the women's shelter where she had been living, called the police, and got a forensic exam at Harborview Medical Center where a SAK was collected. At the time, the victim reportedly did not wish to proceed with the case and it was deactivated.

In 2016, the SAK was tested as a result of the initiative to clear the backlog. The testing resulted in a "hit" that matched Lay's DNA profile. King County originally charged Lay with Rape in the First Degree and offered a lesser charge of Rape in the Second Degree. The jury came back as hung on both charges.

In 2020, King County prosecutors tried the case a second time and were able to secure a conviction of Rape in the Second Degree. Lay was sentenced to 136 months in custody.

- **State v. Hailu (King County):** In downtown Seattle, Kirose Hailu lured the adult female victim into an alley by claiming the person she was looking for headed there. He then threatened to kill her if she resisted as he raped her vaginally and orally. As he left, he told her, "My friends are going to come and fuck you. If you move, I'll kill you." The victim waited a while, then got dressed and left. A couple of days later she was back downtown where she saw Hailu. She waved down a patrol car and reported the rape. The victim got a forensic exam where a SAK was collected. However, the case was closed when the detective reported being unable to contact the victim. As part of clearing the backlog, the SAK was tested and resulted in a "hit" that matched Hailu's DNA profile.

Hailu pled guilty to Rape in the Third Degree and was sentenced to 60 months, consecutive to the 170 months he is serving for a prior conviction of Rape in the Second Degree.

- **State v. Rance (King County):** The adult female victim had just been discharged from Harborview Medical Center and was waiting for a bus when Eric Rance approached her and convinced her to go with him to his place nearby. Shortly thereafter, the victim became uncomfortable and tried to leave. Rance became extremely angry and threatened the victim. Rance put a condom on and raped the victim as she cried. After he raped her, he forced her to shower and then allowed her to leave. The victim immediately reported to a patrol officer who drove by. The victim underwent a forensic exam where a SAK was collected. The case was deactivated within days because the detective reported being unable to contact the victim. As part of initiative to clear the backlog, the SAK was tested resulting in a "hit" that matched Rance's DNA profile.

Rance pled guilty to Assault in the Third Degree for an assault that occurred in 2013 and received credit for time served. According to the prosecuting attorney, the victim was supportive of the plea for a number of reasons.

- **State v. Young (Spokane County):** Eugene Young was introduced to the adult female victim at a bar in downtown Spokane. Young stated he could not drive and asked the victim for a ride. Mutual friends told her it would be fine. The victim drove him to a house and went inside. Once inside, Young attacked the victim from behind, threatening to cut her with a knife. He then raped the victim vaginally and attempted to rape her anally. After approximately two hours, he had the victim drop him off at another location. The victim drove back to where her friends were, reported the assault to police, and went to the hospital for a sexual assault exam. However, the SAK was never submitted for testing. As part of clearing the backlog, the SAK was tested and the results matched Young's DNA profile.

Young pled guilty to Second Degree Assault with Sexual Motivation and received an exceptional sentence of 144 months with a 24 month enhancement.

Convicted, awaiting sentencing

- **State v. Childs (King County):** Robert Childs Jr., a 30-year-old man, raped a 12-year-old girl, who was unknown to him, at the Torchlight Parade in 2006. Childs' DNA was found in the victim's underwear. To clear the backlog of SAKs, the victim's kit was tested in 2018 and came back with a "hit" matching Childs' DNA profile. Childs was located in Florida in February 2019 and was extradited.

A jury convicted Childs of Rape of a Child in the Second Degree. He is currently awaiting sentencing and faces a mandatory sentence of life without parole.



Photo courtesy of WSP



2021 RECOMMENDATIONS

The Advisory Group voted on the following recommendations during the October 20, 2021 meeting.

✓ **INCREASE SANE AVAILABILITY AND ACCESS STATEWIDE**

In favor: 14; Opposed: 0; Abstained: 0; Absent: 2 (WASPC and WA State Senate)

To ensure survivors receive consistent, reliable, victim-centered and trauma-informed care across the state, the Advisory Group recommends dedicated funding for a statewide SANE training, continuing education, scholarship and retention program, including a statewide SANE coordinator position to oversee the program, expanded training opportunities, and a hospital grant program to retain existing SANEs and support training of new SANEs across the state. Federal funding to support SANE training in Washington has expired. National best practices include a comprehensive and coordinated response to sexual assault statewide, including accessibility to essential medical and forensic examination services provided by SANEs.

✓ **ENHANCE THE COLLECTION OF LAWFULLY-OWED DNA**

In favor: 13; Opposed: 0; Abstained: 1 (WACO); Absent: 2 (WASPC and WA State Senate)

To promote accountability for offenders and justice for survivors, the Advisory Group recommends enhancing the collection of lawfully-owed DNA for qualifying offenders who will not serve a term of confinement. Local jurisdictions must establish protocols that work in their unique environments to either 1) collect DNA at the time of sentencing before offenders have a chance to leave the courtroom, or 2) develop procedures to verify compliance with orders to later report to the local law enforcement agency to provide a sample (e.g., setting compliance hearings). Since the Washington State Legislature launched a coordinated statewide effort to test every backlogged sexual assault kit in the state, foreign DNA profiles from each sexual assault kit are uploaded into CODIS and matched against one or more profiles within CODIS. These DNA matches provide investigative leads for the case by linking evidence profiles from other cases, as well as linking the unknown DNA profile to a known offender. However, the database is missing thousands of samples that were required to be collected from offenders obligated to submit. Institutions must develop more robust procedures to ensure collection takes place.

✓ **PROVIDE REIMBURSEMENT FOR ALL SEXUAL ASSAULT KIT EXAMS**

In favor: 12; Opposed: 0; Abstained: 1 (WACO); Absent: 3 (WASPC, WA State Senate, WDA)

The Advisory Group recommends enabling the Crime Victim's Compensation (CVC) program to provide reimbursement for all sexual assault forensic examinations, including those where the assault happened outside of the state and providing any additional resources that may be required to process these claims. RCW 70.125.110 states that sexual assault survivors have the right to receive a medical forensic exam at no cost. However, the CVC program is currently prohibited from paying for the victim's exam if the assault occurred out of state, even if the exam is performed in Washington. According to the CVC program, in 2019, 74 claims were denied for reimbursement and in 2020, 54 claims were denied because the assault occurred out of state.

✓ **INCREASE TRAINING OPPORTUNITIES FOR PROSECUTORS OF SEXUAL ASSAULT CASES**

In favor: 13; Opposed: 0; Abstained: 0; Absent: 3 (WASPC, WA State Senate, WSHA)

While Washington has made progress in requiring victim-centered, trauma-informed training for law enforcement officers investigating sexual assault cases, there remains a lack of Washington-specific training opportunities for prosecutors. The Advisory Group recommends enhancing training opportunities for

prosecutors of sexual assault cases, including providing, at low or no cost to local jurisdictions, hands-on learning opportunities for prosecutors to hone trial skills, as well as apply best practices for interacting with victims.

✓ **REAUTHORIZE THE ADVISORY GROUP**

In favor: 12; Opposed: 0, Abstained: 0, Absent: 4 (WASPC, WA State Senate, WSHA, WDA)

The Advisory Group's authorizing language expires on December 31, 2021; however, given that work remains to improve the response to sexual assault, members recommended continuing the group.



2022 PLANS

In 2022, the Advisory Group plans to focus its efforts on:

- Continuing to monitor testing of the backlog of SAKs and the collection of lawfully-owed DNA;
- Developing a patrol officer reference card to promote victim-centered, trauma-informed interactions between law enforcement and survivors and provide tools for law enforcement to help connect survivors to advocates and other critical services;
- Examining progress towards a coordinated, comprehensive, statewide approach to increasing access to and availability of critical SANE services;
- Building on research for training prosecutors involved in sexual assault cases;
- Continuing to monitor the supply chain of SAKs and assessing whether a central entity for SAK purchasing and distribution is needed, as well as other opportunities to ensure hospitals have consistent access to Washington-specific SAKs;
- Discussing vicarious trauma for disciplines involved in the response to sexual assault; and
- Exploring additional opportunities for case reviews to provide insights on case attrition.



Photo courtesy of WSP



ENDNOTES

1. Testing numbers as of October 31, 2021 provided by the Washington State Patrol Crime Laboratory
2. <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/ndis-statistics>