



# Sexual Assault Kit Reform: Legislative Action to Improve Sexual Assault Kit Testing and Tracking

By: Grace Kelley, Legislative Research Analyst  
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This brief will outline how Delaware and nearby states have approached sexual assault kit reform, including sexual assault kit tracking systems. Additionally, this brief includes further considerations for Delaware legislators.

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## Overview

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1 out of 6 American women and 1 out of 33 American men have been a victim of sexual assault. Victims of sexual assault can choose to have a sexual assault forensic exam, commonly referred to as a sexual assault kit (SAK), where DNA evidence is collected from a victim's body, clothes, and belongings following their attack. When approaching sexual assault cases, DNA evidence is an integral part in identifying perpetrators, holding them accountable, and preventing future sexual assaults.

Collecting and analyzing SAKs is an intricate process that requires the collaboration of law enforcement, forensic laboratories, and medical personnel. Once a SAK is collected, sexual assault examiners submit the evidence to the appropriate law enforcement agency. Law enforcement then submits the SAK for testing at a crime lab if a victim chooses to report the crime. States have tracked SAKs in the past by following their state's chain of custody protocol used for other types of evidence samples, which is typically documented in non-electronic formats or law enforcement case management systems.

Through auditing inventories of evidence rooms in recent years, many states, including Delaware, have discovered SAKs that were never received by law enforcement from healthcare personnel after collection, in addition to SAKs that were never sent to a crime lab by law enforcement. Historically, there has been minimal transparency and accountability surrounding the SAK testing process. Hospitals, law enforcement, laboratories, prosecutors, and victims have not had the ability to pinpoint the status of an SAK throughout its progress. For victims specifically, not having access to the status of their SAK can negatively affect their recovery process and further impair their sense of control. In addition, states have not had strict SAK collection and testing timelines or SAK testing policies in general, further contributing to testing delays, untested sexual assault kits, and uninformed victims.

Many states have enacted legislation implementing testing, transfer, and retention timelines for SAKs, in addition to introducing or updating policies on sexual assault victims' rights and recurring inventories of SAKs. To supplement the addition of these policies, 40 states and Washington, D.C. have also committed to or have implemented statewide SAK tracking systems. A SAK tracking system is an online

database that allows victims, law enforcement, medical staff, and others involved in the testing process to track and update the progress of a SAK from inception to final disposition using a unique barcode or serial number located on the SAK. Ideally, a tracking system ensures that all actors abide by SAK collection, transfer, and retention timeline requirements in the testing process, and allows victims to track the status of their SAK independently.

Since the passage of [Senate Joint Resolution 1](#) in 2015, **Delaware** has received a little over 2 million dollars of federal funding from the Sexual Assault Kit Initiative (SAKI). These funds have been used to implement specific SAK tracking features in the existing law enforcement case management system (LEISS), hire a SAKI Oversight Coordinator, and create an updated SAK testing policy. Additionally, Delaware was able to **successfully clear the backlog of 1,235 untested SAKs found prior to 2018**. However, Delaware has not codified rights specific to sexual assault victims or SAK testing and tracking procedures as other nearby states have in recent years.

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## Delaware's Efforts Toward SAK Reform

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- **House Bill 253 (145<sup>th</sup> GA)**

This [bill](#) specifies that all aspects of a sexual assault exam are eligible to be covered by the Victim Compensation Fund and victims of sexual offenses should not be charged by health care professionals for the exam.
- **Senate Joint Resolution 1 (148<sup>th</sup> GA)**

This [resolution](#) requires a one-time inventory of untested SAKs from every law enforcement agency, hospital, laboratory, and prosecutorial agency. Additionally, it requires the Criminal Justice Council (CJC) to release a report of their findings and recommendations for improving Delaware's criminal justice system's response to sexual assault. In the [report](#) from 2016, the CJC stated that Delaware should explore victim-centered reporting and notification options, a unified system for tracking SAKs, and overall updates to SAK retention and testing policies in the state.
- **Sexual Assault Kit Testing Policy (2022)**

The Office of Attorney General Kathy Jennings released an updated [Sexual Assault Evidence Testing Policy](#). This policy outlines strict testing and retention timelines for investigative SAKs, and states that SAKs must be tracked and updated by the investigating agency throughout every step of the transfer and testing process using the Law Enforcement Investigative Support Suite (LEISS) database. Under this policy, all sexual assault kits must be tested unless the victim does not consent to engaging in the criminal justice process.
- **Senate Concurrent Resolution 99 (152<sup>nd</sup> GA)**

This [resolution](#) creates the Victims' Bill of Rights Committee to study and make

recommendations to improve Delaware's Victims' Bill of Rights, specifically updating procedures for victim notification and the rights for victims of sexual assault and sexual violence.

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## SAK Reform by State

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- **Pennsylvania**

In 2015, Pennsylvania enacted [HB272](#) establishing SAK collection and testing timelines and requires law enforcement to report their untested SAKs annually. [SB399](#) was signed into law in 2019 and requires state police to review SAK practices every 2 years. Additionally, the bill updated Pennsylvania's Sexual Assault Survivors' Bill of Rights. Pennsylvania State Police released a [report](#) in September 2023 analyzing available software systems for SAK tracking in other states, along with the resources and costs needed for success. This report was mandated by the passage of [Act 70](#) in 2022.
- **New York**

In 2017, New York enacted [SB980](#) into law which requires law enforcement and prosecutorial agencies to update their inventory report of SAKs monthly. In 2018, [A8401C](#) was enacted requiring the NY Department of Health to create a Sexual Assault Victim Bill of Rights. In 2022, the Governor of New York signed [S7867](#) into law requiring a tracking system with a victim portal be established by January 2024.
- **Maryland**

In 2023, Maryland passed [HB759](#) that requires the Governor's Office of Crime Prevention, Youth, and Victim Services to establish a SAK tracking system that includes a victim portal.

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## SAK Tracking Systems

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- **State Approaches:**

9 states with active SAK tracking systems implemented these systems through non-legislative means. The remaining 26 states with active systems implemented legislatively. The most comprehensive legislation creating tracking systems outlines the entity that is responsible for establishing and maintaining the system, the capabilities and purpose of the system, and the entities that must participate in the use of the system, notably Massachusetts' [S2371](#) in 2018, South Carolina's [H3309](#) in 2020, and Florida's [HB673](#) in 2021.

- **Types of Tracking Systems:**

There are 4 [software systems](#) available for states to use to launch SAK tracking systems. 15 states use Track-Kit through InVita STACS DNA, 8 use Idaho Kit Tracking System (ISAKI), 3 use Oregon's Sexual Assault Management System (SAMS), and 2 use PERK through Forensic Advantage. Each system provides victims and actors in the testing process the ability to track and input SAK data securely, but the costs, capabilities, and maintenance vary with each system.

- **Challenges - Funding, Training, Data Vulnerability:**

Implementing a SAK tracking system is attached to a wide range of expenses. States with tracking systems have spent anywhere from [\\$100,000](#) to \$350,000 to execute their systems, and then \$30,000 to \$125,000 for annual maintenance, including training for users of the systems. South Carolina's system has been delayed for over a year due to a lack of funding, in part because the state has not received federal funding for the project. Additionally, training on SAK testing policies and tracking systems

overall has proven to be difficult in some states. The [Idaho Kit Tracking System Administrator](#) noted that communication and training of law enforcement agencies and medical facilities has been difficult due to time constraints and a lack of staff. Accordingly, in some cases, data in the tracking system has been missing or inaccurate.

- **Are Tracking Systems Effective?**

Within 6 months of implementing a statewide SAK tracking system, [Massachusetts](#) saw a **consistent reduction in turnaround times of newly collected SAKs**, including retrieval of SAKs from medical facilities by law enforcement and law enforcement's delivery of SAKs to laboratories. [Idaho State Police](#) (ISP) noted that the **percentage of untested SAKs determined by law enforcement decreased consistently** from 19% in 2017 to 6.5% in 2021. ISP found that 34 medical, law enforcement, laboratory, and prosecutor personnel logged in each month to document SAKs, and **71 unique public users (consisting of victims) visited the site** each month. Both Massachusetts and Idaho were able to gather this data from their respective tracking systems. Additionally, [North Carolina](#) and Michigan have seen a **reduction of untested SAKs** by 99% and 95%, respectively.

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## Considerations for Delaware Legislators

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- **Recurring Inventories of SAKs:**

Delaware has not mandated that agencies conduct recurring inventories of SAKs in their possession throughout the state. New York and Pennsylvania, among other states, have enacted legislation on recurring SAK inventories.

- **Independent Victim Access to Status & Location of SAKs:** Under Delaware’s current Sexual Assault Kit Testing Policy, law enforcement agencies provide updates on SAKs to their assigned Victim Service representative(s), who then relay the information to the victim. Alternatively, victims can contact the responding law enforcement agency or the Delaware Victims Center for the status of their SAK. Victims cannot check the location of their SAK online, unlike other states that have implemented tracking systems. Forensic Advantage’s PERK tracking system’s overall cost is based on state population, which may be a viable option for Delaware to consider.
- **Sexual Assault Victims’ Bill of Rights:** Delaware utilizes a victim-centered approach and refers to the Victim’s Bill of Rights outlined in [Title 11](#) Chapter 94 of the Delaware Code in cases of sexual assault. Many states have passed legislation creating or mandating the creation of a separate Sexual Assault Victims’ Bill of Rights.
- **Codifying Sexual Assault Kit Policies:** Delaware has not codified SAK testing policies or tracking procedures like many nearby states.

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### Additional Resources

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- The nonprofit, Joyful Heart Foundation, has an informative [website](#) describing the backlog issue in the United States and tracks SAK reform by each state. The website also recommends aspects of SAK reform to consider when drafting legislation to closely align with [National Best Practices for Sexual Assault Kits: a Multidisciplinary Approach](#).
- Massachusetts’ example of a SAK tracking system [website](#).

- [Presentation](#) explaining SAK tracking systems in Idaho, D.C., and Texas. The presentation also shows screenshots of what each actor that has access to the system sees on their screen, in addition to data on how many victims log in to track their SAK.