



# Sexual Assault Kit Reform: Exploring the Issue of Sexual Assault Kit Testing and Tracking

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## Abstract

This report explores the challenges that Delaware and other states have faced with testing and tracking sexual assault evidence kits, and outlines Delaware’s current policies on sexual assault kits. Additionally, this report analyzes actions that states have taken within the last decade to address testing and tracking challenges. This report also discusses sexual assault kit tracking systems in depth and raises further considerations for Delaware legislators.

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## Background and Context

### What Are Sexual Assault Evidence Kits and Why Are They Necessary?

1 out of 6 American women and 1 out of 33 American men have been a victim of sexual assault. [Sexual assault](#) is defined as “sexual contact or behavior that occurs without explicit consent of the victim”. Victims of sexual assault can choose to have a sexual assault forensic exam, commonly referred to as a sexual assault or rape kit (SAK), where DNA evidence is collected from a victim’s body, clothes, and belongings following their attack. This [exam](#) is performed by Sexual Assault Nurse Examiners (SANEs) or Sexual Assault Forensic Examiners and can take up to a few hours. When approaching sexual assault cases, [DNA evidence](#) is an integral part in identifying perpetrators, holding them accountable, and preventing future assaults from occurring.

### Sexual Assault Kit Testing and Tracking

Collecting and analyzing DNA evidence in sexual assault cases is an intricate process that requires the collaboration of law enforcement, crime labs, medical personnel, and victims. 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. In cases of sexual assault, evidence is transferred between multiple disciplines, which requires all actors in the testing process to accurately track and maintain the chain of custody. If any step in the process is delayed or missed, potential justice for the victim could be in jeopardy.

### Issues Faced with Sexual Assault Kit Testing and Tracking

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. Law enforcement agencies have had the discretion to not submit SAKs for testing, whether that be for procedural reasons, lack of resources, or negative perceptions of sexual assault victims. In some cases, the evidence was sent to a crime lab, but was not tested for similar reasons. The total number of untested SAKs nationwide is unknown, primarily because of the absence of a national system for tracking them. However, it is estimated that throughout the United States, there are roughly 90,000 to 400,000 SAKs that have yet to be [tested](#). 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 and uninformed victims.

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## [Delaware's Efforts Toward Sexual Assault Kit Reform](#)

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### [House Bill 253](#)

In 2009, the 145<sup>th</sup> General Assembly of Delaware passed [House Bill 253](#) which created the Victims' Compensation Assistance Program. The 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](#)

In 2015, former Delaware Governor Jack Markell signed into law [Senate Joint Resolution 1](#). This Joint Resolution required that the Delaware Criminal Justice Council (CJC) inventory, prioritize, and report the number of untested SAKs in the state based on the reports made from every law enforcement agency, law department, hospital, testing facility, and prosecutorial agency. In 2016, the Criminal Justice Council released a [final report](#) of their findings in addition to recommendations for improving the criminal justice system's response to sexual assault in the future. In this report, the council outlined 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.

### [State Auditor Special Report](#)

In 2022, former Delaware State Auditor Kathy McGuinness released a [report](#) summarizing Delaware's use of federal grant funding to address SAK testing. The CJC applied for a Sexual Assault Kit Initiative (SAKI) grant from the Bureau of Justice Assistance to address the backlog of untested SAKs in Delaware and was awarded a 3-year grant of \$1.169 million in September 2015, in addition to \$1 million in October 2018. Funds from the grants were used to implement specific SAK tracking features in the existing law enforcement case management system (LEISS), hire a SAKI Oversight Coordinator, and create trauma-informed training for sexual assault investigations. Additionally, **Delaware was able to successfully clear the backlog of 1,235 untested SAKs found prior to 2018.** According to the report, just over \$400,000 remains of SAKI grant funding.

### [Delaware's Sexual Assault Kit Testing Policy](#)

Also in 2022, an updated [SAK testing policy](#) was released by the Office of Attorney General Kathy Jennings. Delaware's updated policy outlines a strict testing and retention timeline for investigative SAKs:

- Law enforcement should be notified within 24 hours of the collection of investigative SAKs by medical personnel.
- SAKs shall be collected within 5 days by law enforcement.
- SAKs shall be submitted to the Division of Forensic Science laboratory within 30 days and ideally tested within 30 days.
- Reported SAKs should be preserved by law enforcement indefinitely unless the known offender is deceased.

The policy clarifies 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 Supportive Suite (LEISS) database. To encourage the implementation of the SAK testing policy and hold law enforcement and laboratories accountable for testing timelines, the LEISS database sends an automatic email to the appropriate agency if a SAK is not collected or tested within the allotted time frame. LEISS also flags SAKs with an "unfounded" (law enforcement concludes that a crime did not occur after an investigation) classification, and an email is sent to the Department of Justice and Division of Forensic Science for review as an extra safeguard to prevent another backlog of untested SAKs. Additionally, SAKs are tracked regardless of the crime they are

classified under in the system. It is the responsibility of the investigating law enforcement agency to provide regular updates to a victim services representative on a SAK’s status, who then relays the information to the victim. Alternatively, victims can contact the responding law enforcement agency or the Delaware Victims Center confidentially via telephone.

Under the new policy, all SAKs must be tested unless the victim does not consent to engaging in the criminal justice process, in which case the SAK will be designated as non-investigative by the health care provider who collected the samples. The victim is then given a specific timeframe where they can contact law enforcement to change the status from non-investigative to investigative. The new policy states that medical providers and law enforcement should refer to the Delaware’s Victims’ Bill of Rights outlined in Chapter 94 of Title 11 of the Delaware Code when approaching sexual assault cases and inform victims of their rights accordingly.

Senate Concurrent Resolution 99

In June 2023, Delaware’s General Assembly passed [Senate Concurrent Resolution 99](#) creating the Victims’ Bill of Rights Committee. This committee is tasked with studying and making 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. The committee’s final report, including findings and recommendations, is due January 15, 2024.

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**State Efforts Toward Sexual Assault Kit Reform**

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 protocols for inventories of SAKs. The table below provides an overview of legislation addressing SAK testing in nearby states throughout the last decade.

STATE	LEGISLATION	KEY POINTS
Maryland	<a href="#">HB 382 (2015)</a>	<ul style="list-style-type: none"> <li>Requires healthcare professionals to provide victims with the investigating law enforcement agency’s contact information to inquire about the status of their SAK. Law enforcement must update the victim within 30 days of their request.</li> </ul>
	<a href="#">HB 255 (2017)</a>	<ul style="list-style-type: none"> <li>Requires agencies (including law enforcement) to preserve all newly collected SAKs for 20 years and notify a victim on their SAK’s destruction at least 60 days prior.</li> </ul>
	<a href="#">HB 1096 (2019)</a>	<ul style="list-style-type: none"> <li>Requires law enforcement to submit all SAKs (unless deemed unfounded) for analysis within 30 days of receipt from a medical facility, and labs are required to test the SAKs in a timely manner. Additionally, this bill tasked the Maryland Sexual Assault Evidence Kit Policy and Funding Committee with establishing an independent process to review law enforcement’s decision to not test a SAK.</li> </ul>
New York	<a href="#">A10760 (2016)</a>	<ul style="list-style-type: none"> <li>Requires law enforcement to submit SAKs to a lab within 10 days of collection and the lab must test the SAKs within 90 days. Mandates that law enforcement agencies must report the number of SAKs collected, the number submitted and not submitted for testing, and the timeline for testing each SAK quarterly.</li> </ul>
	<a href="#">SB 980 (2017)</a>	<ul style="list-style-type: none"> <li>Law enforcement and prosecutorial agencies must update their inventory report of SAKs monthly.</li> </ul>
	<a href="#">A8401C (2018)</a>	<ul style="list-style-type: none"> <li>Requires the Department of Health to outline a Sexual Assault Victim Bill of Rights.</li> </ul>

<p><b>Pennsylvania</b></p>	<p><a href="#">HB 272 (2015)</a></p> <p><a href="#">SB 399 (2019)</a></p>	<ul style="list-style-type: none"> <li>• Requires law enforcement to collect SAKs from health care providers within 72 hours, submit SAKs to a laboratory within 15 days of collection, and labs must test the SAK within 6 months. Additionally, law enforcement must report their untested SAKs inventory annually. This bill also created a section outlining the rights of sexual assault victims to be informed when their evidence is submitted for testing.</li> <li>• Establishes submission and testing timelines for anonymous SAKs and requires state police to review current SAK collection practices every 2 years. Updates PA’s Sexual Assault Survivors’ Bill of Rights and requires the attorney general to develop protocols for informing victims of said rights.</li> </ul>
<p><b>Virginia</b></p>	<p><a href="#">S 291 (2016)</a></p> <p><a href="#">HB 2127 (2017)</a></p> <p><a href="#">HB 808 (2020)</a></p>	<ul style="list-style-type: none"> <li>• Requires law enforcement to submit evidence kits to the Department of Forensic Science within 60 days and reported SAKs must be kept for at least 10 years. This bill also updates sexual assault victims’ rights to request and receive updates on their SAK from the appropriate law enforcement agency.</li> <li>• Extends the rights of sexual assault victims regarding anonymous SAK retention, extended storage before destruction, information, and notification of the timeframes of SAK retention and storage.</li> <li>• Mandates that each hospital must submit an annual inventory of SAKs, as well as sexual assault victims treated, to the Virginia Department of Forensic Science. Requires hospitals to notify law enforcement within 4 hours of evidence collection and creates the Task Force on Services for Survivors of Sexual Assault to develop best practices for treatment and transfer services for hospitals.</li> </ul>
<p><b>Massachusetts</b></p>	<p><a href="#">H 4364 (2016)</a></p> <p><a href="#">S 2371 (2018)</a></p>	<ul style="list-style-type: none"> <li>• Requires hospitals to notify victims that their SAK (reported or not reported to law enforcement) is retained for 15 years. Also requires all government entities to preserve SAKs for the duration of the statute of limitations or at least 15 years.</li> <li>• Mandates a statewide inventory of untested SAKs annually, newly collected SAKs must be collected by law enforcement from hospitals and medical facilities within 3 business days of notification, law enforcement must submit SAKs to labs within 7 business days of receipt, and SAKs must be tested within 30 days.</li> </ul>
<p><b>Connecticut</b></p>	<p><a href="#">HB 6498 (2015)</a></p>	<ul style="list-style-type: none"> <li>• Requires SAKs to be sent to the state crime lab within 10 days of collection and tested within 60 days.</li> </ul>

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## Sexual Assault Kit Tracking Systems

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To enhance the enforcement of SAK testing timelines and sexual assault victims’ rights policies, many states have also implemented sexual assault kit tracking systems.

### What is a Sexual Assault Kit Tracking System?

A sexual assault kit 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. Tracking systems are used to pinpoint testing delays, combat the frequency of untested SAKs, and provide transparency for victims of sexual assault. 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.

## State Approaches to Implementing Sexual Assault Kit Tracking Systems

Forty states and Washington, D.C. have committed to or have implemented statewide SAK tracking systems within the last few years. Nine states (Alaska, Arizona, Arkansas, Idaho, New Hampshire, New Mexico, Vermont, Washington, D.C., and West Virginia) implemented SAK tracking systems through non-legislative means. Vermont’s tracking system does not include a victim portal, and instead, victims are given a unique number and are instructed to call the statewide SANE organization for a SAK status update in real-time. The remaining states with active tracking systems implemented these systems legislatively. Maryland\*, Illinois, Indiana, Louisiana\*, Michigan, Mississippi\*, Missouri, Pennsylvania\*, and Vermont all enacted legislation requiring agencies or commissions to study the feasibility of creating and operating a statewide SAK tracking system, along with recommendations for implementation.

The most comprehensive legislation creating statewide SAK 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. The table below highlights examples of SAK tracking system legislation enacted in various states.

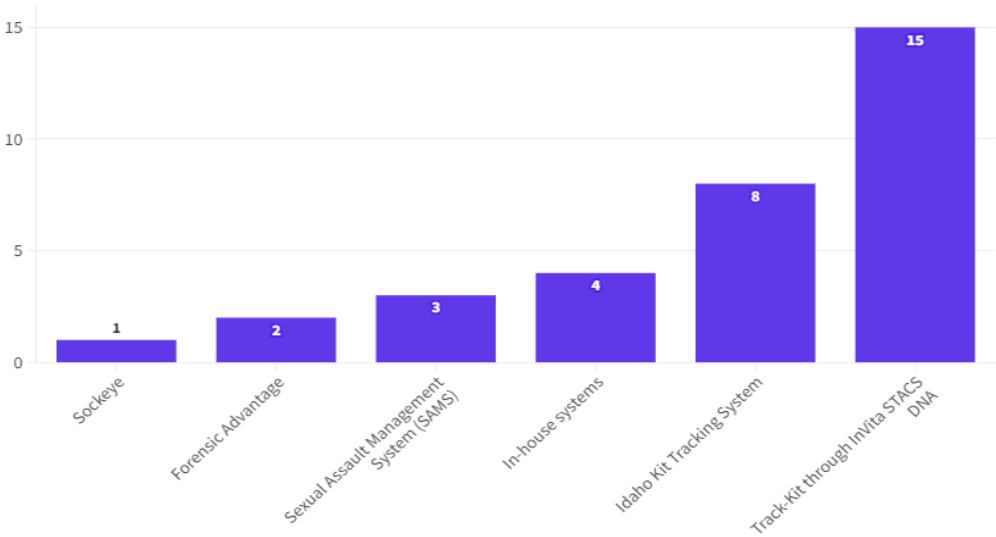
STATE	LEGISLATION	KEY POINTS
Massachusetts	<a href="#">S 2371 (2018)</a>	<ul style="list-style-type: none"> <li>• Who establishes and maintains the system? <ul style="list-style-type: none"> <li>➤ The Executive Office of Public Safety and Security/Department of Public Health. The Executive Office of Public Safety and Security must submit an annual summary report on the tracking system.</li> </ul> </li> <li>• What should the system do? <ul style="list-style-type: none"> <li>➤ Track the location and status of SAKs from initial collection at hospitals or medical facilities, receipt and storage at a governmental entity, receipt and analysis at a forensic laboratory, and storage or destruction after completion of analysis.</li> <li>➤ Allow victims of sexual assault to anonymously track and receive updates regarding the status of their SAK.</li> </ul> </li> <li>• Who must participate in the system? <ul style="list-style-type: none"> <li>➤ Hospitals or medical facilities, law enforcement agencies, prosecutors, and crime laboratories must update and track the status and location of SAKs.</li> </ul> </li> </ul>
South Carolina	<a href="#">H 3309 (2020)</a>	<ul style="list-style-type: none"> <li>• Who establishes and maintains the system? <ul style="list-style-type: none"> <li>➤ The State Law Enforcement Division (SLED). The SLED must submit a semiannual report on the tracking system.</li> </ul> </li> <li>• What should the system do? <ul style="list-style-type: none"> <li>➤ Track the location and status of SAKs throughout the criminal justice process, including the initial collection in examinations performed at medical facilities, receipt and storage at law enforcement agencies, receipt and analysis at forensic laboratories, and storage and any destruction after completion of analysis.</li> <li>➤ Allow victims of sexual assault to anonymously track or receive updates regarding the status of their SAK.</li> </ul> </li> <li>• Who must participate in the system?</li> </ul>

\* States notated with an asterisk currently do not have active sexual assault kit tracking systems.

		<ul style="list-style-type: none"> <li>➤ All medical facilities, law enforcement agencies, forensic laboratories, or other persons or entities that collect evidence for, or receive, store, analyze, maintain, or preserve SAKs must update the location and status of all SAKs in their custody within the system.</li> </ul>
Florida	<a href="#">HB 673 (2021)</a>	<ul style="list-style-type: none"> <li>• Who establishes and maintains the system? <ul style="list-style-type: none"> <li>➤ The Department of Law Enforcement.</li> </ul> </li> <li>• What should the system do? <ul style="list-style-type: none"> <li>➤ Track the status of SAKs from the collection site throughout the criminal justice process, including the initial collection at medical facilities, inventory and storage by law enforcement agencies or crime laboratories, analysis at crime laboratories, and storage or destruction after completion of analysis.</li> <li>➤ Allow alleged victims to access their SAK tracking information, testing status, and DNA matches to a person deemed by investigators to be a suspect (only stating that a match has occurred and no other identifying information).</li> </ul> </li> <li>• Who must participate in the system? <ul style="list-style-type: none"> <li>➤ Law enforcement agencies, medical facilities, crime laboratories, and any other facilities that collect, receive, maintain, store, or preserve SAKs shall participate in the database.</li> </ul> </li> </ul>

Types of Sexual Assault Kit Tracking Systems

35 states currently have active tracking systems, and 33 use a variety of systems outlined in the [chart below](#).



Source: [Joyful Heart Foundation](#), [InVita Healthcare Technologies](#) - Created August 25, 2023. Visualization by Nikki Davidson. Data on sexual assault kit tracking technology only available for 33 states.

At its core, each system provides victims, law enforcement, labs, and medical personnel access to track and input SAK data securely. However, the costs, capabilities, and maintenance differ with each system. In September 2023, Pennsylvania State Police released a [report](#) examining 4 software systems currently in use in other states: Track-Kit through InVita STACS DNA, Idaho Kit Tracking System (ISAKI), Sexual Assault Management System (SAMS), and PERK through Forensic Advantage. Track-Kit and PERK are commercial

off-the-shelf systems, whereas ISAKI and SAMS are free systems created by Idaho State Police and Oregon State Police, respectively. All 4 systems are available for states to use. The study found that ISAKI does not provide upgrades, technical support, maintenance, or training for use of the system, whereas the SAMS system does offer these services. However, SAMS providing these services is contingent on Oregon continuing to receive federal funding. Both systems' costs consist of maintenance and personnel in practice. The study also concluded that Track-Kit by InVita is the most expensive option for a tracking system as maintenance, upgrades, and technical support, as well as add-on features like a victim portal, are provided for an additional cost. PERK by Forensic Advantage provides maintenance, upgrades, and 24/7 technical support to all users, including victims, for no additional cost. The overall cost of PERK is based on the recipient state's population.

### Challenges of Implementing Sexual Assault Kit Tracking Systems

- Funding
  - 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 \$30,000 to \$125,000 for annual maintenance, including training for users of the systems. South Carolina's tracking system has been delayed for over a year due to a lack of funding, in part because the state has not received Sexual Assault Kit Initiative (SAKI) federal funding from the Bureau of Justice Assistance.
- Training on Sexual Assault Kit Testing Policies and Data Entry
  - The collaboration of medical personnel, law enforcement, forensic laboratories, and other actors in the testing process is imperative for the success of a SAK tracking system. Each actor must abide by SAK testing policies and timelines, and accordingly, accurately update the status of a SAK within the system. The [Idaho Kit Tracking System Administrator](#) noted that communication and subsequent training of law enforcement agencies and medical facilities on sexual assault policies and the tracking system has proven to be difficult due to time constraints and lack of staff. Consequently, in some cases, data in the tracking system has been missing or inaccurate.

### Are Kit Tracking Systems Effective?

Since 2020, Massachusetts' Executive Office of Public Safety and Security has released Sexual Assault Evidence Collection Kit [Summary Reports](#) outlining data collected from their Track-Kit System for each fiscal year. The tracking system data includes the total number of SAKs entered in the tracking system, the number of SAKs that remained at medical facilities, law enforcement agencies, or forensic laboratories longer than SAK submission timelines prescribed by law, and the reasons for each delay. Within 6 months of statewide implementation, Massachusetts noted 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) have also released reports on their tracking system since 2016, and in their [report from 2021](#), ISP noted that the percentage of non-investigated SAKs determined by law enforcement has decreased consistently from 19% in 2017 to 6.5% in 2021. Additionally, the report outlined usage of the tracking system database and public website for victims, stating that on average, 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. [North Carolina](#) and Michigan have seen a reduction of unsubmitted SAKs by 99% and 95%, respectively, after launching SAK tracking systems.

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### Further Considerations for Delaware Legislators

Delaware's updated SAK testing policy and related efforts address many issues that Delaware has faced with tracking and testing SAKs, and mirrors policies introduced across the country. However, victims are not able to independently track the status and location of their SAK, and Delaware does not have a separate Bill of 2023-RR-0001

Rights for victims of sexual assault. Additionally, Delaware has not mandated that agencies conduct recurring inventories of SAKs. Lastly, in contrast to nearby states, Delaware has not codified any SAK testing policies or tracking procedures.

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## Conclusion

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SAK testing and tracking is a multifaceted issue that states have made efforts to address throughout the last decade. Among these efforts, states have implemented updated SAK testing policies, mandated recurring inventories of SAKs, enhanced sexual assault victims' rights, and launched statewide SAK tracking systems. Overall, these changes aim to provide victims of sexual assault with transparency and a renewed sense of trust in the criminal justice process, in addition to streamlining the process for sexual assault cases overall. Delaware has implemented many aspects of SAK reform within the last few years. However, additional efforts on SAK reform merit consideration for Delaware legislators.