



# LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature  
Division of Legal and Research Services  
State Capitol, Juneau, AK 99801

(907) 465-3991 phone  
(907) 465-3908 fax  
[research@akleg.gov](mailto:research@akleg.gov)

February 13, 2015

**TO:** Senator Berta Gardner  
**FROM:** Tim Spengler, <sup>TCS</sup>Legislative Analyst  
**SUBJECT:** Rape Kits in Alaska  
*Research Request 15.171*

Please indicate your preference and return this form via interoffice mail or fax.

☒ I approve the release of this information with my name attached.

- ☐ Now
- ☐ At the end of the 29<sup>th</sup> Legislature

☒ I approve the release of this information, but remove my name.

- ☐ Now
- ☐ At the end of the 29<sup>th</sup> Legislature

☒ Keep confidential.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

To assist us in improving the quality of our services, we would appreciate your response to the following questions. Please be assured that we will take your comments seriously in performing future research.

*Was the information objective?*

*Was it clearly written?*

*Did it provide answers to (or, at least, useful information on) all the questions you posed?*

*Was the research completed and delivered to you in a timely manner?*



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## Research Brief

TO: Senator Berta Gardner  
FROM: Tim Spengler, Legislative Analyst  
DATE: February 13, 2015  
RE: Rape Kits in Alaska  
*LRS Report 15.171*

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*You had a number of questions pertaining to rape kits in Alaska, including the number of tested and untested kits, relevant statutes, costs, and success in prosecution. Additionally, you asked about rape kit laws in other states.*

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Briefly, following a sexual assault, a victim has the option to go to a hospital to have a forensic examination by a trained professional. During a forensic medical exam, a sexual assault evidence collection kit (rape kit) may be used. The kit affords the opportunity to collect any DNA that may have been left by the suspect. The rape kit contains many tools that may be used by the examiner for evidence collection during the forensic medical exam.<sup>1</sup> Of the rape kits collected, many are untested, which is an ongoing issue throughout the United States. A number of factors have been cited as contributing to the backlog of untested kits, including the cost of test analysis. Also, law enforcement agencies sometimes pursue testing only in cases with the best chance of solving or where the alleged rapist is a stranger to the victim.<sup>2</sup>

## Response from Alaska Forensic Expert

Below we list your questions and the information we found for each. Unless otherwise noted by our bracketed comments, we present the information, verbatim, provided to us by Orin Dym, the Alaska Scientific Crime Detection Laboratory's forensic manager.<sup>3</sup>

- *Are all rape kits in Alaska processed by the Department of Public Safety's Alaska Scientific Crime Detection Laboratory?*<sup>4</sup>

Yes, with the exception that Federal agencies may utilize the FBI laboratory.

- *How many kits have been tested in Alaska in each of the last five years?*

2010	2011	2012	2013	2014
484	333	242	617	443

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<sup>1</sup> This introductory information comes largely from the Rape, Abuse and Incest National Network (RAINN) and from the Alaska crime lab. RAINN is the nation's largest anti-sexual violence organization and was named one of "America's 100 Best Charities" by *Worth* magazine (<https://www.rainn.org/>). We also found valuable information from a 2011 report from the U.S. Department of Justice entitled "The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases." This 21-page document can be viewed at <https://ncjrs.gov/pdffiles1/nij/233279.pdf>.

<sup>2</sup> An additional factor in the backlog is that the FBI's forensic data base—the Combined DNA Index System (CODIS)—did not exist until the mid-1990s. Rape kits that date back prior to that may not have been tested if the victim could not identify a suspect. By the time law enforcement started matching forensic evidence from rape kits to the DNA of previously convicted criminals, many police department already had a large backlog.

<sup>3</sup> Mr. Dym can be reached at (907) 269-5743.

<sup>4</sup> Information on the crime lab is accessible at <http://www.dps.state.ak.us/crimelab/>.

- *How many rape kits typically go untested in Alaska each year?*

Not known. Nearly all of the kits submitted to the laboratory are processed. Exceptions occur when the laboratory is contacted by the submitting agency to withdraw the request for analysis, when the kit was collected beyond the time frame in which detectable scientific evidence would remain, or when analysis would not yield interpretable findings owing to the limitations of the scientific methods.

[Mr. Dym relayed to us in a phone conversation that if a law mandating that all rape kits be tested was enacted, it would lead to an indeterminate fiscal note, as it is not tracked or known how many kits go untested. If the lab were to be inundated with untested kits, analysis would either take a significantly longer time to complete, or the lab would have to hire additional personnel. At present, priority rape cases are analyzed in 40 days or less. Tests with low scientific value may take up to 14 months. Mr. Dym relates that the crime lab has monthly meetings with the Department of Law and law enforcement agencies to determine testing priorities.]

- *If you do not have data on the above question, do you have an estimate on what percentage of rape kits are tested in Alaska?*

Not known. The Department does not know how many completed sexual assault evidence collection kits have been utilized by a law enforcement agency, but not yet submitted to the crime lab for testing. Beginning February 1<sup>st</sup> we will be requiring that all kits must ultimately be sent back to the lab. This will give us a better understanding of what is collected, and what is analyzed. [This DPS policy will only apply to kits collected by State Troopers not to city police forces. Mr. Dym informs us that the troopers submit around 40 percent of the total amount of kits that come to the laboratory. Only the Anchorage Police Department submits more.]

- *What is the geographic breakdown of tested vs. untested kits in Alaska (i.e. are kits from Anchorage tested at a higher rate than kits from rural Alaska)?*

This is unknown with regards to kits that are never submitted to the laboratory. Geographic location does not factor in to the laboratory's processing of kits.

- *What are the typical reasons that kits go untested?*

In addition to the reasons given above, kits may go untested for a variety of additional reasons that include—Anonymous reporting, case is un-prosecutable (victim withdraws complaint, suspect dies), Consent (the physical evidence is not in question). In some of these instances, the kit may never be submitted to the lab.

- *What is the cost of processing a rape kit in Alaska? Is the cost absorbed by DPS, or by the law enforcement agency that sends you the kit?*

The State Crime Lab provides service to all State law enforcement agencies at no cost. Since the nature of each case and items of evidence are unique to every sexual assault, there is no stock analysis cost. [In a subsequent phone conversation with Mr. Dym, he estimated that the cost to analyze each kit is in the \$3,000 to \$5,000 range.]

- *Are there statutory, regulatory, or policy timeframes for testing kits?*

None.

- *Are you aware of any examples of rape kits that were not tested, which resulted in more hardship (for example, another rape) for victims?*

Unknown. [There is information readily available on why testing rape kits is important both in solving current, and preventing future, crimes. The entity ENDTHEBACKLOG is a good place to start <http://www.endthebacklog.org/backlog/why-testing-matters>.]

- *Do you know how Alaska's rate of testing kits compares to other states?*

Unknown. [Like Alaska, the vast majority of other states do not track the testing of rape kits. Those that are tracking such information have only done so in recent years and we identified no useful data.]

The Department of Law (DOL) does not keep data on the number of convictions that resulted from evidence generated from rape kits or the breakdown of closed vs. open cases involving kits.<sup>5</sup> According to Kaci Schroeder, DOL's legislative liaison, the agency would have to pull cases by hand in order to arrive at any figures, a task that would take a great deal of time and resources.

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#### Rape Kit Legislation in Other States

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A number of states have passed legislation in the last few years that attempt to address the backlog of untested rape kits. These laws tend to fall into the following categories: those that require audits, inventories, and/or tracking of kits, and those that mandate testing. Unfortunately, we found very little information on how successful or costly these legislative attempts have been, largely because most of the measures have only been implemented in the last year or two.

In the table on the following page, we summarize some of the relevant enacted legislation that we identified.<sup>6</sup> Following that we provide pertinent information from the National Conference of State Legislatures that you may find useful. As we mentioned earlier, it appears that any potential bill in Alaska requiring the testing of all rape kits would likely come with an indeterminate fiscal note, as the number of kits that go untested (and those that are backlogged) in the state is unknown. Presumably, less costly would be a measure to identify and track Alaska's untested kits and assess the backlog.<sup>7</sup>

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<sup>5</sup> Ms. Schroeder can be reached at (907) 465-4037.

<sup>6</sup> You may also want to peruse a document from the National Center for the Victims of Crimes entitled "Laws about the Sexual Assault Kit Backlog," at <https://www.victimsofcrime.org/our-programs/dna-resource-center/untested-sexual-assault-kits/sexual-assault-kit-backlog-laws>. This document lists relevant recently enacted as well as pending legislation.

<sup>7</sup> For information on what type of rape kit legislation might be best suited for Alaska, we suggest you contact Legislative Legal Services.

Table 1: Selected Enacted Legislation Pertaining to Rape Kit Testing		
State	Citation	Summary
California	Audit	Approved an audit to survey untested rape kits in state. Audit will assess how rape kit backlog funding is being used and will analyze laboratory and law enforcement policies.
	Section 680 of the Penal Code	Requires law enforcement to submit sexual assault forensic evidence to a crime lab within five days of collection. The lab must test the rape kit and enter results in the federal CODIS database within 30 days.
Colorado	CRS 24-33.5-113	Requires forensic testing be done, if requested by victim. Kit must be submitted to crime lab within 21 days. Also, law enforcement must submit an inventory of untested kits to state Bureau of Investigation for the preparation of a plan to analyze kits.
Hawaii	House Concurrent Resolution 99-H.D. 1	Among other things, requires Attorney General to provide report on efforts to create an effective kit tracking mechanism and identify funding to help with effort.
Illinois	725 ICS 202/5	Mandates submission of all sexual assault evidence within ten days to Illinois State Police (ISP). The ISP is then required to have kits analyzed within 10 days. Law enforcement must also provide ISP with an inventory of untested kits.
Louisiana	LSA-RA 15.622	Agencies that store rape kits must submit an inventory of untested kits. State crime lab must then submit a report detailing untested kits in each parish.
Michigan	MCLA 752.962	Creates a state commission to establish regulations, procedures, and timetables with deadlines that law enforcement agencies and health care providers must follow when collecting and using rape kit evidence.
Ohio	ORC 2933.82	Requires law enforcement to forward untested rape kits to crime laboratory for DNA analysis within one year.
Texas	Gov't Code 420.041-043	Requires that law enforcement submit rape kits to lab within 30 days.
Virginia	Virginia Uncodified Acts 642 (2014)	Requires local and state law enforcement to inventory and submit a report regarding untested kits, by county.
<p><b>Notes:</b> These are the majority of enacted rape kit laws. More detail on these and other relevant laws are available at <a href="https://www.victimsofcrime.org/our-programs/dna-resource-center/untested-sexual-assault-kits/sexual-assault-kit-backlog-laws">https://www.victimsofcrime.org/our-programs/dna-resource-center/untested-sexual-assault-kits/sexual-assault-kit-backlog-laws</a>.</p> <p><b>Sources:</b> The National Center for Victims of Crime (see above URL), Westlaw.</p>		

In September 2014, the National Conference of State Legislatures produced a webinar that may prove illuminating to you. The webinar discusses how states are coordinating resources and addressing the issue of untested sexual assault evidence. The webinar can be viewed at <http://www.ncsl.org/research/civil-and-criminal-justice/untested-sexual-assault-evidence-webinar-the-legislative-response.aspx>.<sup>8</sup>

Also of possible interest to you is a Colorado news story from September 25, 2014. It reports how Colorado's new law is working well in some ways (more kits being tested) but not well in others (not addressing previously-untested kits). The story can be viewed at <http://www.thedenverchannel.com/news/call7-investigators/call7-investigation-reveals-thousands-of-rape-kits-still-may-not-be-tested-despite-new-law>.

We hope this is helpful. If you have questions or need additional information, please let us know.

<sup>8</sup> An NCSL blog on the topic can be accessed at <http://www.ncsl.org/blog/2014/09/23/states-respond-to-untested-sexual-assault-evidence.aspx>. Also, a 2013 document from NCSL on untested forensic biology including sexual assault evidence can be viewed at <http://www.ncsl.org/Documents/cj/StateBacklogsOfForensicEvidence.pdf>.