



## **A Model for Comprehensive State Legislation to End the Backlog**

*Joyful Heart's model legislation is a survivor-centered approach to eliminate the backlog of untested rape kits in the state, test newly collected kits swiftly, prioritize the needs and rights of survivors, and take serial offenders off the streets. The language below aligns with federal best practices<sup>1</sup>, and has been reviewed by survivors, advocates, medical professionals, law enforcement, crime lab personnel, and prosecutors. Every state should customize the model to ensure it addresses each state's unique challenges and existing statutes.*

### **INTENT OF THE LAW**

The legislature finds that, when tested, DNA evidence from rape kits can be an incredibly powerful tool to solve and prevent crimes. It can identify unknown assailants, confirm known suspects, identify serial offenders by linking crimes together, and exonerate the wrongfully convicted. Standard and efficient sexual assault evidence kit procedures and a statewide tracking system will ensure that victims receive accurate information that enables them to take steps to protect their rights, while preventing misplacement of kits, delays in testing, or destruction of evidence. It is the intent of the legislature that kits are tested in a timely manner to enhance public safety by protecting survivors, exonerating the wrongfully convicted, and holding offenders accountable.

### **BE IT ENACTED THAT**

#### **SECTION 1. *Annual Statewide Inventory of Sexual Assault Evidence Kits*<sup>2</sup>**

Within 180 days of enactment of this law, and thereafter annually, all medical facilities, law enforcement agencies, crime laboratories, and any other facilities that receive, maintain, store, or preserve sexual assault evidence kits ("kits") shall submit a report containing the following information to [the appropriate state agency<sup>3</sup>]:

- A. The total number of all untested kits in possession of each the medical facilities, law enforcement agencies, crime laboratories, and any other facilities that receive, maintain, store, or preserve kits ("entity").
- B. For each kit:
  - a. category of the kit:
    - 1. sexual assault was reported to law enforcement; or
    - 2. victim chose not to file a report with law enforcement ("anonymous"<sup>4</sup>)
  - b. status of the kit:

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<sup>1</sup> [National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach](#). The National Institute of Justice, August 2017.

<sup>2</sup> Recommendations 18 and 19. [National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach](#). The National Institute of Justice, August 2017.

<sup>3</sup> Usually the Department of Public Safety or the State Police.

<sup>4</sup> May also be known as "unreported kits." In this document, we define an "anonymous kit" as a kit that was collected but the victim chose not report the crime to law enforcement.

1. medical facilities: date the kit was reported to law enforcement, and date the kit was picked up by law enforcement;
  2. law enforcement: date the kit was picked up from a medical facility, date the kit was submitted to a crime laboratory, and for any kit not submitted to a crime lab, the reason(s) the kit was not submitted;
    - a. For kits belonging to another jurisdiction: the date that the jurisdiction was notified and the date it was picked up;
  3. crime laboratories: date the kit was received from law enforcement, and from which agency the kit was received; date the kit was tested; date the resulting information was entered into CODIS [and other relevant state or local DNA databases], and the reason(s) a kit was not tested or a DNA profile was not created.
- C. The total number of kits in possession of the entity [for more than 30 days or beyond the statutory timeframe for kit submission and testing].
- D. The total number of kits destroyed and the reason(s) for destruction.
- E. The [appropriate state agency] shall compile the data from the reports in a summary report. This summary report must include a list of all agencies or facilities that failed to participate in the inventory. The annual summary report shall be made publicly available on the [appropriate state agency's] website, and shall be submitted to the governor, the attorney general, and the appropriate legislative committees and leadership.

## **SECTION 2. *Mandatory Submission and Testing Requirements for Previously Untested (Backlogged) Sexual Assault Evidence Kits***<sup>5</sup>

- A. Within 90 days of enactment of this law, all previously untested kits in medical facilities or other facilities that collect kits, shall be submitted to the appropriate law enforcement agency.
- B. Within 180 days of enactment of this law, each law enforcement agency shall submit all previously untested kits, including those past the statute of limitations<sup>6</sup>, to the accredited public crime [laboratory or laboratories].
- a. Anonymous kits are exempted from this section unless the victim files a report and consents to the testing of their kit. Anonymous kits shall be safely stored [by law enforcement or crime lab<sup>7</sup>] in a manner that preserves evidence for a duration of [20 years or the statute of limitations, whichever is longer<sup>8</sup>].
  - b. Victims who do not file a report with law enforcement at the time the kit was collected do not negate their right to report the crime and have the kit tested in the future.
- C. The accredited public crime [laboratory or laboratories] shall test all previously untested sexual assault kits within 90 days of receipt from local law enforcement.

<sup>5</sup> Recommendation 20.

<sup>6</sup> Victims may be able to file civil lawsuits against their offender and testing could identify the offender. Additionally, victims who had a DNA match but whose cases are past the statute of limitations, may provide an impact statement at sentencing should their offender be convicted of another crime and at parole hearings if the offender is incarcerated.

<sup>7</sup> Recommendation 17.

<sup>8</sup> Recommendation 32.

- a. Testing shall be pursued to develop autosomal DNA profiles that are eligible for entry into the Combined DNA Index System (CODIS) and [other relevant state or local DNA databases].
- b. In cases where testing has resulted in a DNA profile, the laboratory shall enter the full profile into the Combined DNA Index System Database (CODIS) and [other relevant state or local DNA databases]. The average completion rate for this analysis and classification shall not exceed 90 days.
- c. If the accredited public crime [laboratory or laboratories] is [are] unable to meet the deadline specified above, kits shall be outsourced for testing to an accredited private crime laboratory.

### **SECTION 3. *Mandatory Submission and Testing Requirements for Newly Collected Sexual Assault Evidence Kits***<sup>9</sup>

- A. Medical facilities and all other facilities that conduct medical forensic examinations shall notify the appropriate law enforcement agency immediately, and no later than 24 hours after the collection of a new sexual assault evidence kit.
- B. Local law enforcement agencies shall:
  - a. Take possession of the kit from medical facilities within three business days<sup>10</sup> of notification.
  - b. Submit newly collected kits to the accredited public crime [laboratory or laboratories] within seven days<sup>11</sup> of taking possession of the kit.
    1. Anonymous kits are exempted from this section unless the victim files a report and consents to the testing of their kit. Anonymous kits shall be safely stored by law enforcement in a manner that preserves evidence for a duration of [20 years or the statute of limitations, whichever is longer].
    2. Victims who do not file a report with law enforcement at the time the kit was collected do not negate their right to report the crime and have their kit tested in the future.
  - c. Notify the appropriate jurisdiction within seven days of taking possession of a kit outside of their jurisdiction. The appropriate jurisdiction shall take possession of the kit(s) within seven days of notification.
- C. The accredited public crime [laboratory or laboratories] shall test all kits within 30 days of receipt from local law enforcement.
  - a. Testing shall be pursued to develop autosomal DNA profiles that are eligible for entry into the Combined DNA Index System (CODIS) and [other relevant state or local DNA databases].
  - b. In cases where testing has resulted in a DNA profile, the [laboratory or laboratories] shall enter the full profile into the Combined DNA Index System Database (CODIS) and [other relevant state or local DNA databases]. The average completion rate for this analysis and classification shall not exceed 90 days.

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<sup>9</sup> Recommendation 20.

<sup>10</sup> Recommendation 15.

<sup>11</sup> Recommendation 16.

- c. If the accredited public crime [laboratory or laboratories] is [are] unable to meet the deadline specified above, untested kits shall be outsourced to an accredited private crime laboratory.

#### **SECTION 4. *Tracking System for Sexual Assault Evidence Kits***

- A. Within 90 days of enactment of this law, [the appropriate state agency], shall convene a multidisciplinary task force on the kit handling process. The task force shall:
  - a. Develop recommendations for establishing a statewide electronic kit tracking system.
  - b. Identify and pursue state and federal funding to establish the tracking system, including grants.
  - c. Be comprised of members that include survivors, law enforcement professionals, crime lab personnel, prosecutors, victim advocates, victim attorneys, and sexual assault nurse examiners [or sexual assault forensic examiners].
  - d. Monitor the tracking system's implementation for at least two years and recommend necessary modifications.
- B. The [appropriate state agency] shall implement the recommendations of the task force to adopt and maintain the statewide tracking system. The [appropriate state agency] may contract with state or non-state entities including, but not limited to, private software and technology providers, for the creation, operation, and maintenance of the system. The tracking system shall:
  - a. Track the status of the kits from the collection site throughout the criminal justice process, including but not limited to the initial collection at medical facilities, inventory and storage by [law enforcement agencies or crime lab], analysis at crime laboratories, and storage or destruction after completion of analysis.
  - b. Allow all agencies or facilities that receive, maintain, store, or preserve kits to update the status and location of the kits.
  - c. Allow victims to access the system anonymously and receive updates regarding the location and status of their kit.
- C. The [appropriate state agency] may phase-in initial participation according to region, volume of kits, or other appropriate classifications.
- D. The [appropriate state agency] shall submit a report on the current status and plan for launching the system, including the plan for phased implementation, to the governor, the attorney general, legislative leadership, and the task force in advance of the legislative session following enactment of this law.
- E. All entities in the chain of custody of kits shall fully participate in the system no later than one year from the date of adoption.
- F. Participation is mandatory for law enforcement agencies, medical facilities, crime laboratories, and any other facilities that receive, maintain, store, or preserve kits.
- G. All previously untested kits shall be entered into the system.<sup>12</sup>

#### **SECTION 5. *Victims' Right to Notice***

- A. Under this section all victims of sexual assault shall have the right to:

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<sup>12</sup> If backlogged kits are tracked in the system, annual inventory reports could be generated from this system.

1. Consult with a sexual assault victim advocate who has confidentiality and privilege; waiving the right to a victim advocate in one instance does not negate this right. The medical facility, law enforcement officer, or prosecutor shall inform the victim of this right prior to commencement of a medical forensic examination or law enforcement interview, and shall not continue unless such right is knowingly and voluntarily waived.
  2. Information, upon request, of the location, testing date and testing results of a kit, whether a DNA sample was obtained from the kit, whether or not there are matches to DNA profiles in state or federal databases and the estimated destruction date for the kit, if applicable, in a manner of communication designated by the victim.
  3. Be informed when there is any change in the status of their case, including if the case has been closed or reopened.
  4. Designate a person of the victim's choosing to act as a recipient of the information provided under this subsection.
  5. Be informed about how to file a report with law enforcement and have their kit tested in the future, if the victim chose not to file a report at the moment the kit is collected.
  6. Be informed about the right to apply for victim compensation.
- B. The [appropriate state agency] will ensure that statewide policies and procedures for law enforcement shall be adopted concerning contact with victims and notification concerning kits. The policies and procedures shall be trauma-informed and survivor-focused and shall require:
1. Each agency to designate at least one person, who is trained in trauma and victim response, to receive all inquiries concerning kits and to serve as a liaison between the agency and the victim.
  2. Victims of sexual assault be provided with the contact information for the designated liaison(s) at the time that a kit is collected.
  3. In advance or at the beginning of the medical forensic examination and law enforcement interview, medical professionals, victim advocates, law enforcement officers, or prosecutors shall provide victims with a physical document developed by [appropriate state agency] identifying their rights under law, including the rights granted under this section. This document shall also be available in at least [the two most commonly spoken languages in the state, after English].

## **SECTION 6. *Appropriation of State Funding***

The legislature shall appropriate funds to carry out the provisions of this law.

## **SECTION 7. This act takes effect immediately.**

## **SECTION 8. *Definitions.***

- A. "Accredited laboratory" means a DNA laboratory that has received formal recognition that it meets or exceeds a list of standards, including the FBI director's quality assurance standards, to perform specific tests, established by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the

forensic community in accordance with the provisions of the federal DNA identification act, 42 USC 14132, or subsequent laws.

- B. "Anonymous kit" refers to a kit that is collected from a victim of sexual assault through a medical forensic examination where the victim elects, at the time of the examination, not to report the sexual assault offense to a law enforcement agency.
- C. "Combined DNA Index System" (CODIS) means the Federal Bureau of Investigation's program of support for criminal justice DNA databases as well as the software used to run these databases.
- D. "DNA analysis" means the isolation of autosomal deoxyribonucleic acid (DNA) to develop DNA profiles that are eligible for entry into the Combined DNA Index System (CODIS); DNA samples taken from evidence containing DNA from a known individual or of unknown origin; the determination of the DNA test results; and entry of resulting DNA profiles into CODIS.
- E. "Law enforcement agency" means a police department, the office of a sheriff, the state highway patrol, a county or city prosecuting attorney, or a federal, state, or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest.
- F. "Medical forensic examination" means an examination of a sexual assault patient by a health care provider, ideally one who has specialized education and clinical experience in the collection of forensic evidence and treatment of these patients. The examination includes gathering information from the patient for the medical forensic history; an examination; coordinating treatment of injuries, documentation of biological and physical findings, and collection of evidence from the patient; documentation of findings; information, treatment, and referrals for STIs, pregnancy, suicidal ideation, alcohol and substance abuse, and other non-acute medical concerns; and follow-up as needed to provide additional healing, treatment, or collection of evidence.
- G. "Newly collected kit" refers to kits that are not part of the backlog or have been collected since timeframes and requirements for testing kits became law.
- H. "Previously untested sexual assault evidence kits" means a human biological specimen(s) collected by a health care provider during a forensic medical examination from the victim of a sexually-oriented criminal offense that has not been through DNA analysis and has been held untested by medical facilities, law enforcement agencies, or accredited laboratories.
- I. "Sexual assault evidence kit" or "kit" means a collection of human biological specimen(s) collected by a health care provider during a medical forensic examination from the victim of a sex offense.
- J. "Status" refers to the location and date/time when the kit transfers within the chain of custody.

**Addendum: Additional policies the Joyful Heart Foundation recommends considering.**

#### **SECTION 9. Statute of Limitations for Sexual Assault**

- A. (Option 1) Eliminate the criminal and civil statutes of limitations for sexual assault.
- B. (Option 2) Extend the criminal and civil statutes of limitations for sexual assault.

- C. (Option 3) If a DNA profile is generated from the analysis of a sexual assault evidence kit, the related case can be reopened at any time after the commission of the offense, regardless of the statute of limitations on the crime.

#### **SECTION 10. *Compensation for Victims***

- A. When a renewed investigation into a previously reported sexual assault crime is initiated by a law enforcement agency after DNA testing or other evidence has revealed the identity of the offender, any victim or secondary victim of such crime committed by such offender may be eligible to apply within two years for victim compensation even if the deadline for reimbursement application has passed.

#### **SECTION 11. *Evidence Retention***

- A. Anonymous kits shall be safely stored in a manner that preserves evidence for a duration of [20 years or the length of the statute of limitations, whichever is longer]. Kits associated with a reported crime should be preserved [for 50 years or the length of the statute of limitations, whichever is greater<sup>13</sup>].

#### **SECTION 12. *Law Enforcement Training***

- A. All law enforcement investigators, first responders, and 911 personnel, shall complete victim-centered and trauma-informed sexual assault response training.<sup>14</sup>

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<sup>13</sup> Recommendation 31.

<sup>14</sup> Recommendation 22.