

## Elements of Reform:

### Changing State Laws to Prevent Future Backlogs

**Jurisdictions across the nation are working to address sexual assault reform through legislative changes. The SAKI Training and Technical Assistance (SAKI TTA) team is raising awareness of these legislative changes; this particular brief highlights legislative changes in Kentucky.**

*"Whereas delay in processing sexual assault evidence kits undermines public safety and confidence in the criminal justice system and no just cause exists for delay, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor ..."*  
—Kentucky Senate Bill 63

In March 2016, the Kentucky General Assembly passed a comprehensive sexual assault kit reform law; the law received broad bipartisan support. Although Kentucky's measure was not the first statewide reform law to be enacted in the nation, the law is a model for other states. Many of the bill's elements, known collectively as the Sexual Assault Forensic Evidence (SAFE) Act, were originally recommended by Kentucky's state auditor in a 2015 special report. Those recommendations were based on an investigation as to why local law enforcement agencies were not submitting kits to the state's only criminal forensic

laboratory for testing. Additionally, the recommendations looked into reasons for the delays in testing kits at the crime laboratory. The Auditor's office also studied other state laws.

#### Submit All SAFE Kits

The law required all Sexual Assault Forensic Evidence (SAFE) kits collected prior to March 2016 to be submitted to the Kentucky State Police forensic laboratory (Kentucky's only forensic laboratory) by January 2017. This requirement ensured the crime laboratory received all previously unsubmitted kits so that the kits could be analyzed as part of Kentucky's New York County District Attorney's Office (DANY) grant effort or as part of other possible grant programs.

The law also required law enforcement agencies to implement policies by January 2017 that require them to collect and submit all kits to the crime laboratory for analysis.

#### Timelines for Handling SAFE Kits

If victims choose to report to law enforcement, the law requires the following:

- ◆ Hospitals must notify the appropriate agency within 24 hours of collecting the kit.
- ◆ Law enforcement then has
  - 5 days to retrieve the kit from the collecting facility,
  - 10 days to transfer the kit to the appropriate agency if the collecting law enforcement agency lacks jurisdiction, and
  - 30 days to submit the kit to the crime laboratory.

Policymakers acknowledged that certain understaffed agencies located several hours from the central crime laboratory must be given sufficient time to deliver the kits to the crime laboratory.

The law set forth deadlines for the crime laboratory to reduce the average time for testing kits to 90 days by 2018 and 60 days by 2020. It currently takes about a year to analyze kits. The law exempts the crime laboratory from meeting these deadlines if the crime laboratory lacks necessary funding. Advocates of the law hope that increasing awareness about the importance of testing kits—as highlighted by the state's effort to clear its backlog

#### Key elements of Kentucky's new law include the following:

- ◆ A requirement that all Sexual Assault Forensic Exam (SAFE) kits be submitted and analyzed
- ◆ Timelines for law enforcement and hospitals to handle the SAFE kits and for the crime laboratory to complete testing
- ◆ More training and policies for law enforcement, including a policy for notifying victims about the status of their SAFE kits
- ◆ A limitation on the ability of law enforcement to destroy SAFE kits
- ◆ A voluntary designation for hospitals to have Sexual Assault Nurse Examiner (SANE) nurses on call at all times
- ◆ A requirement to collect data related to sexual assault in the state and analyze the costs of these crimes

through a DANY grant—will make adequately funding the crime laboratory a continued priority for legislators and governors.

## Policies Law Enforcement Must Possess

The 2015 Auditor’s report found that nearly all local law enforcement agencies in the state lacked policies to guide how they handle these investigations and the kits.

The law required all Kentucky law enforcement agencies to possess written policies and procedures related to sexual assault exams by January 2017. The policies must (1) outline the required timelines for retrieving and submitting kits and (2) contain a process for notifying victims of the testing progress.

All of Kentucky’s law enforcement agencies comply with the requirement to possess these written policies and procedures. The law made the funding for annual officer training contingent upon complying with these provisions.

The law clarifies that failure to meet any of the deadlines shall not be a basis for (1) a dismissal of a criminal action or (2) a bar to the admissibility of the evidence in a criminal action. That provision was added at the request of prosecutors and law enforcement officials who were concerned about how the law may affect prosecutions.

## Training for Law Enforcement

The Auditor’s report found that many of the state’s police officers and sheriff deputies were insufficiently trained to handle sexual assault investigations. The new law requires basic training for new officers to include at least 8 hours of training relevant to sexual assault. The Auditor’s office also found that patrol officers are often the first to respond to a sexual assault victim rather than a special victims’ investigator; therefore, providing proper training for first responders is necessary.

The new law also required the agency responsible for training police officers and sheriff deputies in the state to establish a 40-hour sexual assault investigation training course by January 2017.

By January 2019, agencies are required to have one or more officers trained in this curriculum, as follows:

| Number of Officers | Minimum Number of Trained Officers |
|--------------------|------------------------------------|
| ≤ 5                | 1                                  |
| 6–29               | 2                                  |
| ≥ 30               | 4                                  |

## Limiting the Destruction of Kits

Vague existing state statutes likely led to the destruction of an untold number of untested and tested sexual assault kits. The SAFE Act attempted to limit the ability of law enforcement to destroy certain kits.

## SANE-Ready Designation for Hospitals

The Auditor’s report focused largely on the untested sexual assault kits, but investigators from that office learned that some victims faced hurdles when they presented to a hospital to have SAFE exams done. Investigators also found the state has an insufficient number of SANEs who are considered better equipped and trained to respond to sexual assault victims than other emergency department staff members.

The SAFE Act established a voluntary designation hospitals can seek if they can certify that they have a SANE nurse on call at all times. The state must maintain a list of these SANE-ready hospitals on a Web site and provide the list to emergency medical services personnel. Kentucky’s state coalition of rape crisis centers is working with the state and the Kentucky Hospital Association to educate hospital administrators and promote the designation.

## Data Collection

By January 2018, the law requires the Sexual Assault Response Team Advisory Committee (SART-AC) to report to the General Assembly on the results of kits submitted to the crime laboratory. Report results include whether kit analysis led to suspects’ identification and prosecution, as well as the cost to society of the offenses committed by the identified suspects.

According to the law, the SART-AC must also report the following information to the General Assembly and Secretary of the Justice Cabinet:

- ◆ Number of sexual assaults reported
- ◆ Number of kits submitted and tested
- ◆ Number of charges filed and convictions obtained in the previous calendar year

The law requires the Prosecutors Advisory Council, Kentucky State Police, and Administrative Office of the Courts to provide the SART-AC with the data needed to compile these reports.

## Limitations of the Law

The measure lacks a provision related to tracking kits. To address this limitation, the Kentucky State Police forensic laboratory has voluntarily developed and initiated a statewide tracking system.

## Conclusion

Kentucky's law attempts to fix weaknesses at every level of the system—from hospitals to law enforcement to the crime laboratory. It seeks to bring justice to victims and improve public safety by ensuring the timely submission and testing of all kits. The law also seeks to change the culture and improve sexual assault investigations by increasing law enforcement training and initiating data analysis related to sexual assault in Kentucky.

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