

Annual Report to the
Legislature and Governor

**Washington Sexual Assault
Forensic Examination Best
Practices Advisory Group**

December 2020



This document is the annual report to the Washington State Legislature and Governor as directed by Substitute House Bill 1166 (2019). For more information on the Sexual Assault Forensic Examination Best Practices Advisory Group's activities, please visit <https://www.atg.wa.gov/safe-advisory-work-group>.



TABLE OF CONTENTS

SECTION ONE	Advisory Group Membership.....	2
SECTION TWO	Executive Summary.....	3
SECTION THREE	Introduction.....	4
SECTION FOUR	Status of 2019 Recommendations.....	5
SECTION FIVE	Advisory Group 2020 Activities.....	7
SECTION SIX	Recommendation.....	10
SECTION SEVEN	Advisory Group 2021 Plans.....	11



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EXECUTIVE SUMMARY

To bring justice to sexual assault survivors, in 2015, the Washington State Legislature instituted reforms to the state's response to sexual assault, including coordinating multidisciplinary efforts to address the backlog of untested sexual assault kits (SAKs), which preserve evidence left behind from an assault. To that end, the Legislature established the Sexual Assault Forensic Examination Best Practices Advisory Group (the Advisory Group) to reduce the number of untested SAKs in Washington and to review best practice models for managing all aspects of sexual assault investigations. This report addresses the progress the Advisory Group has made in 2020, offers a recommendation for legislative action to hold sex offenders accountable, and outlines the Advisory Group's plans for 2021. The Advisory Group's authorizing language expires December 31, 2021.



All of the Advisory Group's 2019 recommendations were acted upon.

- ✓ Provide resources for the investigation and prosecution of cold cases: \$2,000,000 in the 2020 supplemental operating budget for state grant program.
- ✓ Convene an advisory group to develop standard protocols for access to victim services in hospitals: Sexual Assault Coordinated Community Response Task Force created, which will establish best practices by December 2022.
- ✓ Store unreported SAKs and additional records for 20 years at local law enforcement agencies: now required.¹
- ✓ Collect DNA samples from qualifying offenders in the courtroom at the time of sentencing: now required if the local police department or sheriff's office has a corresponding protocol.²



The Advisory Group's 2020 Activities

- Monitored the progress of testing the SAK backlog.
Washington is approximately halfway through testing the backlog – 5,041 of 10,370 SAKs have been tested since 2016. 1,936 new DNA profiles have uploaded into the database and there were 891 “hits,” meaning the DNA profile from the SAK matched a DNA profile in the database.
- Resolved logistical issues associated with the new storage requirements for SAKs by developing FAQs for hospitals and law enforcement agencies.
- Drafted best practice guidelines for notifying victims about developments in their cold case using a victim-centered, trauma-informed approach.



Recommendation

To close a legal loophole that allows convicted sex offenders to avoid registering as sex offenders when they move to Washington, the Advisory Group unanimously recommended removing the marital requirement in certain sex offenses. Without this change, Washington may become a safe haven for sex offenders from other states, including child rapists and those who have been deemed a high risk to sexually reoffend within the community at large.



The Advisory Group's 2021 Plans

- Research and create recommendations about training for prosecutors and judges involved in sexual assault cases.
- Determine how to effectively track investigations and prosecutions that result from testing the backlog of untested SAKs.
- Develop best practices for the investigation of sexual assault cases from a victim-centered, trauma-informed perspective.



INTRODUCTION

In 2015, the Washington State Legislature instituted reforms to the state's response to sexual assault, including coordinating multidisciplinary efforts to identify and resolve systemic barriers contributing to a backlog of untested SAKs and establishing mandatory testing requirements for SAKs. A SAK, used by a medical professional performing a forensic examination, preserves any evidence left behind from an assault. Prior to 2015, law enforcement agencies and prosecutors had the discretion to submit SAKs to forensic laboratories for testing, but were not required to do so.

Untested or unsubmitted SAKs are those that have been booked into evidence by law enforcement, but not submitted to a crime lab for testing. In contrast, an unreported SAK is one that has been collected from a survivor who has chosen not to report the sexual assault to law enforcement.

The Sexual Assault Forensic Examination Best Practices Task Force (now the "Advisory Group") was formed to bring together law enforcement, victim advocates, survivors, hospitals, prosecutors, and legislators to reform processes around sexual assault forensic examinations to bring justice to survivors of sexual assault. The Advisory Group is focused on removing barriers to information-sharing and establishing a system that prioritizes the experiences of survivors. In 2019, the Washington State Legislature established the Advisory Group within the Office of the Attorney General through Substitute House Bill 1166. The Advisory Group's mission is to reduce the number of untested SAKs in Washington and to review best practice models for managing all aspects of sexual assault investigations. The duties of the Advisory Group include:

- Determining the number of untested SAKs in Washington;
- Making recommendations regarding legislative policy options for reducing the number of untested SAKs;
- Researching the best practice models for collaborative responses to survivors of sexual assault from the point the SAK is collected to the conclusion of the investigation and prosecution of a case, and providing recommendations to address any gaps in Washington and resources that may be necessary to address those gaps;
- Making recommendations for securing non-state funding for testing SAKs, and reporting on progress made toward securing such funding;
- Developing policies on the storage, retention, and destruction of unreported SAKs as well as protocols for engaging with survivors associated with unreported SAKs;
- Monitoring implementation of state and federal legislative changes;
- Collaborating with the Legislature, state agencies, medical facilities, and local governments to implement reforms pursuant to federal grant requirements; and
- Making recommendations for institutional reforms necessary to prevent sexual assault and improve the experiences of sexual assault survivors in the criminal justice system.

The Advisory Group submitted a preliminary report and work plan in 2015 and full annual reports with recommendations in 2016, 2017, 2018 (available at: <http://leg.wa.gov/JointCommittees/Archive/SAFE/Pages/default.aspx>) and 2019 (available at: https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/SAFE%20Report%202019.pdf). The reports contain information about the Advisory Group's activities, relevant legislative and policy changes, and recommendations to the Legislature and Governor for institutional reforms needed to improve the care of sexual assault survivors and reduce the number of untested SAKs. The Advisory Group was set to expire in June 30, 2019, but was extended by the Legislature through December 31, 2021 by Substitute House Bill 1166 (2019).



STATUS OF 2019 RECOMMENDATIONS

All of the Advisory Group's 2019 recommendations were acted upon.

✓ PROVIDE RESOURCES FOR THE INVESTIGATION AND PROSECUTION OF COLD CASES

In the 2020 supplemental operating budget, the Washington Association of Sheriffs and Police Chiefs (WASPC) received \$2,000,000 in General Fund—state appropriations for fiscal year 2021 to administer a grant program to assist multidisciplinary cold case or sexual assault investigation teams in seeking resolutions to cases tied to previously untested SAKs. On December 1, 2020, WASPC will submit a report to the Legislature and Governor regarding the status of grant awards pursuant to RCW 36.28A.430(3)(h).

✓ CONVENE AN ADVISORY GROUP TO DEVELOP STANDARD PROTOCOLS FOR ACCESS TO VICTIM ADVOCACY SERVICES IN HOSPITALS

In 2020, the Legislature unanimously passed Substitute Senate Bill 6158, sponsored by Senator Dhingra. This bill established the Sexual Assault Coordinated Community Response Task Force, which will 1) recommend best practice protocols for coordinated community responses to sexual assault survivors beginning with their arrival at a hospital or clinic; 2) identify gaps in trauma-informed, victim-centered care and resources for sexual assault survivors, and 3) recommend legislative policy options and non-state funding sources to implement coordinated community response protocols for sexual assault survivors. The Task Force has 25 appointed members, is staffed by the Attorney General's Office, and will complete its work by December 2022.

✓ STORE UNREPORTED SAKs AND ANY ADDITIONAL ITEMS COLLECTED DURING A FORENSIC EXAMINATION FOR 20 YEARS

In 2020, the Legislature passed Engrossed Substitute House Bill 2318, sponsored by Representative Orwall. One provision requires local law enforcement agencies to store and preserve unreported SAKs for twenty years from the date of collection.³ The legislation also established requirements for law enforcement agencies to preserve investigatory reports and records associated with DNA evidence in sexual assault cases. These records must be kept for 99 years or until the death of the defendant in cases where the defendant has been convicted and sentenced. When a conviction has not been made, the records must be kept for 99 years or until the statute of limitations has been reached.⁴

✓ STORE UNREPORTED SAKs AND ANY ADDITIONAL ITEMS COLLECTED DURING A FORENSIC EXAMINATION AT LOCAL LAW ENFORCEMENT AGENCIES WITH FUNDING APPROPRIATED

As noted above, law enforcement agencies are now required to store unreported SAKs. Specifically, the agency that would have jurisdiction to investigate any related criminal allegations if they were to be reported to law enforcement in the future. The applicable local law enforcement agency is also responsible for arranging transportation of the unreported SAK from the collecting entity to the agency. The Attorney General's Office is in the process of determining whether funds it has received for the Sexual Assault Kit Initiative⁵ from the U.S. Department of Justice can be used to assist law enforcement in enhancing their capacity to store SAKs.



✓ COLLECT DNA SAMPLES FROM QUALIFYING OFFENDERS IN THE COURTROOM AT THE TIME OF SENTENCING

Certain offenders are required to provide a sample of their DNA so it can be submitted to the FBI's database, the Combined DNA Index System (CODIS). This tool allows forensic laboratories to compare DNA profiles electronically, linking serial violent crimes to each other and to known offenders. A provision of Engrossed Substitute House Bill 2318 (2020) requires qualifying offenders, who will not serve a term of confinement, to immediately provide a DNA sample to the local police department or sheriff's office before leaving the court *if the local police department or sheriff's office has a protocol for collecting the DNA sample in the courtroom*. Otherwise, the person must report to the local police department or sheriff's office within a reasonable period of time established by the court to provide a DNA sample. Refusal to provide a DNA sample is a gross misdemeanor.⁶

Though this recommendation was acted upon, the Advisory Group will continue to work to ensure that all qualifying offenders have their DNA collected in the courtroom.



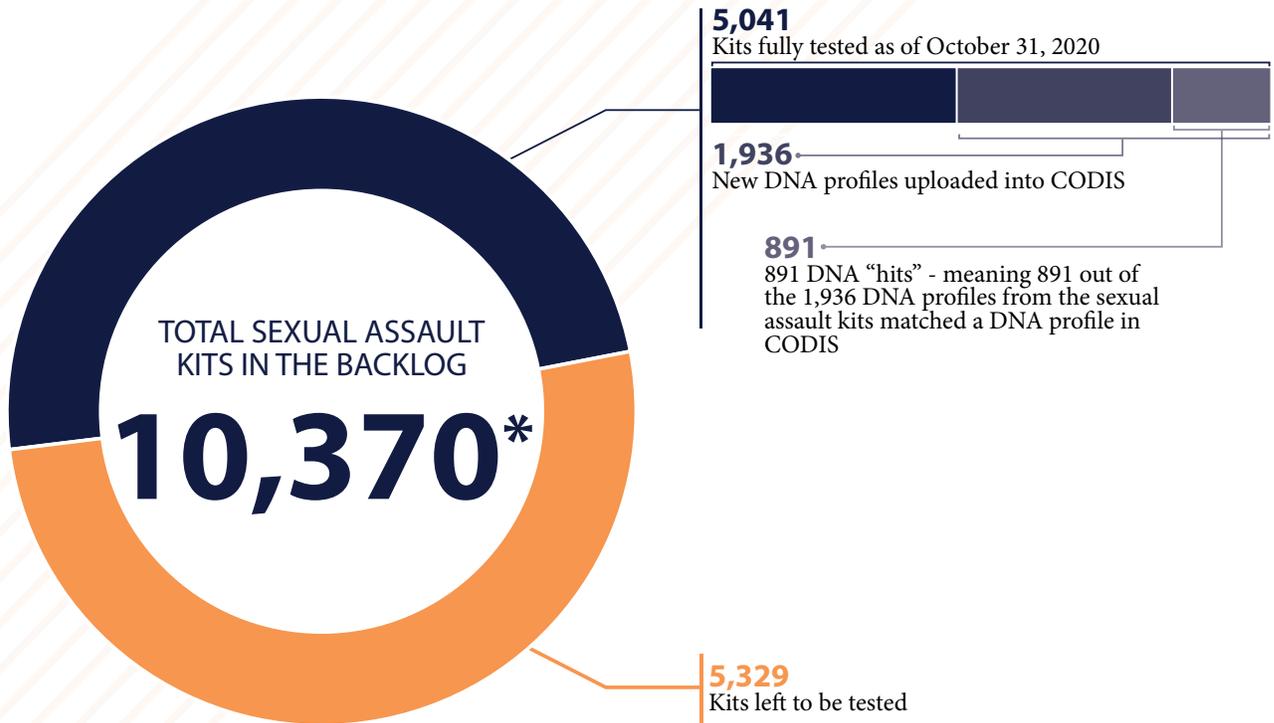


ADVISORY GROUP 2020 ACTIVITIES

Over the course of four meetings in 2020, the Advisory Group:

- Continued to monitor the progress of testing the backlog of SAKs.
 - The backlog refers to SAKs that had not been submitted to a crime lab for testing prior to the 2015 statute requiring law enforcement agencies to submit SAKs for testing, as well as those that had not been submitted for testing in 2018 when the Washington State Attorney General’s Office conducted an inventory. Based on the data collected by the Washington State Patrol Crime Lab and the Attorney General’s Office, it is estimated that our state’s total backlog was approximately 10,370 SAKs. Since 2015, the Crime Lab has worked diligently with local law enforcement agencies to submit nearly all (10,270) of the SAKs for testing. As of October 31, 2020, testing has been completed on 5,041 of those SAKs. From these SAKs tested, 1,936 new profiles have been uploaded into CODIS. There were 891 DNA “hits,” meaning the DNA profile from the SAK matched a DNA profile in CODIS.

With approximately 5,329 SAKs left to be tested, our state is about halfway through testing the backlog.



**10,270, or nearly all of kits, have been submitted for testing. However, until all of the kits have been received and verified by the Washington State Patrol Crime Laboratory, these numbers are subject to change.*

- Resolved issues associated with the new storage requirements for unreported SAKs.
 - A number of logistical issues arose due to the new law that requires all unreported SAKs to be stored by local law enforcement agencies for 20 years, including questions about labeling SAKs to protect patient privacy, determining jurisdiction and tracking SAKs with no corresponding law enforcement report number, and transporting SAKs. The Advisory Group worked to create FAQs for hospitals and law enforcement agencies.
- Drafted best practice guidelines for cold case victim notification.
 - The Advisory Group created best practice guidelines for notifying victims about a change in the status of their cold case, including a CODIS hit on a previously unsubmitted SAK. Particularly because a number of years may have passed and the victim may not have received regular updates over time about the status of their case, this communication can cause psychological trauma. The guidelines were developed to provide a victim-centered, trauma-informed approach consistently across the state when communicating with victims. The guidelines will be disseminated by the Washington Coalition of Sexual Assault Programs, the Washington Association of Sheriffs and Police Chiefs, the Washington Association of Prosecuting Attorneys, and the Attorney General's Office.
- **Began gathering information about investigations, charges, and prosecutions resulting from testing the backlog, including the following examples:**



Convicted & sentenced

- **State v. Bolar (King County):** There has been a resolution in this 2007 case of a rape of a child, which involved a SAK that remained untested until 2017. Mr. Bolar plead to one count of Kidnapping in the Second Degree and two counts of Rape of a Child in the Third Degree. He was sentenced to 51 months for Kidnapping and 60 months on each count of Rape of a Child. The kidnapping and rape charges were ordered to be served consecutively, while the two counts of Rape a Child are concurrent, so the total sentence is 111 months. Mr. Bolar has a prior Rape of a Child in the Third Degree conviction. In addition, between the time of the 2007 crime and the testing of the SAK in 2017, he was convicted twice of Assault in the Fourth Degree with sexual motivation.

In 2007, the defendant grabbed the 14-year-old girl from the street and pulled her into the bushes where he proceeded to vaginally and anally rape her and then vaginally penetrated her with a hose to presumably wash away evidence. The Defendant then took the victim to a house where over the next two days he beat and raped her. Ultimately, the victim was able to escape and contact help.



Convicted but not yet sentenced

- **State v. Lay (King County):** Mr. Lay was convicted of Rape in the Second Degree in 2020 for an assault that occurred in 2007. The defendant has a prior conviction for Assault in the Third Degree with Sexual Motivation.

The defendant and another man kidnapped the adult female victim in downtown Seattle, drove her to an open field, threatened to kill her if she did not comply, and repeatedly raped her. Afterwards, Lay forced the victim into the backseat of the car, and raped her again, holding a screw driver to her throat to ensure compliance. He then attempted to force the victim into prostitution, and when she resisted, he threw her out of the car. The victim made her way to the women's shelter where she had been living, called the police, and got a forensic exam at Harborview Medical Center where a SAK was collected. The detective at the time could not get in touch with the victim and deactivated the case.

In 2016, the SAK was tested as a result of testing the backlog and the results came back to Mr. Lay. King County originally charged Mr. Lay with Rape in the First Degree and offered a lesser charge of Rape in the Second Degree. The jury came back as hung on both charges. In 2020, King County Prosecutors tried the case a second time and were able to secure a conviction of Rape in the Second Degree.



Charged, trial pending

- **State v. Young (Spokane County):** Mr. Young is pending trial on Rape in the Second Degree for an assault that occurred in 2007. He was serving time in Coyote Ridge Correctional Center for another offense.

Allegedly, Young was introduced to the adult female victim at a bar in downtown Spokane. The defendant stated he could not drive and asked the victim for a ride. Mutual friends told her it would be fine. The victim drove him to a house and went inside. Once inside, the defendant attacked the victim from behind, threatening to cut her with a knife. The defendant then raped the victim vaginally and attempted to rape her anally. After approximately two hours, the defendant had the victim drop him off at another location. The victim drove back to where her friends were, reported the assault to police, and went to the hospital for a sexual assault exam. However, the SAK was never submitted for testing. As part of clearing the backlog, the SAK was tested and matched the defendant.

- **State v. Hailu (King County):** Mr. Hailu is pending trial on Rape in the Second Degree charges for an assault that occurred in 2014. The defendant has a prior Rape in the Second Degree conviction and is currently serving a 170 month to life sentence for that offense.

Allegedly, in downtown Seattle, the defendant lured the adult female victim into an alley by claiming the person she was looking for headed there. He then threatened to kill her if she resisted as he raped her vaginally and orally. As he left, he told her, "My friends are going to come and fuck you. If you move, I'll kill you." The victim waited a while, then got dressed and left. A couple of days later she was back downtown where she saw the defendant. She waived down a patrol car and reported the rape. The victim got a forensic exam where a SAK was collected. However, the case was closed when the detective could not make contact with the victim. As part of clearing the backlog, the SAK was tested and matched the defendant.

- **State v. Rance (King County):** Mr. Rance is awaiting trial for Rape in the Second Degree for an assault that occurred in 2013. Mr. Rance was previously prosecuted for Rape of a Child in the First Degree and the jury acquitted him.

Allegedly, the adult female victim had just been discharged from Harborview Medical Center and was waiting for a bus when the defendant approached her and convinced her to go with him to his place nearby. Shortly thereafter, the victim became uncomfortable and tried to leave. The defendant became extremely angry and threatened the victim. The defendant put a condom on and raped the victim as she cried. After he raped her, the defendant forced the victim to shower and then allowed her to leave. The victim immediately reported to a patrol officer who drove by. The victim underwent a forensic exam where a SAK was collected. The case was deactivated within days because the detective could not make contact with the victim. The SAK was tested as a result of the backlog testing and matched the defendant.



RECOMMENDATION

The Advisory Group voted on recommendations during the November 9, 2020 meeting and unanimously adopted the following:



REMOVE THE MARITAL REQUIREMENT IN CERTAIN SEX OFFENSES

To address public safety concerns, the Advisory Group recommends that the marital requirement be removed from RCW 9A.44.050, RCW 9A.44.073, RCW 9A.44.076, RCW 9A.44.079, RCW 9A.44.083, RCW 9A.44.089, RCW 9A.44.093, RCW 9A.44.096, and RCW 9A.44.100.

To promote community safety, sex offenders are required to register their address with the county sheriff's office. Sex offenders who move to Washington from another state must register. However, due to a recent court decision, some sex offenders who move to Washington no longer have to register, including some child rapists and those who have been deemed a high risk to sexually reoffend within the community. Adopting the Advisory Group's recommendation would increase registration of out-of-state offenders, providing information to law enforcement and the public, regardless of where a sex offense occurred.

Washington's Community Protection Act⁷ requires sex offenders who move from out of state to register in Washington:

- If the person would be required to register as a sex offender while residing in their state of conviction, or;
- If the person committed an offense that under Washington law would be classified as a sex offense, even if they are not required to register in the state of conviction.⁸

However, the Washington Court of Appeals determined that it is unconstitutional to routinely require offenders to register in Washington if they are required to register in their state of conviction.⁹ Instead, Washington is now required to assess, on a case-by-case basis, whether the offense is comparable to an offense in Washington that requires registration. Sex offenders moving to Washington are now only required to register when the offenses are comparable.

The impact:

Far from a technicality, the new requirement to conduct an assessment has had and will continue to impact Washingtonians because a number of our state's sex offense laws require demonstrating that the perpetrator is not married to the victim – even if the victim is a child obviously far too young to be married. Many other states have removed this antiquated component of their laws. As a result, an out-of-state offense may not be considered comparable to an offense in our state, meaning the offender is not required to register in Washington.

As of January 2020, Clark, King, and Skagit Counties alone had identified more than 50 sex offenders whose crimes were not comparable solely due to the marital element. Metro areas that cross state lines, like Clark County, are particularly impacted. Oregon does not have any marriage elements in their child sex offenses statutes, so moving across the border can enable sex offenders to avoid registration requirements.

In one case, a serial offender from Oregon with three convictions for assaults against three different child victims moved to Washington. Because of the marital element in Washington law, none of the offender's three Oregon convictions for sexual assaults against children were comparable. Consequently, he was not required to register.

Due to the marital component of Washington law, convicted child rapists who move from Portland, Oregon to Vancouver, Washington may not have to register as sex offenders.



ADVISORY GROUP 2021 PLANS

In 2021, the Advisory Group plans to focus its efforts on:

- Continuing to monitor testing of the backlog of unsubmitted SAKs;
- Determining how to effectively track investigations and prosecutions that result from testing the backlog of unsubmitted SAKs;
- Resolving any challenges that arise in regards to investigating and prosecuting cases that result from testing the backlog of unsubmitted SAKs;
- Researching and creating recommendations about necessary training for disciplines involved in sexual assault cases. Specifically, the Advisory Group will assess training for prosecutors and develop a procedural guide, known as a bench book, for judges;
- Ensuring that that DNA samples are collected in the courtroom at the time of sentencing in all cases in which individuals will not serve a term of confinement; and
- Developing best practices for the investigation of sexual assault cases from a victim-centered, trauma-informed perspective

Endnotes

1. RCW [5.70.030](#) (2)(b)
2. RCW [43.43.754](#) (5)(d)
3. RCW [5.70.030](#) (2)(b)
4. RCW [5.70.010](#)
5. The Sexual Assault Kit Initiative (SAKI) is a statewide effort to address the accumulation of unsubmitted sexual assault kits in the possession of local law enforcement agencies and hospitals. In 2017, the Attorney General's Office won its first \$3 million SAKI grant from the U.S. Department of Justice (DOJ) to begin collaborative efforts to end the backlog of sexual assault kits. DOJ awarded the Office an additional \$2.5 million in grants in 2019.
6. RCW [43.43.754](#) (5)(d)
7. RCW [9A.44.130](#)
8. RCW [9A.44.128](#) (10)(h)
9. In *State v. Batson*, 9 Wn. App. 2d 546 (2019), the Court held that this is an unconstitutional delegation of legislative authority.