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# Backlog of Sexual Assault Evidence: In Brief

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## Summary

Sexual assault kits (SAKs, also referred to as “rape kits”) are used by medical professionals to collect evidence during a forensic medical exam of a sexual assault victim in order to establish elements of a crime. Generally, upon completion of the medical exam the kit is transferred to an authorized law enforcement agency that logs the kit into evidence. Procedure and protocol regarding when and where kits are sent, however, vary across jurisdictions. Some law enforcement agencies automatically send the kits to forensic laboratories for testing while others wait for varying amounts of time; in some cases depending on when/if a police officer or prosecutor requests forensic analysis of the kits. Evidence from these kits may help identify, convict, or exonerate an offender. Evidence may also be stored in DNA databases for use in other cases.

When people refer to a “rape kit backlog,” they are referring to *untested* kits that either reside with law enforcement having never been submitted to a laboratory for testing, or referring to untested kits that have been submitted to crime labs but are delayed for testing for longer than 30 days. Some research organizations state that the problem more typically resides with those kits that were submitted to a crime laboratory but remain untested; however, the definition of backlog appears to vary across jurisdictions. While the status and location of the kits vary, the binding element of the backlogged kits is that they have never been tested.

The backlog of SAKs has raised concerns over justice for assault victims and that evidence in untested kits could be used to prevent suspects from victimizing others. SAKs may remain untested for reasons such as limited resources of laboratories and law enforcement and police discretion. Police may opt not to pursue a forensic investigation for a variety of reasons including perception of victim cooperation or a decision that the results of the kit would not be pertinent to the overall investigation.

In recent years, the federal government has addressed the SAK backlog by providing financial support, conducting or funding research to address the backlog, and testing a limited number of SAKs from local law enforcement agencies that had not been submitted previously.

Congress has passed legislation that addresses aspects of the SAK backlog. In February 2013, Congress passed the Violence Against Women Reauthorization Act of 2013 (VAWA 2013; P.L. 113-4) which, among other things, included new provisions to address the backlog in the states. VAWA 2013 incorporated the Sexual Assault Forensic Evidence Reporting Act of 2013 (SAFER Act). The SAFER Act added two new purposes for which authorizing legislation for the Debbie Smith DNA Backlog Grant Program funds can be used: (1) to conduct an audit of the samples of sexual assault evidence in the possession of a state or unit of local government that are awaiting testing and (2) to ensure that the collection and processing of DNA evidence by law enforcement is carried out in a timely manner and in accordance with the protocols and practices the Federal Bureau of Investigation (FBI) is required to develop under the act.

Congress may wish to assess the SAK backlog and debate if the federal response should be changed as the issue evolves and agencies, including the National Institute of Justice (NIJ), capture the breadth of the problem. For example, Congress may design preventative measures in attempting to prevent future backlogs. This may be done through grants to states and local entities by funding preventative measures and/or conditioning grants on the requirement that states and local governments establish a set time in which SAKs must be tested. Congress may also wish to request research on the impact of the backlog reduction and determine how efforts to address the issue have affected crime victims.

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Over the past few years policymakers have shown an interest in addressing the backlog of testing of sexual assault kits (SAKs, also referred to as “rape kits”) in many jurisdictions across the United States.<sup>1</sup> The backlog of SAKs has raised concerns over justice for assault victims and that additional victimizations could have been prevented had the evidence from any given kit been tested and the perpetrator apprehended in a timely manner.<sup>2</sup> This report provides background on the SAK backlog and information on federal efforts to reduce it.

## What Are SAKs and How Are They Used?<sup>3</sup>

SAKs include tools used by a nurse examiner<sup>4</sup> or another trained professional to collect evidence during a forensic medical exam of a sexual assault victim.<sup>5</sup> Many jurisdictions create their own sexual assault evidence collection kits while others purchase them from commercial vendors. As such, the content of a kit can vary across jurisdictions.<sup>6</sup> In general, sexual assault evidence collection kits include (1) instructions; (2) bags, sheets, and envelopes for evidence collection; (3) swabs for collecting fluids or secretions that could contain a perpetrator’s DNA (deoxyribonucleic acid); (4) a comb for collecting hair samples; (5) blood collection devices; and (6) documentation forms.<sup>7</sup>

A forensic medical exam involves collecting a complete medical history from the victim and completing a full-body physical examination.<sup>8</sup> This may include collecting blood, urine, hair, and other body secretion samples; photo documentation of any injuries sustained during the assault; collecting the victim’s clothing, especially undergarments; and securing any possible physical evidence that may have transferred onto the victim from the crime scene.<sup>9</sup>

Upon completion of forensic medical exams, kits are transferred to law enforcement, who log the kits into evidence. Procedure and protocol regarding when and where kits are sent, however, vary across jurisdictions. Some law enforcement agencies automatically send the kits to forensic laboratories<sup>10</sup> for testing while others wait for varying amounts of time, in some cases depending on when/if a police officer or prosecutor requests forensic analysis. Laboratories also vary on how items are screened, which items are tested, and the length of time taken to complete testing.<sup>11</sup> In a 2007 study of crime laboratories in the United States, over 75% of laboratories reported that DNA analysis requests were completed within four months or less while the other 25% required more than four months to complete the analysis. Twenty laboratories reported that more than nine months were needed.<sup>12</sup>

Evidence obtained through a rape kit can be used for several criminal justice purposes. It may be used to establish elements of a crime including the time at which an alleged attack occurred. It can establish a DNA link between two individuals, and this link may help identify, convict, or exonerate an offender in

### Role of Federal Government in Forensic Data Collection

The Federal Bureau of Investigation (FBI) operates and maintains a national DNA database where DNA profiles can be compared to generate leads in criminal investigations. Federal, state, and local laboratories upload and compare DNA profiles using the Combined DNA Index System (CODIS) software produced and distributed by the FBI.<sup>13</sup>

<sup>1</sup> The Joyful Heart Foundation, a nonprofit organization that advocates for the elimination of SAK backlogs, has identified approximately 40 municipal and county jurisdictions with known rape kit backlogs ranging from several hundred to thousands of rape kits. See Joyful Heart Foundation, *Endthebacklog: Where the Backlog Exists*.

<sup>2</sup> Joyful Heart Foundation, *Endthebacklog: Why Testing Every Kit Matters*, <http://endthebacklog.org/>.

<sup>13</sup> For more information on CODIS and federal involvement in forensic testing, see CRS Report R41800, *DNA Testing*

court. Evidence may also be stored in DNA databases for use in other cases. Forensic testing of SAK evidence can take several days.

In some cases, rape kits remain in police custody and are not submitted to a laboratory for testing. In others, kits may be submitted to the laboratory but remain untested. The latter is generally referred to as a “backlog.”

## What is Meant by the “Rape Kit Backlog?”

When people refer to a “rape kit backlog,” they are referring either to *untested* kits that reside with law enforcement having never been submitted to a laboratory for testing, or to untested kits that have been submitted to crime labs but are delayed for testing for longer than 30 days. Some research organizations state that the problem more typically resides with those kits that were submitted to a crime laboratory but remain untested;<sup>14</sup> however, the definition of backlog appears to vary across jurisdictions. For example, in a study of the Detroit rape kit backlog, over 75% of the 11,219 backlogged kits had never been submitted to a laboratory for testing (see “Detroit Project”).<sup>15</sup> While the status and location of the kits vary, the binding element of the backlogged kits is that they have never been tested.

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in *Criminal Justice: Background, Current Law, and Grants*, by Nathan James.

<sup>4</sup> The medical professional is often a trained Sexual Assault Nurse Examiner.

<sup>5</sup> Rape, Abuse and Incest National Network (RAINN), *What is a Rape Kit*, <http://www.rainn.org/get-information/sexual-assault-recovery/rape-kit> (hereinafter, *What is a Rape Kit*).

<sup>6</sup> U.S. Department of Justice, Office on Violence Against Women, *A National Protocol for Sexual Assault Medical Forensic Examinations*, NCJ 228119, April 2013, p. 7.

<sup>7</sup> *What is a Rape Kit*.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> According to a census conducted by the Bureau of Justice Statistics, there were 411 publicly funded crime laboratories as of 2009. That year, these laboratories received 4.1 million requests for forensic services; 80% of these requests were for DNA analysis of biological evidence. To address demand, some laboratories outsourced work to private laboratories or to other public laboratories such as the Federal Bureau of Investigation lab. See Matthew R. Durose, Kelly A. Walsh, and Andrea M. Burch, *Census of Publicly Funded Forensic Crime Laboratories, 2009*, U.S. Department of Justice, Office of Justice Programs, NCJ 238252, August 2012, <http://www.bjs.gov/content/pub/pdf/cpffcl09.pdf>.

<sup>11</sup> National Institute of Justice, *Sexual Assault Kits: Using Science to Find Solutions*, <http://www.nij.gov/unsubmitted-kits/>; Lisa Hurst and Kevin Lothridge, 2007 DNA Evidence and Offender Analysis Measurement: DNA Backlogs, Capacity and Funding, June 2010, <https://www.ncjrs.gov/pdffiles1/nij/grants/230328.pdf> (hereinafter 2007 DNA Evidence and Offender Analysis Measurement).

<sup>12</sup> 2007 DNA Evidence and Offender Analysis Measurement, p. 8.

<sup>13</sup> For more information on CODIS and federal involvement in forensic testing, see CRS Report R41800, *DNA Testing in Criminal Justice: Background, Current Law, and Grants*, by Nathan James.

<sup>14</sup> National Institute of Justice, *Sexual Assault Kits: Using Science to Find Solutions*, <http://www.nij.gov/unsubmitted-kits/>.

<sup>15</sup> Rebecca Campbell, Giannina Fehler-Cabral, and Steven Pierce, et al., *The Detroit Sexual Assault Kit (SAK) Action Research Project (ARP), Final Report*, March 2015, National Criminal Justice Reference Service, <https://www.ncjrs.gov/pdffiles1/nij/grants/248680.pdf#page=306>.

## Why Do Some Kits Remain Untested?

Rape kits remain untested for several reasons including limited resources of laboratories and law enforcement as well as police discretion. In some cases involving older rape kits, the statute of limitations may have expired.

### Due to Limited Resources

Some forensic laboratories face backlogs not only for SAKs but also other types of DNA evidence collected at crime scenes such as hair and blood samples. As demand for DNA testing rises with increasing awareness of its potential to help solve cases, so does the increase in demand for resources from both law enforcement and laboratories.<sup>16</sup> Law enforcement agencies and laboratories have a shortage of resources to manage backlogs of rape kits,<sup>17</sup> and this may be magnified during times of increased fiscal austerity.

There is no standard cost to test a rape kit, as this seems to vary from jurisdiction to jurisdiction. The Joyful Heart Foundation, an organization that advocates for the elimination of SAK backlogs, reports that it costs between \$1,000 and \$1,500 to test a rape kit.<sup>18</sup> The National Center for Victims of Crime reports that it costs between \$400 and \$1,500 to test a kit.<sup>19</sup>

### Due to Police Discretion

Police may opt not to pursue a forensic investigation due to a variety of reasons including perception of victim cooperation or consideration that the results of the kit would not be pertinent to the overall investigation.<sup>20</sup> Not all evidence collected in an alleged sexual assault has probative value. If consent is an issue in a particular case (the suspect admits sexual contact but contends it was consensual), detectives may consider that the SAK does not add any essential information to the investigation. Also, evidence may not be sent to a lab for analysis if charges against the alleged perpetrator have been dropped or the suspect has pled guilty.<sup>21</sup> Some law enforcement agencies might not submit SAKs to crime laboratories because the identity of the perpetrator was not in question from the beginning of the investigation, detectives identified the suspect through other evidence not included in the kit, or the victim chose not to proceed with the case.<sup>22</sup>

SAKs might not be submitted to a lab because police may not understand the potential value of testing SAKs. In 2009, the National Institute of Justice (NIJ) reported that 44% of law

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<sup>16</sup> National Institute of Justice, *Backlogs of Forensic DNA Evidence; Increasing the Capacity of Crime Laboratories*, January 2012, <http://nij.gov/topics/forensics/lab-operations/evidence-backlogs/Pages/increasing-capacity.aspx>.

<sup>17</sup> National Institute of Justice, *Sexual Assault Kits: Using Science to Find Solutions*, <http://www.nij.gov/unsubmitted-kits/>.

<sup>18</sup> The Joyful Heart Foundation, *Why the Backlog Exists*, <http://www.endthebacklog.org/backlog/why-backlog-exists>.

<sup>19</sup> The National Center for Victims of Crime, *Sexual Assault Kit Testing: What Victims Need to Know*, p. 6, <http://victimsofcrime.org/docs/default-source/dna-resource-center-documents/dna-sak-victim-brofinal.pdf?sfvrsn=2>.

<sup>20</sup> The National Center for Victims of Crime, *Sexual Assault Kit Testing: What Victims Need to Know*, <http://www.victimsofcrime.org>.

<sup>21</sup> *What is a Rape Kit*.

<sup>22</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Untested Sexual Assault Evidence in Law Enforcement Custody*, <http://www.nij.gov/topics/forensics/lab-operations/evidence-backlogs/law-enforcement-sexual-assault.htm>.

enforcement agencies did not submit SAKs for testing because a suspect had not been identified, and 15% did not submit SAKs because analysis had not been requested by a prosecutor.<sup>23</sup>

In addition, procedures for analyzing the evidence collected using SAKs can vary from jurisdiction to jurisdiction. In some jurisdictions, all sexual assault evidence collection kits are forwarded to a crime laboratory for analysis.<sup>24</sup> In other jurisdictions, it may be months or even years before the kit is tested, if at all.<sup>25</sup> Some law enforcement agencies might have a problem working through their backlog of old kits because crime laboratories are operating at full capacity analyzing DNA evidence collected from current cases.<sup>26</sup>

## How Many Backlogged Kits Are There?

According to NIJ, “it is unknown how many unanalyzed [SAKs] there are nationwide.” NIJ notes that while there are many reasons for why there are no data on the number of untested SAKs in law enforcement’s possession, one contributing factor is that there is no national system for collecting these data. Also, tracking and counting SAKs is an antiquated process in many jurisdictions (often done in non-electronic formats), and the availability of computerized evidence-tracking systems has been an issue for many jurisdictions for years.

### State Efforts to Address SAK Backlogs

The National Conference of State Legislatures reports that California, Colorado, Connecticut, Hawaii, Illinois, Maine, Michigan, and Texas have passed legislation that addresses issues related to untested SAKs. The laws “require state laboratories and law enforcement agencies to catalogue and/or submit for analysis any untested [SAKs] currently in their possession and/or charge a state entity or commission with preventing or mitigating future backlogs. The laws also set timelines for the submission and analysis of future collected [SAKs] and improve communication between victims and the state officials handling their case.”<sup>27</sup>

One grassroots organization addressed the data void by attempting to count the backlog (through public records requests) and track data in cities and states across the country. While the organization’s data are incomplete, they have some estimates of rape kit backlogs for various cities and states.<sup>28</sup> Thus far, the Joyful Heart Foundation has identified approximately 40 municipal and county jurisdictions with known rape kit backlogs ranging from several hundred to thousands of rape kits.

<sup>23</sup> In 2009, NIJ released the results of a nationwide survey of more than 2,000 police departments and their forensic evidence. See Nancy Ritter, *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases*, NIJ Special Report, May 2011, p. 2, <https://www.ncjrs.gov/pdffiles1/nij/233279.pdf> (hereinafter, *The Road Ahead*).

<sup>24</sup> Angela Wu, “Will Rape Kit Testing Laws Help Clear Cases?” *Newsweek*, July 26, 2010, <http://www.newsweek.com/will-rape-kit-testing-laws-help-clear-cases-74393>.

<sup>25</sup> Human Rights Watch, *Testing Justice: The Rape Kit Backlog in Los Angeles City and County*, 1-56432-461-3, New York, NY, March 2009, p. 22.

<sup>26</sup> Department of Justice, Office on Violence Against Women, *Eliminating the Rape Kit Backlog: A Roundtable to Explore a Victim-centered Approach*, Washington, DC, May 10, 2010, p. 15.

<sup>27</sup> National Conference of State Legislatures, *Forensic Biology Backlogs and Untested Sexual Assault Evidence*, <http://www.ncsl.org/Documents/cj/StateBacklogsOfForensicEvidence.pdf>.

<sup>28</sup> See The Joyful Heart Foundation, *Where the Backlog Exists*, <http://endthebacklog.org/backlog/where-backlog-exists>.

## Considerations When Working Through SAK Backlogs

The discovery of hundreds or even thousands<sup>29</sup> of untested SAKs might lead to calls for all of the kits to be tested; however, this might not be the most efficient use of limited resources. There are several issues that might be considered when working through a backlog of untested kits, including the following:

- Should all SAKs be tested, even the ones that might be from cases that are a couple of decades old, or should there be a triage process to determine which SAKs will be tested?
- Should evidence be tested in cases in which the statute of limitations has expired?
- Do law enforcement agencies give preference to testing kits in cases in which someone was assaulted by a stranger as opposed to sexual assaults perpetrated by an acquaintance?
- Do police and prosecutors have the resources they need to follow up on all of the leads that could be generated from widespread testing of backlogged SAKs?
- Should all victims be notified about the results of their SAK tests? If so, how and when should victims be notified? Should victims have a say in whether their SAKs will be tested?
- How will victims be linked with services, if needed?

## Federal Support to Reduce Rape Kit Backlogs

In recent years, the federal government has addressed the SAK backlog by providing financial support, conducting or funding research to address the backlog, and testing a limited number of SAKs from local law enforcement agencies that had not been submitted previously.

### Financial Support to State and Local Entities

In FY2015, Congress appropriated \$41 million for the Community Teams to Reduce the Sexual Assault Evidence Kit Backlog and Improve Sexual Assault Investigations program. Administered by the Department of Justice, Bureau of Justice Assistance, the goal of the program is to create a “coordinated community response that ensures just resolution to these cases whenever possible through a victim-centered approach, as well as to build jurisdictions’ capacity to prevent the development of conditions that lead to high numbers of unsubmitted SAKs in the future.”<sup>30</sup> The program provides funding to state and local governments to help address the backlog, test, and track SAKs; create and report performance metrics; access training to increase effectiveness in addressing complex issues involved with SAKs and associated cases; engage in multidisciplinary

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<sup>29</sup> Ibid.

<sup>30</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *National Sexual Assault Kit Initiative (SAKI)*, grant solicitation, BJA-2015-4115, March 9, 2015, p. 4, <https://www.bja.gov/Funding/15SAKIsol.pdf>.

policy development, implementation, and coordination; and improve practices related to the criminal justice process and victim engagement and support.<sup>31</sup>

NIJ also provides funding to state and local crime laboratories through its DNA Backlog Reduction program.<sup>32</sup> Funding under this program can be used to (1) process, record, screen, and analyze forensic DNA and/or DNA samples from convicted offenders or eligible arrestees; and (2) increase the capacity of public crime laboratories to process more DNA samples. While this funding cannot be used to help state and local governments work through their backlogs of SAKs that have not been submitted to a crime laboratory for analysis, it could be used to help process biological evidence collected through SAKs that have been submitted to a crime laboratory for analysis.

## Federal Research on SAK Backlogs

NIJ notes that there has been little research on SAK backlogs, and there are few evidence-based “best practices” to help jurisdictions make decisions about how to work through their backlogs and prevent backlogs from developing again in the future.<sup>33</sup> In 2011, NIJ funded research in Houston, TX, and Detroit, MI,<sup>34</sup> to try to help address these issues.<sup>35</sup>

NIJ reported that one of the important lessons learned from the two projects was the value of forming multidisciplinary teams when addressing the issue of the large number of SAKs that had not been submitted.<sup>36</sup> Prosecutors’ offices in both jurisdictions formed multidisciplinary teams to look at this issue. The teams included police officers, crime lab analysts, prosecutors, and victim advocates. NIJ notes that solving sexual assault crimes is a complicated process—it is more than simply testing biological evidence in the SAK—and the multidisciplinary teams can help facilitate the process. For example, the multidisciplinary teams can help exchange information about Combined DNA Index System (CODIS) “hits” (e.g., a match between a sample profile from a SAK and an offender profile in the National DNA Database)<sup>37</sup> among police, prosecutors, and crime labs in a seamless and real-time manner.

## Detroit Project

The Detroit team conducted a census of all SAKs in the possession of law enforcement. Team members manually counted approximately 11,300 SAKs collected from 1980 through November 1, 2009, while recording the name and date of birth of the victim, and date of the assault. The census took 15 weeks and 2,365 person-hours. The team found 2,512 SAKs with lab numbers but

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<sup>31</sup> Ibid.

<sup>32</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *DNA Backlog Reduction Program*, <http://www.nij.gov/topics/forensics/lab-operations/evidence-backlogs/Pages/backlog-reduction-program.aspx>.

<sup>33</sup> *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases*, p. 4.

<sup>34</sup> Wayne County.

<sup>35</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Untested Evidence in Sexual Assault Cases*, <http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx>.

<sup>36</sup> Ibid.

<sup>37</sup> For more information on CODIS, see CRS Report R41800, *DNA Testing in Criminal Justice: Background, Current Law, and Grants*, by Nathan James.

could not determine how many of these had been tested; 8,707 had never been submitted to the lab.

A total of 1,595 SAKs were tested in Detroit as a part of the NIJ-sponsored program, and nearly half (785 SAKs) yielded DNA profiles that could be uploaded to CODIS. Of the 785 profiles uploaded to CODIS, there were 455 “hits,” meaning that 28% of the SAKs tested in the Detroit action-research project revealed the DNA identification of the suspect. Among these, 127 serial assaults were identified.<sup>38</sup>

## Houston Project

There were an estimated 16,000 rape kits in police storage in Houston. The Houston Police Department (HPD) was already performing an audit of all SAKs in their custody because the NIJ-sponsored research was taking place when the police department was moving to a new evidence-storage facility. HPD determined that 6,663 SAKs had not been tested previously, including approximately 4,000 kits stored in the property room freezer. Of these 4,000 SAKs, the Houston team randomly selected a sample of 500 to be studied in the NIJ-sponsored project. Results from these analyses have not yet been publicly released by NIJ.

## The NIJ-FBI SAK Partnership

NIJ has partnered with the FBI crime laboratory to process and test a limited number of SAKs from local law enforcement agencies that had not been submitted previously. NIJ will collect and analyze data about these SAKs. The goal of this partnership is to better understand the issues related to how SAKs are handled and suggest ways to improve the collection and processing of them.<sup>39</sup>

SAKs in the possession of law enforcement or public crime laboratories can be submitted to the FBI for analysis if

- the SAKs are from an incident that took place more than one year from the time of submission;
- no biological testing has been conducted on the SAKs; and
- an incident or police report is enclosed for each SAK being submitted.<sup>40</sup>

## Recent Changes in Federal Law to Address the Backlog

### Violence Against Women Reauthorization Act of 2013

In February 2013, Congress passed the Violence Against Women Reauthorization Act of 2013 (VAWA 2013; P.L. 113-4) which, among other things, included new provisions to address the

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<sup>38</sup> Rebecca Campbell, Giannina Fehler-Cabral, and Steven Pierce, et al., *The Detroit Sexual Assault Kit (SAK) Action Research Project (ARP), Final Report*, March 2015, National Criminal Justice Reference Service, <https://www.ncjrs.gov/pdffiles1/nij/grants/248680.pdf#page=306>.

<sup>39</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *The NIJ-FBI Sexual Assault Kit Partnership—A Research Initiative for Unsubmitted Sexual Assault Kits*, <http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/nij-fbi-sak-initiative.aspx>.

<sup>40</sup> Ibid.

SAK backlog in states. VAWA 2013 expanded the purpose areas of several VAWA grants to address the needs of sexual assault survivors to include strengthening law enforcement and forensic response and urging jurisdictions to evaluate and reduce rape kit backlogs. It also established a new requirement that at least 20% of funds within the STOP (Services, Training, Officers, Prosecutors) program and 25% of funds within the Grants to Encourage Arrest Policies and Enforce Protection Orders program be directed to programs that meaningfully address sexual assault. In addition, VAWA 2013 incorporated the Sexual Assault Forensic Evidence Reporting Act of 2013.

### **Sexual Assault Forensic Evidence Reporting Act of 2013**

Congress amended the authorizing legislation for the Debbie Smith DNA Backlog Grant Program<sup>41</sup> by passing the Sexual Assault Forensic Evidence Reporting Act of 2013 (the SAFER Act of 2013, Title X of P.L. 113-4). The SAFER Act added two new purposes for which Debbie Smith grants can be used: (1) to conduct an audit of the samples of sexual assault evidence in the possession of a state or unit of local government that are awaiting testing, and (2) to ensure that the collection and processing of DNA evidence by law enforcement is carried out in a timely manner and in accordance with the protocols and practices the FBI is required to develop under the act. Prior to the passage of the SAFER Act, Debbie Smith grants could only be used to test biological evidence that had been submitted to a crime laboratory for analysis and to enhance the capacity of crime laboratories to conduct DNA analysis.

## **Going Forward**

Congress may wish to assess the SAK backlog and debate if the federal response should be changed as the issue evolves and agencies, including NIJ, capture the breadth of the problem. For example, Congress may design preventative measures in attempting to prevent future backlogs. This may be done through grants to states and local entities by funding preventative measures and/or conditioning grants on the requirement that states and local governments establish a set time in which SAKs must be tested. Congress may also wish to request research on the impact of the backlog reduction and determine how efforts to address the issue have affected crime victims.

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<sup>41</sup> 42 U.S.C. §14135. For more information on the Debbie Smith program, see CRS Report R41800, *DNA Testing in Criminal Justice: Background, Current Law, and Grants*, by Nathan James.

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