

515 CMR 8.00: TESTING OF QUANTITY LIMITED EVIDENCE WITHIN THE SEXUAL ASSAULT EVIDENCE COLLECTION KIT PURSUANT TO M.G.L. c. 41, § 97B½

Section

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8.01: Scope and Purpose

515 CMR 8.00 shall apply to all sexual assault evidence collection kits submitted to the Massachusetts State Police Crime Laboratory (MSPCL) pursuant to M.G.L. c. 41, § 97B½ for testing. Pursuant to M.G.L. c. 41, § 97B½(b), the MSPCL shall test all sexual assault evidence collection kits within 30 days of receipt from local law enforcement. 515 CMR 8.00 governs the notification, testing, and the tolling period of quantity limited evidence contained in sexual assault evidence collection evidence kits. 515 CMR 8.00 shall not apply to evidence other than what is contained within a sexual assault evidence collection kit.

8.02: Definitions

As used in 515 CMR 8.00:

Exhaustive Testing. Testing of a quantity limited item that consumes the entire sample for DNA analysis in order to maximize the potential for obtaining DNA results.

Quantity Limited Evidence (QLIM). An item of evidence is quantity limited when the MSPCL determines that the item's limited quantity will require exhaustive testing during DNA analysis in order to maximize the potential for obtaining DNA results.

Received. A SAECK is received when the MSPCL is in possession of the physical SAECK and all documentation required to proceed with the forensic examination (*e.g.*, police report or other necessary contextual documentation).

Sexual Assault Evidence Collection Kit (SAECK). A sealed box containing detailed protocols and materials necessary to conduct a forensic medical sexual assault examination and the forensic evidence collected from a sexual assault survivor.

Tolled. A SAECK is considered tolled when the most forensically probative item of evidence has been identified as QLIM and would be exhausted by DNA testing, causing a delay in the testing period for a period of time as designated in 515 CMR 8.03.

8.03: Quantity Limited Items in a Sexual Assault Evidence Collection Kit (SAECK)

(1) When the MSPCL has identified that the most forensically probative item of evidence from a SAECK is quantity limited:

- (a) The MSPCL will provide the prosecuting attorney's office with jurisdiction over the case or investigation with written notice of the quantity limited sample.
- (b) The notice from the MSPCL to the prosecuting attorney's office will:
  - 1. Inform the prosecuting attorney's office that the selected item(s) of evidence is quantity limited and that DNA testing will consume the raw evidence.
  - 2. Notify the prosecuting attorney's office that the statutory period-for testing is being tolled for 30 business days.
  - 3. Identify the date on which a response is required.
  - 4. Include all appropriate forms.

(2) Each prosecuting attorney's office shall designate an individual as the point-of-contact who is responsible for receiving notice of quantity limited evidence and notify the MSPCL of the point-of-contact.

8.03: continued

- (3) Testing may proceed when the MSPCL receives a written response from the prosecuting attorney's office with notification of one of the following:
  - (a) The prosecuting attorney's office authorizes the MSPCL to proceed with exhaustive testing. Testing will resume when the response to the MSPCL notice is received.
  - (b) The prosecuting attorney's office, defense attorney, or defendant requests or a court orders scientific representation present to observe the DNA testing. In such case, the MSPCL will work with the scientific representative to schedule a date on which the scientific representative will be present to observe the DNA testing. Testing will resume on the date scheduled by the MSPCL and the scientific representative for observation of testing.
- (4) The statutory time period to test the SAECK will be tolled under the following conditions:
  - (a) The prosecuting attorney's office determines that it is in the interests of justice that testing be halted and notifies the MSPCL of this determination.
  - (b) If the MSPCL does not receive a response from the prosecuting attorney's office by the date set forth in the written notice, the case will be treated as administratively closed by the MSPCL and the QLIM sample will be stored pursuant to M.G.L. c. 41, § 97B.

8.04: Annual Review

5.15 CMR 8.00 shall be reviewed at least annually by the Undersecretary of Forensic Science and Technology, or a designee.

8.05: Severability

If any article, section, subsection, clause, or phrase of 515 CMR 8.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Department of State Police, or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause, or phrase of 515 CMR 8.00.

REGULATORY AUTHORITY

515 CMR 8.00: M.G.L. c. 41, § 97B½.