

SEXUAL ASSAULT EVIDENCE COLLECTION KIT (SAECK) ANNUAL SUMMARY REPORT

FY 2020 Report



**Executive Office of Public Safety and Security
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Table of Contents

1. Legislative Authority
2. Background
3. SAECK Tracking System Task Force
4. SAECK Tracking System
5. Fiscal Year 2020 Summary
 - a. General
 - b. Kit Processing
 - c. CODIS Submission
 - d. Discarded Kits
6. Conclusion

1. Legislative Authority

Section 11 of Chapter 69 of the Acts of 2018, *An Act Relative to Criminal Justice Reform*, states:

Section 18X. (a) The executive office of public safety and security shall establish and maintain a statewide sexual assault evidence kit tracking system. The secretary of public safety and security, hereinafter referred to as the secretary, in conjunction with the department of public health, shall convene a multidisciplinary task force composed of members that include law enforcement professionals, crime lab personnel, prosecutors, victim advocates, victim attorneys, survivors and sexual assault nurse examiners or sexual assault forensic examiners to help develop recommendations for a tracking system, methods to improve transportation of sexual assault evidence kits and funding sources. The secretary 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. A sexual assault evidence kit shall include the standardized kit for the collection and preservation of evidence in sexual assault or rape cases as designed by the municipal police training committee pursuant to section 97B of chapter 41.

(b) The statewide sexual assault evidence kit tracking system shall:

(i) track the location and status of sexual assault evidence kits throughout the criminal justice process, including: (1) the initial collection in examinations performed at hospitals or medical facilities; (2) receipt and storage at a governmental entity, including a local law enforcement agency, the department of state police, a district attorney's office or any other political subdivision of the commonwealth or of a county, city or town; (3) a hospital or medical facility that is in possession of forensic evidence pursuant to section 97B of chapter 41; (4) receipt and analysis at forensic laboratories; and (5) storage and any destruction after completion of analysis;

(ii) allow hospitals or medical facilities performing sexual assault forensic examinations, law enforcement agencies, prosecutors, the crime laboratory within the department of state police, or any crime laboratory operated by the police department of a municipality with a population of more than 150,000, and other entities in the custody of sexual assault kits to update and track the status and location of sexual assault kits;

(iii) allow victims of sexual assault to anonymously track and receive updates regarding the status of their sexual assault kits; and

(iv) use electronic technology or technologies allowing continuous access.

(c) Any public agency or entity, including its officials and employees, and any hospital and its employees providing services to victims of sexual assault may not be held civilly liable for damages arising from any release of information or the failure to release information related to the statewide sexual assault evidence kit tracking system, so long as the release was without gross negligence.

(d) Local law enforcement agencies shall participate in the statewide sexual assault evidence kit tracking system established in this section for the purpose of tracking the status of all sexual assault evidence kits in the custody of local law enforcement agencies and other entities contracting with local law enforcement agencies.

(e) The director of the crime laboratory within the department of state police and the director of any crime laboratory operated by the police department of a municipality with a population of more

than 150,000 shall participate in the statewide sexual assault evidence kit tracking system established in this section for the purpose of tracking the status of all sexual assault evidence kits in the custody of the department of state police and other entities contracting with the department of state police or such crime laboratory operated by a police department of a municipality with a population of more than 150,000.

(f) A hospital or medical facility licensed pursuant to chapter 111 shall participate in the statewide sexual assault evidence kit tracking system established in this section for the purpose of tracking the status of all sexual assault evidence kits collected by or in the custody of hospitals and other entities contracting with hospitals.

(g) District attorney offices shall participate in the statewide sexual assault evidence kit tracking system established in this section for the purpose of tracking the status of all sexual assault evidence kits.

Section 18Y. Annually, on or before September 1st, the following reports regarding the previous fiscal year shall be submitted to the executive office of public safety and security by law enforcement agencies, medical facilities, crime laboratories, and any other facilities that receive, maintain, store or preserve sexual assault evidence kit. The reports shall contain: (i) the total number of all kits containing forensic samples collected or received; (ii) the date of collection or receipt of each kit; (iii) the category of each kit; (iv) the sexual assault that was reported to law enforcement; (v) whether or not the victim chose not to file a report with law enforcement (non-investigatory); (vi) the status of the kit; (vii) the total number of all kits remaining in possession of the medical facility, law enforcement or laboratory and all reasons for any kit in possession for more than 30 days; (viii) the total number of kits destroyed by medical facilities, law enforcement or laboratories, and reason for destruction; (ix) in the case of a medical facility, the date the kit was collected, the date the kit was reported to law enforcement and the date the kit was picked up by law enforcement; (x) in the case of law enforcement, the date the kit was picked up from a medical facility, the date the kit was delivered to the crime laboratory and, for kits belonging to another jurisdiction, the date that the jurisdiction was notified and the date it was picked up; and (xi) in the case of crime laboratories the date the kit was received, from which agency the kit was received, the date the kit was tested, the date the resulting information was entered into CODIS and the state DNA databases and all reasons a kit was not tested or a DNA profile was not created.

The executive office of public safety and security shall compile the information in a summary report that includes a list of all agencies or facilities that failed to participate in the audit. The annual summary report shall be made publicly available on the executive office of public safety and security's website and shall be submitted to the governor, the attorney general, the clerks of the house of representatives and the senate, and the house and senate chairs of the joint committee on the judiciary.

The executive office of public safety and security may obtain information from the tracking system established in section 18X and by additional means, such as manual counts and review of records such as case files.

2. Background

Pursuant to Section 11 of Chapter 69 of the Acts of 2018, *An Act Relative to Criminal Justice Reform*, the Executive Office of Public Safety and Security (hereinafter “EOPSS”) was granted the authority to establish and maintain a statewide sexual assault evidence collection kit (hereinafter “SAECK”) tracking system. The Criminal Justice Reform Act requires law enforcement agencies, the Massachusetts State Police Crime Laboratory (hereinafter “MSPCL”) and any crime lab operated by a police department of a municipality with a population of more than 150,000, a medical facility or medical facility licensed pursuant to G.L. c. 111, and the state’s district attorneys to participate in this statewide tracking system. The Act also requires that the tracking system record the progress of SAECK(s) from initial collection at a medical facility through testing at a crime laboratory. EOPSS is required to report out all information from the tracking system each fiscal year. For purposes of this initial report, EOPSS is also reporting on significant “front end” work undertaken during Fiscal Year 2019, which allowed for the Fiscal Year 2020 data to be compiled and summarized herein.

3. SAECK Tracking System Task Force

An Act Relative to Criminal Justice Reform further required EOPSS to create the SAECK Tracking System Task Force, consisting of key stakeholders from hospitals, law enforcement agencies, victim advocacy groups, district attorneys, crime labs, and associated partner agencies such as the Department of Public Health (DPH) and the Executive Office of Health and Human Services (EOHHS). The purpose of the task force was to develop a set of recommendations for the tracking system’s capabilities.

From September of 2018 through January of 2019, the SAECK Tracking System Task Force held meetings focused on system functionality and vendor capabilities. In July of 2019, the Task Force issued a report which contained the key functionality requirements it identified as necessary for the system. The requirements included:

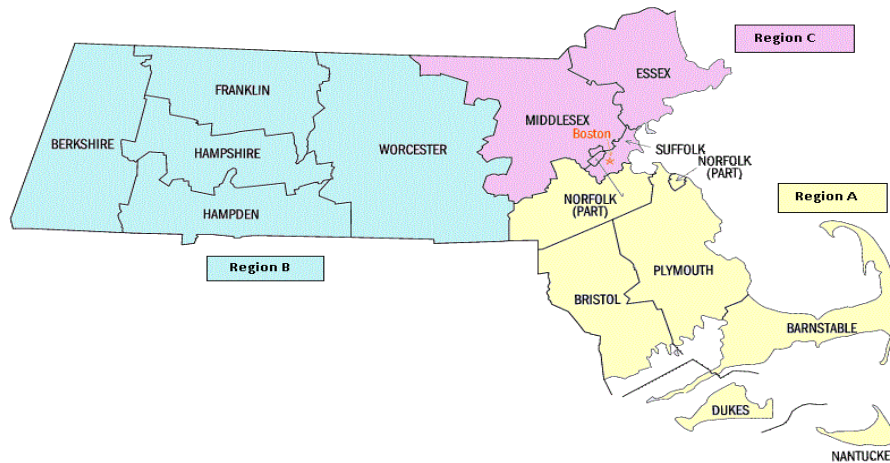
1. The ability to track a SAECK through the entire process, from medical service provider, to law enforcement agency, to the laboratory, and to storage;
2. A simple and intuitive system with 24/7 system support;
3. The system must be configurable to a Commonwealth-specific workflow;
4. A mobile-friendly and secure system;
5. Privacy and anonymity for survivors;
6. Alert and notification capabilities; and
7. The ability to monitor agency-level workflow.

4. SAECK Tracking System

EOPSS utilized the SAECK Tracking System Task Force report as the basis for the Request for Response (RFR) it released on March 22, 2019. As a result of the RFR, EOPSS awarded a contract with Sample Tracking and Control Solutions (STACS) DNA on July 22, 2019. In order to work with STACS DNA, EOPSS created the Policy Center, led by Undersecretary of Forensic Science and Technology, Kerry Collins, and a team of essential

EOPSS personnel, to support the functionality of and be responsible for the Track-Kit® system. STACS DNA assisted the Policy Center with a project plan, configuring the system, rollout dates, and training.

The system was rolled out in a phased approach, separating the counties of the Commonwealth into three regions. Beginning on January 6, 2020, the system was rolled out to Region A and the MSPCL. On February 24, 2020, the system was rolled out to Region B. Lastly, on March 9, 2020, the system was rolled out to Region C and the Boston Police Department Crime Laboratory (hereinafter “BPDCL”). In tandem with the rollout, EOPSS and STACS hosted a total of 72 training sessions for law enforcement agencies, medical facilities, district attorneys’ offices, and laboratories from November 13, 2019, through March 6, 2020.



The Track-Kit® system is designed to allow for ease of use by all users: medical service providers, law enforcement agencies, laboratories, survivors, and prosecuting agencies. Some of the noteworthy features of the system are:

- Secure, easy-to-use website for each type of user;
- Tracks kit location and status;
- Sends email notifications to ensure compliance with legislative timelines;
- Visualizes performance metrics in dashboards;
- Provides Inventory management to ensure a facility does not run out of kits;
- End-to-end audit trail of all activity;
- Multi-channel 24/7 end user support;
- Training and user documentation is tailored for each type of user; and
- Survivors are able to access localized resource information.

5. Fiscal Year 2020 Summary

a. General

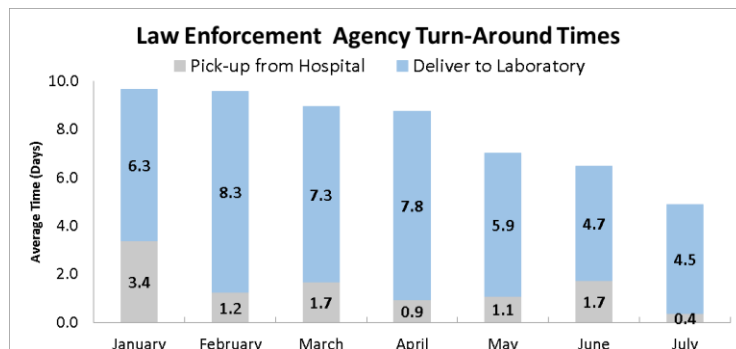
All agencies and facilities are required to submit annual reports to EOPSS containing the data points outlined in G.L. c. 6A, § 18Y. Given the remarkable aspects and features of the Track-Kit® system, the required data has been consistently reported to EOPSS throughout Fiscal Year 2020. As such, EOPSS has been tracking the

information prior to the deadline of September 1, as set forth in the statute, and was able to run the reports immediately. As a result of this feature, no facility or agency failed to submit the information required in section 18Y.

During Fiscal Year 2020, a total of 366 SAECKs were administered and entered into the Track-Kit[®] system. Of the 366 SAECKs, 56 SAECKs were administered to minors and 310 SAECKs were administered to adults. Fourteen of the total SAECKs entered into Track-Kit[®] pertain to incidents outside the jurisdiction of the Commonwealth. Of the 352 SAECKs that involved incidents in the Commonwealth, 252 of the incidents were reported to law enforcement and 100 were unreported.¹

b. Kit Processing

The Track-Kit[®] system allows for monitoring and notification in compliance with G.L. c. 41, § 97B 1/2. Specifically, the system allows for the medical provider to notify the law enforcement agency that a SAECK was collected within 24 hours of the examination. Local law enforcement agencies then have three business days to take possession of the SAECK. The law enforcement agencies are required by law to submit the SAECK to the appropriate crime laboratory within seven business days of taking possession. During the first six months of operation of the tracking system, there was a consistent reduction in turnaround times of pickups from the medical provider and deliveries to the laboratory. As of July 2020, the average pickup time from the medical provider is 0.4 days and the average delivery time to the laboratory is four and one-half days.



In accordance with G.L. c. 6A, § 18Y (vii), EOPSS is required to report “the total number of all kits remaining in possession of the medical facility, law enforcement or laboratory and all reasons for any kit in possession for more than 30 days.” Of the 366 SAECKs administered and entered into the Track-Kit[®] system, none remained at a medical facility for more than 30 days. A total of nine SAECKs remained at a law enforcement agency for more than 30 days for the following reasons:

1. Staffing limitations, including limitations related to the COVID-19 pandemic;
2. Further information was required to determine appropriate laboratory; and
3. Change in kit status from unreported to reported.

¹ Of the 252 kits involving reported incidents, the MSPCL determined upon further examination that eight kits did not qualify for testing because the incident was not reported to law enforcement and/or the incident occurred outside the jurisdiction of the Commonwealth.

It is important to note that, for purposes of the 30-day timeframe, the MSPCL distinguishes between kits that are in its possession and kits that are tested. For example, the MSPCL may complete testing within 30 days but the kit may remain at the laboratory for more than 30 days because the law enforcement agency has yet to retrieve the kit. Similarly, a kit could be returned to a law enforcement agency within 30 days but the MSPCL's testing is still ongoing and may exceed 30 days.²

The MSPCL received 223 SAECKs that had been collected between January 6, 2020, and June 30, 2020. Of those kits, 85 SAECKs remained in the laboratory's possession for more than 30 days for the following limited reasons:

1. Staffing restrictions during COVID-19 pandemic;
2. Further information was required from external agencies, which delayed the start of testing;
3. Evidence remained in custody during processing; and
4. SAECK ready for pickup and awaiting appointment with law enforcement agency.³

Of the 85 SAECKs that remained in the MSPCL's possession for more than 30 days, 68 were ready for pickup under 30 days, but awaited pickup from the law enforcement agency. There is no timeframe set forth in the statute requiring the law enforcement agency to retrieve the kit from the lab in a designated period of time. As such, some kits remained in the possession of the lab for more than 30 days.

Although Section 18Y does not require EOPSS to report the number of kits that were not tested within 30 days, EOPSS provides this data point in the interest of transparency in summarizing the MSPCL's efforts during fiscal year 2020. Of the 223 total kits the MSPCL received, 59 SAECKs were not tested within 30 days for the following limited reasons:

1. Staffing limitations, including those related to the COVID-19 pandemic, and shipping schedule for offsite processing;
2. Turnaround time was tolled because the quantity of the evidence was limited and would be consumed by testing, requiring further information from external agencies;⁴ and
3. Further information was required from external agencies to proceed with testing.⁵

Of the 223 kits the MSPCL received, 69 of the kits were designated as tolled kits, which required the MSPCL to await further information from the prosecuting attorney's office to either proceed with testing or mark the kit as administratively closed. Of these 69 kits, the prosecuting attorney's office instructed the MSPCL to proceed with DNA testing on 20 kits, halt testing on 12 kits, and was not responsive on 37 kits. Because the regulations disallow testing without the prosecuting attorney's approval, the MSPCL makes every effort to obtain this necessary information on tolled kits. In situations in which the prosecuting attorney's office is unresponsive, the MSPCL does not proceed with DNA testing and marks the kit as "administratively closed" pursuant to the applicable regulations.

The BPDCL went live March 9, 2020, and since doing so has received 26 kits through June 30, 2020. Of the 26 SAECKs, 13 remained at the laboratory for more than 30 days due to a staffing shortage. In order to comply

² For example, an item could be tested but the results are not back yet

³ This includes the eight SAECKs that the MSPCL received but which were ineligible for testing.

⁴ A SAECK is considered tolled when the most forensically probative item of evidence has been identified as so limited in quantity that it would be consumed by DNA testing, causing a delay in testing pending further information from the prosecuting attorney's office as designated in 515 CMR 8.00.

⁵ This may include police reports or other evidence.

with G.L. c. 6A, § 18Y the mandate, the BPDCL was granted four DNA positions, which it is in the process of filling.⁶

c. CODIS Submission

The DNA samples contained in the SAECKs are processed and analyzed by the laboratories in order to create DNA profiles. If the DNA profiles meet specific criteria established by the FBI, the profiles may be entered into the state and national DNA database (CODIS). Of the reported and completed SAECKs, the MSPCL was able to develop 65 DNA profiles. Thirty-one of those profiles met the specific criteria established by the FBI for CODIS submission and were uploaded into the database.

The MSPCL was unable to create DNA profiles for the remaining SAECKs due to the following reasons:

1. The case was unreported;
2. There were no kit items to test;
3. The DNA quantity was not sufficient for analysis;
4. Testing was tolled due to limited quantity of evidence; and
5. Testing was still in process.

The BPDCL was able to develop 8 DNA profiles, of which four were uploaded to the CODIS database. The other four profiles developed did not meet state and federal CODIS eligibility requirements. There were no items to test in the remaining kits.

d. Discarded Kits

No collected SAECKs were discarded in Fiscal Year 2020. Collected and reported SAECKs are preserved pursuant to G.L. c. 41, §§ 97B and 97B 1/2, which require the preservation of the SAECKs for not less than 15 years. Collected and unreported SAECKs are similarly preserved for the duration of the statute of limitations for all sexual assault and rape cases. A small number of kits were designated, and utilized, for training purposes only and were properly destroyed after use.

6. Conclusion

The Criminal Justice Reform Act tasked EOPSS with a mandate to develop, establish, and maintain a SAECK tracking system in the Commonwealth – a mandate of tremendous importance to survivors and to the interests of justice, accountability, and transparency. With the assistance and support of the Executive Office of Health and Human Services, the Executive Office of Technology Services and Security, the Office of Grants and Research, STACS DNA, and the communities of survivors, advocates, and medical professionals, EOPSS was able to achieve 100% compliance among medical, scientific, and law enforcement agencies and go live with all regions across the state as of March 9, 2020. The Policy Center, along with STACS DNA, will continue to monitor the system, remain responsive to the needs of all users, and update the system as needed. EOPSS will continue to work with its partners in an effort to maintain the successful reduction in turnaround times and improved service to stakeholders.

⁶ Because the BPDCL exclusively tests SAECKs from assaults within the City of Boston, it encounters no delays in pickup or obtaining required investigative information, as the MSPCL does.