

---

# Rape Kit Testing: Trauma-Informed Policy Considerations

*A position paper from the New Jersey Coalition Against Sexual Assault, April 2019*

## ***In Brief***

The New Jersey Coalition Against Sexual Assault:

- **Strenuously opposes** any legislation that would result in mandatory victim notification or the testing of unreported rape kits.
- **Applauds** better data collection for rape kits, including data collection mandated by the Office of the Attorney General's "Attorney General Law Enforcement Directive No. 2018-5" as a result of S-1216 / A2370.

## ***At Issue: The "Rape Kit Backlog"***

In recent years, high-profile articles have shed a light on some of the states and jurisdictions across the country that have struggled to clear backlogs of sexual assault forensic evidence kits, commonly referred to as "rape kits." In law enforcement agencies and forensic laboratories throughout the United States, an estimated 155,000 rape kits from reported sexual assault cases remain untested and unprocessed.<sup>1</sup> The full extent of the "rape kit backlog" is still unknown, but the consequences are clear: delayed justice and healing for too many survivors of sexual violence.

As advocates have pushed for reform in recent years, many states have taken steps to address backlogs and improve the collection and processing of this critical forensic evidence. Legislative reform efforts at the state and federal level have allowed for new and improved systems to track kit collection and testing, comprehensive standards for collecting and preserving evidence, and the allocation of funding to address backlogs.<sup>2 3 4 5</sup> These reforms mark critical steps forward in expanding pathways to justice for survivors.

Yet in some cases, well-meaning activism and interest in addressing the rape kit backlog has resulted in policies that can prove harmful to survivors. Several states that have mandated the testing of all backlogged rape kits have in turn

---

<sup>1</sup> Peltz, J. (2019, March 12). New York, feds join to get 100K rape kits tested around US. *AP News*. Retrieved from <https://www.apnews.com/c87e200f99844d649788e90b588a0d49>.

<sup>2</sup> Bill to improve rape kit testing in Idaho signed into law. (2019, March 22). *AP News*. Retrieved from <https://www.apnews.com/ad5a7f589ff24db8abe4090925d81c58>.

<sup>3</sup> Alaska lawmakers approve funding to test rape kits. (2018, May 18). *AP News*. Retrieved from <https://www.apnews.com/93b1ab179406426ca3135be312c5f1aa>.

<sup>4</sup> Ramer, Holly. (2019, January 9). New job, system approved to track New Hampshire rape kits. *Ap News*. Retrieved from <https://www.apnews.com/a049eeb56ff74086a397f613b3018e4d>.

<sup>5</sup> Augenstein, Seth. (2018, December 12). Five states tracking rape kits with new system. *Forensic Magazine*. Retrieved from <https://www.forensicmag.com/news/2018/12/five-states-tracking-rape-kits-new-system>.

implemented mandatory victim notification policies. In some of these states, general or unclear policies lead prosecutors to direct law enforcement agencies to notify all victims whose kits were recently tested — regardless of whether the investigation will be reopened and/or continued, and sometimes years or decades after the assault occurred.<sup>6</sup> These well-intentioned policies can lead to re-traumatization and breaches of privacy for survivors, such as the involuntary disclosure of an assault to family or household members who were unaware of the survivor's prior victimization. The notification process can be an intensely traumatic experience for a survivor who did not want to disclose or revisit a past assault. Policies like these ultimately represent a concerning trend in legislation that fails to prioritize survivors' needs and choices.

### ***In-Depth***

At the center of our work, the New Jersey Coalition Against Sexual Assault (NJCASA) upholds the principles of survivor autonomy. Sexual violence inherently removes control from its victims. As a survivor-advocacy organization, NJCASA seeks to restore that sense of control and independence to survivors. In line with this victim-centered approach, all NJCASA policy recommendations prioritize the expansion of options and choices for survivors.

NJCASA supports the movement to end the nationwide rape kit backlog. We must ensure that the systems we have in place to support survivors are working efficiently and effectively in order to afford survivors every opportunity to seek justice in the way that feels best to them. But as rape kit reform continues, we must also continue to respect the autonomy, safety, and privacy of survivors.

Notifying survivors of their newly tested rape kits — sometimes years or even decades after evidence was collected — can result in harmful unintended consequences. Jurisdictions that decide to notify survivors by phone, letter, or a knock on their front door risk jeopardizing the confidentiality of cases and the privacy of survivors. Notifying survivors of past sexual assault can also result in re-traumatization. Research shows that the reactivation of memories of an assault can trigger flashbacks and exacerbate post-traumatic stress disorder (PTSD) or other mental health disorders.<sup>7</sup> Mandatory notification further fails to respect survivors' autonomy, instead giving survivors no choice in whether they receive a reminder of their past assault. In some cases, mandatory notification requires officials to contact survivors about a rape kit that was collected years or decades ago—even if they are only calling to relay that the evidence collected from the kit resulted in no new leads.

Additionally, if a survivor chooses to have evidence collected following an assault but declines to take part in further investigation, it is imperative that their choice be honored. Some jurisdictions have responded to the rape kit backlog by mandating the testing of all rape kits – including non-investigative kits, which are kits that were collected from survivors who chose to not report to law enforcement or did not consent to the submission of their kit for testing.<sup>8</sup> This type of response represents a misunderstanding of rape kits and the cause of “backlogs,” which can in turn be traced back to most states' severely deficient data collection on the rape kits in their systems. The choice to move forward with testing a rape kit lies solely with the survivor. Rape kits should never be tested without the survivor's

---

<sup>6</sup> Contrera, Jessica. (2018, February 20). A wrenching dilemma. *The Washington Post*. Retrieved from [https://www.washingtonpost.com/news/style/wp/2018/02/20/feature/decades-worth-of-rape-kits-are-finally-being-tested-no-one-can-agree-on-what-to-do-next/?noredirect=on&utm\\_term=.2fo80bb719a6](https://www.washingtonpost.com/news/style/wp/2018/02/20/feature/decades-worth-of-rape-kits-are-finally-being-tested-no-one-can-agree-on-what-to-do-next/?noredirect=on&utm_term=.2fo80bb719a6).

<sup>7</sup> Untested evidence in sexual assault cases. (2016). Retrieved from <https://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx>.

<sup>8</sup> Sexual assault kit testing initiatives and non-investigative kits [PDF]. (2017). Retrieved from <https://www.justice.gov/ovw/page/file/931391/download>.

express and voluntary consent. The rape kit reform movement should seek to center survivors' needs and mitigate trauma, rather than push for the implementation of harmful, one-size-fits-all legislation.

Moving forward, the systems and processes created to prevent future backlogs should be supported by data and tailored to the specific needs present in each state. The rape kit backlog has been characterized by a distinct lack of information, due to faulty or nonexistent statewide standards for tracking and processing kits. But there is

improvement on the horizon in the Garden State. In New Jersey, the Office of the Attorney General's Directive No. 2018-59 outlines processes to improve reporting and data collection for sexual assault cases. The directive calls for county prosecutor's offices to submit data to the Attorney General's office every six months, detailing (among other data points) the number of sexual assault response team (SART) activations, the number of forensic medical exams performed, the number of kits referred to law enforcement, the number of kits tested by law enforcement, and the number of kits being held because the victim opts not to move forward with a criminal investigation. This data will help fill the current gaps in our knowledge of how forensic evidence is processed and used in the Garden State, and further allow us to formulate policy recommendations that better serve the needs of survivors and service-providers.

Though we appreciate the attention that national organizations have brought to the issue of prosecuting cases of sexual assault, and specifically ensuring that rape kits are tested with fidelity, we must continue to hold survivor autonomy and the specific needs of the communities we serve at the center of our policy-making. From our own experience and expertise, we know that the policy that works for communities in one state will rarely be responsive to the needs of another. Our solutions to the epidemic of sexual violence need to be as varied and unique as the problem itself. Mandating notification to survivors or the testing of all kits, including those that were not reported to law enforcement agencies, only serve as problematic outcomes of a well-meaning solution.

***For more information, please contact:***

Patricia Teffenhart, Executive Director

[pteffenhart@njcasa.org](mailto:pteffenhart@njcasa.org) | (609) 631- 4450 x1205



***“The rape kit reform movement should seek to center survivors’ needs and mitigate trauma, rather than push for the implementation of harmful, one-size-fits-all legislation.”***

---

<sup>9</sup> Grewel, G.S. (2018). *Attorney general law enforcement directive no. 2018-5*. Trenton, N.J.: State of New Jersey, Office of the Attorney General.