

# Rape kits sit in labs, untested as required

Backlog exists despite law mandating stricter turnaround for labs

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Feb. 15, 2020 Updated: Feb. 17, 2020 7:54 a.m.

ALBANY — Hundreds of rape kits are sitting untested in New York State Police crime laboratories as standards are being skirted, a situation that's left law enforcement officials also questioning whether the labs can keep up with new pre-trial discovery rules.

A law passed in 2016 placed requirements on how much time law enforcement and crime labs had to collect, process and return the kits. It also instituted increased reporting requirements meant to streamline the system and increase the accountability of the labs and law enforcement agencies. As of August 2019, over 1,500 kits were still in the possession of State Police, according to records obtained by the Times Union.

The rape kits are usually collected by specially trained medical staff at hospitals in cases in which victims, most often women, allege they have been sexually assaulted. The invasive procedure can last more than five hours and includes taking swabs, photographs, hair, blood and urine samples, scraping fingernails for evidence and conducting full pelvic exams.

Three years after the law went into effect, the Division of Criminal Justice Services has also failed to publish an annual report of rape kit inventories for 2019, which was required to be delivered to the Legislature by Jan. 1. The 2018 report, which had been overdue for more

than a year, was published last week, a day after the Times Union asked DCJS officials why it hadn't been published.

Under the new statutes, law enforcement agencies and crime laboratories are supposed to submit quarterly figures for how many rape kits they've collected, sent to laboratories and received back. DCJS collects that data and compiles it into a yearly report. For the first report compiled for part of the 2017 calendar year, only 434 of the 604 state law enforcement agencies submitted data. In 2018, that number rose to 534 of 604 agencies submitting data.

Mishandling of rape kits, which are used to collect DNA evidence after a possible crime, is a pervasive problem across the country. In 2000 New York had a backlog of over 17,000 kits, leaving victims without answers and potential offenders not held accountable. DNA analysis technology has improved immensely over the last decade, and many times, old kits are tested and DNA evidence is linked to the perpetrator in another case.

In 2016, the state Senate passed a bill by then-Sen. Kemp Hannon, R-Garden City, that put in place most of the statutes requiring the testing of all rape kits and yearly reports on inventories. Assemblywoman Aravella Simotas sponsored the bill in the Assembly. Hannon said he never could point to exact reasons why officials denied the existence of backlogs and couldn't take steps to clear them.

"Whatever the circumstances were, they were real," Hannon said. "In other words, people were very reluctant and the belief of criminal justice folks was that they didn't have a backlog."

Hannon's legislation passed the Legislature unanimously and was signed by Gov. Andrew M. Cuomo. Hannon lost reelection in 2018, but before then he pushed for additional statutes on rape kits that were included in a sexual assault bill of rights.

One of the entities instrumental in helping craft the 2016 legislation was the Joyful Heart Foundation, which advocates to clear kit backlogs across

the country. Director of Policy and Advocacy Ilse Knecht has been working on the issue for more than a decade and says while New York's laws are fairly strict, the issue comes down to resources.

"We would expect the lab to be their own cheerleaders and go out and ask for money so they can reach this," Knecht said. "If they aren't getting to the 90 days, they need to do something about it"

According to Knecht, the policies enacted by New York are similar to other states, but other systems are more centralized and outfitted with more resources. Twenty-three states now require a tracking system, similar to those used to track packages in the mail, giving victims the ability to see where their kit is at any point. Law enforcement agencies are also required to submit every kit for testing, which has, in a few cases, revealed connections to other DNA tested in other cases, sometimes leading to the identification of serial offenders.

The statute in New York also places a mandatory time frame in which labs must process the kits. Knecht says in most states, that timeframe is 30 days, but New York allows a 90-day window to test, process and return the kits to the agency that submitted it.

Eight counties, including New York City, have their own crime labs which process rape kits, but the rest of the state sends their kits to a State Police lab. Some of those labs are located in higher populated areas including Buffalo, Rochester, Syracuse and Westchester County, though law enforcement agencies in those counties can still send their kits to the State Police, as Onondaga County did to try and alleviate their own backlog in 2017.

In July 2018 the Times Union first requested an inventory of the kits held by the State Police. But the agency's response to the request languished and it also failed to respond to an appeal for the records filed under the provisions of the Freedom of Information Law. The records were only provided after State Police were sent a demand letter from the Cornell

Law School First Amendment Clinic, which intervened on behalf of the Times Union.

The first inventory was provided in January 2019, but only provided records through the original date of the written request that had been made in July 2018. The records indicated that State Police had 1,001 kits in their possession at that time. A second records request was eventually fulfilled showing that number rose to 1,560 in August 2019. Some of those kits had been in the laboratory for more than two years, eight times longer than the law permits. There were also 1,313 kits sitting in the lab longer than 90 days.

The police agency with the most kits in the lab at that time was the city of Binghamton, which had 84 kits, followed closely by Syracuse and Albany, which had 79 and 70 kits, respectively. Police departments that handle sexual assault and rape investigations at several colleges were among the agencies waiting on a high number of kits to be tested and returned.

In 2018, the state allocated \$500,000 for processing rape kit back logs. Since then the State Police lab has had to bolster staffing to keep up with the flow of kits, but the backlog persists.

“Police agencies sent more than 2,200 kits to our crime lab for testing in 2017 following enactment of the law, which was much higher than anticipated, and more than three times the average number of kits the lab handled in previous years,” said Beau Duffy, a State Police spokesman. “Since that time, the lab has added staff and implemented new procedures to improve the speed and accuracy of processing the kits.”

State Police Laboratory Director Ray Wickenheiser declined to be interviewed for this story.

Public records requests were also sent to the other eight municipal crime labs across the state. All of those facilities — except New York City’s Office of the Chief Medical Examiner — provided data on their kit

inventories. The Onondaga County Forensics Laboratory was the only lab with kits that had not been tested in the proper time frame. Of the 106 kits in the Onondaga lab, 79 had not been processed within the 90-day window.

Prosecutors and law enforcement have been well aware of the lengthy turnaround time for kits from the State Police lab over the last few years, but some interviewed for this story indicate they're increasingly anxious about how quickly the lab will be able to respond under new statutes that went into effect last month and require evidence to be turned over to defendants in a much shorter time period. The law, part of sweeping criminal justice reforms that are facing harsh criticism by some lawmakers and police leaders for going too far, requires prosecutors to turn over their evidence, which could include results of a rape kit analysis, less than 45 days after a defendant is arraigned.

"Unfortunately, with the rhetoric and the vitriol regarding the bail and all of the cliches that you hear regarding that, the rape kit is not on anybody's radar screen," Onondaga County District Attorney William J. Fitzpatrick said.

He has also raised concern about the ability of his office's cold-case task force to pursue investigations if Onondaga and State Police laboratories have to prioritize testing rape kits and other evidence to meet the new pre-trial discovery requirements. Fitzpatrick said that could leave older kits that could be crucial to solving crimes sitting on the shelf.

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