

SEXUAL ASSAULT KIT TESTING IN MICHIGAN: WHAT VICTIMS NEED TO KNOW

A Victim's Right to Information

A sexual assault victim has the right to know:

- **When the Sexual Assault Kit was sent to a crime lab for testing;**
- **Whether DNA evidence was found in the Sexual Assault Kit;**
- **Whether a DNA profile was entered into CODIS (a case evidence database);**
- **Whether a DNA profile resulted in a CODIS hit.**

The police agency investigating the sexual assault should provide this information to a victim. However, in rare circumstances, the police agency may wait to share it if providing the information would somehow interfere with the investigation. MCL 752.956.

What is a Sexual Assault Kit (SAK)?

A Sexual Assault Kit, or SAK, is a box that contains swabs, envelopes, instructions and forms. If a victim agrees, the SAK is used during a sexual assault medical forensic exam to collect DNA evidence from a victim's body after a sexual assault. DNA evidence can be found in semen, saliva, hairs, or blood that may be on a victim's body. This evidence can be used in the criminal investigation and prosecution.

What is a Sexual Assault Medical Forensic Exam?

This exam includes a collection of a medical history, a physical examination, treatment for injury, and prophylactic treatment for pregnancy and or sexually transmitted diseases. If a victim consents, forensic evidence is also collected through the use of a SAK. A sexual assault medical forensic exam is typically performed by Sexual Assault Nurse Examiner (SANE) Program, if available, or at local hospital emergency room. Healthcare providers are required to offer the exam to any person who says they have been sexually assaulted in the previous 120 hours. MCL 333.21527.

Does a victim have to pay to have a SAK collected or tested?

No. Under Michigan law a sexual assault victim should never have to pay to have a sexual assault medical forensic exam, SAK collection, or SAK testing. MCL 18.355a.

Where does the SAK go after collection?

If the victim agrees, the SAK will be given to the police agency investigating the sexual assault. The victim agrees to give the SAK to the police by signing a form to "release" the SAK. Then the SAK will be sent to a crime lab to test it for evidence. If the victim does not want to release the SAK, it must be stored by the healthcare provider that performed the exam for one year.[†] With a few exceptions, a SAK stored by a healthcare provider will not be given to police or tested unless the victim later decides to release it. MCL 752.933.

Are all released SAKs sent to a crime lab for testing?

Yes.[‡] If a victim has released the SAK to police, the police have 14 days to send the SAK to a crime lab for testing. A crime lab has 90 days to test the evidence. This can take longer if the process involves more than one police agency or the lab has limited resources. MCL 752.934.

A victim has the right to ask when the sexual assault kit was sent to a crime lab for testing.

What will the crime lab test for?

A scientist will test the samples collected in the SAK to look for DNA evidence. If there is enough DNA in the sample, a DNA profile is developed. A DNA profile is like a fingerprint that can help identify a suspect. In some cases, a DNA profile may also identify the DNA of a consensual sexual partner.

A victim has the right to ask if DNA evidence was found in the Sexual Assault Kit.

[†] The mandate to store unreleased SAKs for one year only applies to SAKs collected after March 31, 2015.

[‡] Only SAKs released after March 1, 2015 are mandated to be submitted to a crime laboratory for testing.

What if there is no DNA evidence?

Not all SAKs yield DNA evidence. However, DNA evidence is not necessary for a sexual assault conviction. DNA is only one piece of evidence in an investigation. Other types of evidence include victim and witness statements, pictures of injuries, phone records, and other physical evidence.

If there is no DNA evidence, it does not mean that the sexual assault did not occur. The perpetrator may not have left any DNA, the perpetrator may have left too little DNA, the evidence may have washed off, the evidence may have been improperly collected or stored, or the evidence may have simply degraded over time.

What if DNA evidence is found?

If a crime lab finds enough DNA evidence, it will develop a DNA profile (DNA fingerprint) and enter that DNA profile into national databases called CODIS.

A victim has the right to ask if a DNA profile has been entered into CODIS.

What is CODIS?

The COmBined DNA Index System, or CODIS, is a system of national, state, and local databases managed by the FBI that allows crime lab staff across the country to compare DNA profiles from known criminal offenders (and people arrested for some crimes in some states like Michigan) with DNA evidence from crime scenes. CODIS has proven crucial to solving crimes. CODIS may be helpful in a number of ways, including:

- Identifying unknown suspects;
- Linking DNA profiles from more than one crime to find serial offenders; and
- Eliminating suspects.

What is 'hit' in CODIS?

When a DNA profile is put in CODIS it is compared to offender profiles that are already in CODIS. A DNA profile can link with or 'hit' to offenders or other crime scenes. This link or 'hit' is referred to as an association. There are two types of associations: (1) a 'hit' to an identified offender; or (2) a 'hit' to a DNA profile developed from crime scene evidence where the offender is still unknown.

A victim has the right to ask if a DNA profile resulted in a CODIS 'hit.'

A 'hit' in CODIS typically does not mean that the case is solved or that the case will automatically go to trial. DNA is only one piece of evidence in an investigation. If the suspect's name is unknown, a 'hit' that leads to offender identity can be very important. Other times, a 'hit' can add to existing evidence and build a stronger case by identifying a serial offender.

Does a victim's DNA go into CODIS?

No. The CODIS database is made up of DNA profiles from individuals convicted of or, in some states, arrested for particular crimes. It also includes DNA profiles from crime scene evidence where the suspect has not been identified.

What about the DNA profile of a consensual sexual partner?

If there is a possibility that the DNA profile identifies a recent consensual sexual partner, rather than the perpetrator, that profile can be removed from CODIS.

How can a victim find out about SAK location or testing results?

A victim can contact the police agency investigating the sexual assault. If police agency does not provide the information, a victim can contact the local sexual assault crisis center or prosecutor's office for assistance.

Investigating Police Agency:

Contact Information:

Detective/Investigator:

Sexual Assault Program Crisis Center: