

SEXUAL ASSAULT EVIDENCE COLLECTION KIT (SAECK) ANNUAL SUMMARY REPORT

Fiscal Year 2023 Report



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1. Legislative Authority

Section 11 of Chapter 69 of the Acts of 2018, *An Act Relative to Criminal Justice Reform*, amended M.G.L. c. 6A by adding the following:

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. SAECK Tracking System

Pursuant to M.G.L. c. 6A, § 18X, 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. 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 are statutorily required to participate in this statewide tracking system. The tracking system records the progress of SAECK(s) from initial collection at a medical facility through testing at a crime laboratory. Pursuant to M.G.L. c. 6A, § 18Y, EOPSS is required to report out all information from the tracking system each fiscal year.

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:

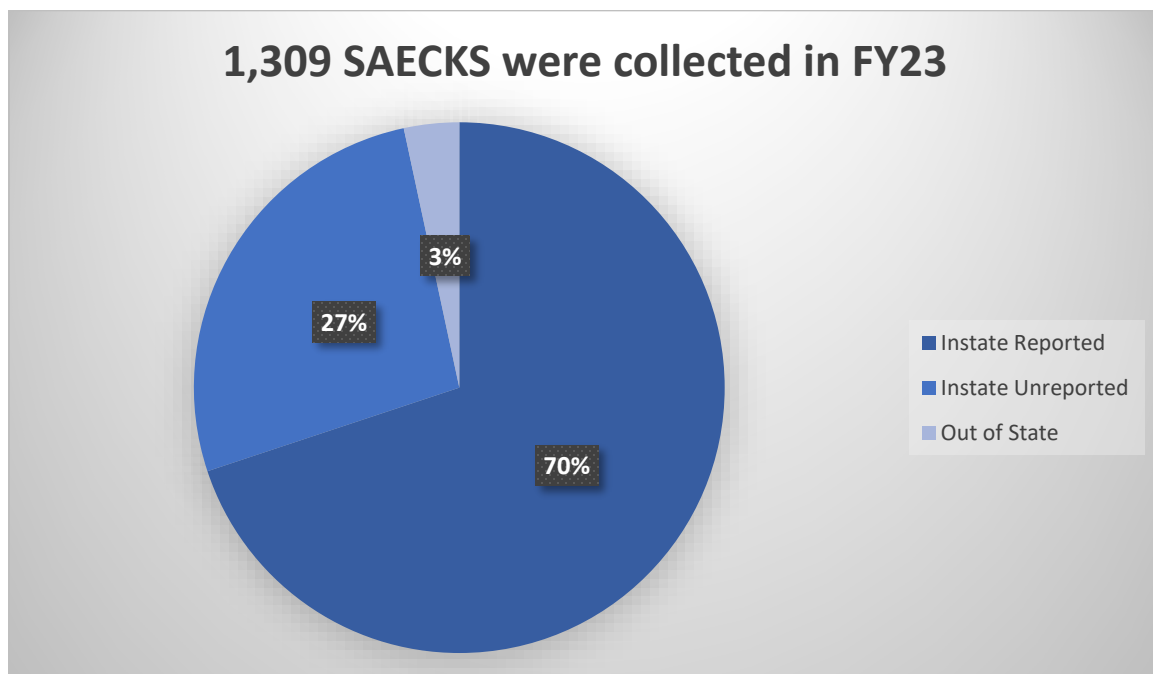
- The ability to track the location and status of a SAECK and toxicology kit through the entire process, from medical service provider to law enforcement agency, to the laboratory, and to storage;
- Privacy and anonymity for survivors;
- The ability to monitor agency-level workflow;
- Secure, easy-to-use website for each type of user;
- Mobile-friendly;
- Tracks kit location and status;
- Sends email notifications to ensure compliance with legislative timelines;
- Visualizes performance metrics in dashboards;
- Provides automatic 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.

3. Fiscal Year 2023 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 2023. 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 query the data that is the basis for this report. As a result of this feature, no facility or agency failed to submit the information required in section 18Y.

During Fiscal Year 2023, a total of 1,309 SAECKs were administered to survivors and entered into the TRACK-KIT® system. Forty-four (44) of the total SAECKs entered into TRACK-KIT® pertain to incidents outside the jurisdiction of the Commonwealth. Of the remaining 1,265 SAECKs that involved incidents in the Commonwealth, 915 of the incidents were reported to law enforcement and 350 were unreported. Of the 1,265 SAECKs, 207 SAECKs were administered to survivors 15 years of age or younger.



b. Kit Processing

Medical Facilities and Law Enforcement Agencies

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

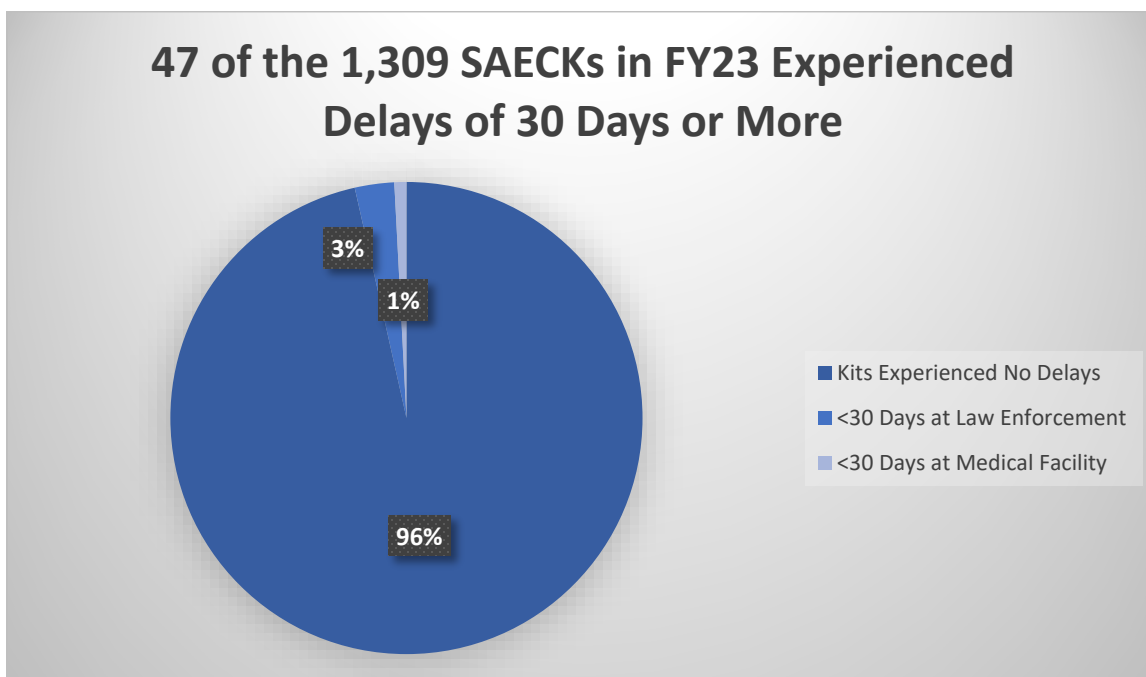
three business days to take possession of the SAECK. The law enforcement agencies are required by law to submit the SAECK to the appropriate crime laboratory within seven business days of taking possession.

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 1,309 SAECKs administered and entered into the TRACK-KIT® system, 11 remained at a medical facility for more than 30 days for the following reasons:

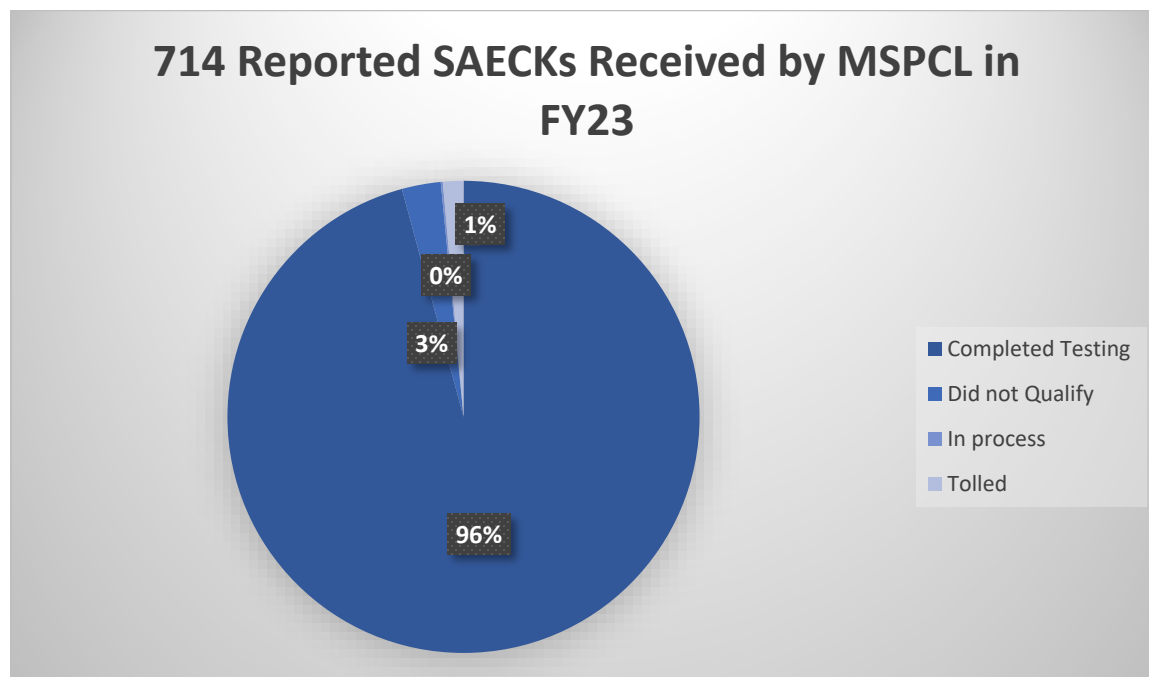
1. The assault occurred out of state and the out-of-state law enforcement agency was unresponsive or delayed in picking up the SAECK;
2. The kit was administered by an out of state medical facility;
3. SAECK was missing information;
4. The medical facility delayed entering the kit into TRACK-KIT®, therefore, delaying law enforcement notification for pick-up; and
5. Medical Facility was not able to track the kit to the proper law enforcement agency.

A total of 36 SAECKs remained at a law enforcement agency for more than 30 days for the following reasons:

- a. Staffing limitations;
- b. Kit awaited transfer to appropriate jurisdiction; and
- c. Change in kit status regarding reported and unreported.



The MSPCL received 714 SAECKs that were collected between July 1, 2022, and June 30, 2023. Of the 714 kits involving reported incidents, the MSPCL determined upon further examination that 19 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. Of the remaining 695 kits that could be tested, 684 completed testing, one (1) is in process, and 10 SAECKs remain in tolled status¹.



In Fiscal Year 2023, 16 SAECKs 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 16 tolled kits, the prosecuting attorney's office instructed the MSPCL to proceed with DNA testing on six (6) kits halt testing on one (1) kit and was not responsive on nine (9) kits. Because the regulations prohibit 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.

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

¹ 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.

testing is still ongoing and may exceed 30 days.² The breakdown below addresses both scenarios and are values that are independent of each other.

MSPCL SAECKs in MPSCL Possession for More Than 30 Days

Of the 714 kits, 434 SAECKs remained in the laboratory's physical possession for more than 30 days for the following reasons:

1. SAECK report was not submitted to the lab when kit was submitted and as such, testing cannot begin until SAECK investigative report is submitted to the lab;
2. SAECKs were tested in less than 30 days but awaited pickup from the law enforcement agency³; and
3. Kit remained in custody during processing.⁴

MSPCL SAECKs Where Testing Took 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 2023. Of the 714 SAECKs the MSPCL received, 28 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. Administrative clearance; and
3. Complex testing that required additional time to complete analyses

Crime Laboratories: The Boston Police Crime Laboratory

The Boston Police Department Crime Laboratory (BPDCL) received 186 SAECKs that were collected between July 1, 2022, and June 30, 2023. Of the 186 kits involving reported incidents, the BPDCL was instructed to halt testing on two (2) kits and one (1) kit was determined to be under the jurisdiction of the MSPCL and transferred to the MSPCL on November 22, 2023. Of the 186 SAECKs BPDCL received, 93 remained at the laboratory for testing for more than 30 days due to staffing shortage.⁵

² For example, an item could be tested and awaiting results.

³ There is no designated time period set forth in the statute by which the law enforcement agency is required to retrieve the kit from the lab. As such, some kits remain in the possession of the lab for more than 30 days.

⁴ The evidence box remained at the MSPCL in the event other evidence needed testing or the kit was delayed in being placed in outgoing regardless of testing status.

⁵ 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.

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 684 reported and completed SAECKs, the MSPCL was able to develop 456 DNA profiles, 192 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; and
4. Testing was tolled due to limited quantity of evidence.

Of the 186 SAECKs received by the BPDCL, 92 were submitted for further testing to develop DNA profile and the remaining kits were negative for biologicals and therefore no samples from those kits were submitted for further testing. Of the 92, 45 were uploaded to the CODIS database. The other 47 profiles that were developed did not meet state and federal CODIS eligibility requirements.

d. Destroyed Kits

In accordance with G.L. c. 6A, § 18Y (viii), EOPSS is required to report “the total number of kits destroyed by medical facilities, law enforcement or laboratories, and reason for destruction.” No medical facility, law enforcement agency or laboratory destroys collected SAECKs. TRACK-KIT® provides data on collected and uncollected destroyed kits.⁶ As with all other fiscal years, in Fiscal Year 2023, no collected kits were destroyed. 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.

Uncollected kits⁷ may be destroyed for a limited number of reasons. In Fiscal Year 2023, 266 uncollected SAECKs were designated as discarded in TRACK-KIT®. Twelve (12) SAECKs were utilized for training purposes and properly disposed of after use and ninety-seven (97) arrived at the medical facility damaged or with a broken seal and thus were unable to be used and were properly destroyed. One hundred and thirty-two (132) Kits were not able to be located by Medical Facility upon arrival of shipment. Twenty – five (25) kits were discarded for other reasons.

⁶ TRACK-KIT® designates destroyed kits as “discarded” kits.

⁷ Uncollected kits are SAECKs in the medical facility’s inventory that have not been administered to a Survivor.

5. Conclusion

For the fourth consecutive year, EOPSS has received full participation from every facility and agency required to submit information into the tracking system. The high standard of compliance is a testament to the efficiency and usability of the software program and the dedication of our key stakeholders to continuously advance and exceed the expectations of the legislative mandate. EOPSS is grateful to our medical, scientific, and law enforcement partners for their ongoing commitment to the successful implementation of the SAECK tracking system.

The MA TRACK-KIT® team, 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 to assist them in compliance with the Track-Kit system. Whether by attending webinars, outreach through the policy centers, hosting informational sessions, or being available 24/7, EOPSS will continue to provide resources and assistance to stakeholders and survivors to ensure all needs are met.