

SEXUAL ASSAULT EVIDENCE COLLECTION KIT (SAECK) QUARTERLY REPORT

APRIL 2023



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1. Legislative Authority

Section 2 of Chapter 35 of the Acts of 2021, *An Act Relative to Sexual Assault Evidence Kits* (the Act), requires the following:

(a) Notwithstanding any general or special law to the contrary, all previously untested investigatory sexual assault evidence kits which contain quantity limited evidence, as defined in 515 CMR 8.02, shall be identified by the state police crime laboratory within 90 days of the effective date of this act. Within said 90-day period, the state police crime laboratory shall notify the relevant prosecuting district attorney's office and each district attorney's office shall notify individuals who submitted to a sexual assault evidence kit if: (i) their kits contain quantity limited evidence; and (ii) the district attorney's office has not authorized the state police crime laboratory to proceed with testing.

(b) Notwithstanding any general or special law to the contrary, all previously untested investigatory sexual assault evidence kits which are not identified by the state police crime laboratory as quantity limited evidence, as defined in 515 CMR 8.02, in accordance with subsection (a), shall be transferred within 180 days of the effective date of this act to an accredited public or private crime laboratory designated by the secretary of public safety and security for testing; provided, that the district attorney shall provide notice to individuals who submitted to the sexual assault evidence kit that their kits have been so transferred; provided further, that for untested investigatory sexual assault evidence kits associated with a case which has resulted in a conviction or a guilty plea, the district attorney for the district in which the case was prosecuted shall contact the individual who submitted to a sexual assault evidence kit and obtain consent to test the kit notwithstanding the conviction or guilty plea.

(c) Not later than January 1, 2022, and quarterly thereafter, the executive office of public safety and security shall file a report with the clerks of the house of representatives and senate and the joint committee on public safety and homeland security on the status of testing untested investigatory sexual assault evidence kits, which shall include, but not be limited to, the following information: (i) the number of untested investigatory sexual assault evidence kits in the possession of public crime laboratories prior to the effective date of this act; (ii) the year each kit was collected; (iii) the date each kit was tested; and (iv) the date the resulting information was entered into CODIS and the state DNA databases. The initial report, and all subsequent reports, shall be made publicly available on the executive office's website not later than January 1, 2022, and quarterly thereafter.

(d) For the purposes of this section, "untested investigatory sexual assault evidence kits" shall mean any sexual assault evidence kit or additional evidence collected contemporaneously with such kit that has not been subjected to a forensic DNA analysis intended to develop an autosomal DNA profile that is eligible for entry into CODIS and the state DNA databases.

2. Untested Sexual Assault Evidence Kits

Pursuant to *An Act Relative to Sexual Assault Evidence Kits*, the Executive Office of Public Safety and Security (EOPSS) is tasked with reporting out:

- (i) the number of untested investigatory sexual assault evidence kits in the possession of public crime laboratories prior to July 1, 2021;
- (ii) the year each kit was collected;
- (iii) the date each kit was tested; and,
- (iv) the date the resulting information was entered into CODIS and the state DNA databases.

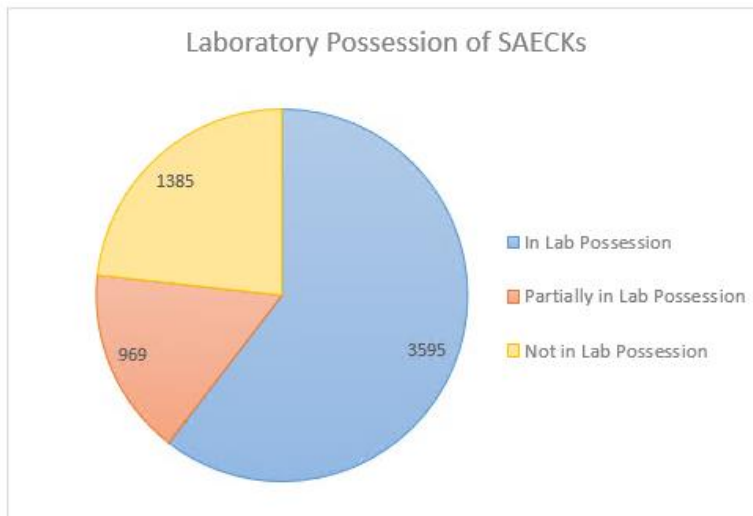
The Act defines an untested investigatory sexual assault evidence kits to be “any sexual assault evidence kit or additional evidence collected contemporaneously with such kit that has not been subjected to a forensic DNA analysis intended to develop an autosomal DNA profile that is eligible for entry into CODIS and the state DNA databases.”

a. Untested Investigatory SAECKs

The MSPCL determined that prior to July 1, 2021, there were 6,504¹ SAECKs submitted to the MSPCL from 2000 to 2018 to be reviewed for eligibility under The Act. As set forth below, after review of the 6,504 SAECKs, the MSPCL determined that as of December 14, 2021, 555 SAECKs did not require testing pursuant to The Act and the remaining 5,949 SAECKs were sent to the prosecuting attorney’s office for review.

Of those, 3,595 were in possession of the MSPCL. For 969 SAECKs, the MSPCL maintained possession of some samples, while other samples from the SAECK were returned to the relevant law enforcement agency and require resubmission to the lab for testing. As to the remaining 1,385 SAECKs, the entire SAECK was returned to the relevant law enforcement agency and requires resubmission to the MSPCL.

¹ As a result of a data review, it was determined that two SAECKs were originally excluded as part of the initial review. They have now been reincorporated into the project and are reflected in the numbers moving forward. The data review confirmed that all other SAECKs are appropriately included in the project.

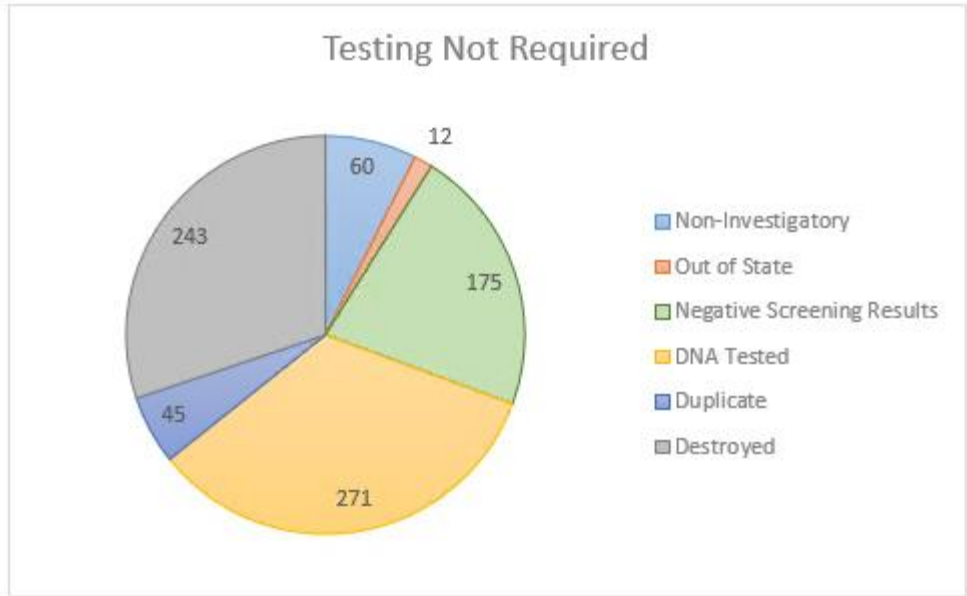


b. Untested SAECKs Not Requiring Testing

At the time of the first quarterly report, the MSPCL determined that 555 SAECKs do not require testing pursuant to The Act. After further information provided from law enforcement agencies and the prosecuting agency’s office, at the time of the second quarterly report, the MSPCL determined that an additional 176 SAECKs do not require testing, at the time of the third quarterly report, the MSPCL determined an additional 45 SAECKs do not require testing, and at the time of the fourth quarterly report, the MSPCL determined an additional eleven (11) SAECKs do not require testing. After receipt of further information, the MSPCL has determined that as of March 31, 2023, an additional seventeen (17) SAECKs do not require testing. The MSPCL determined that the 806 SAECKs do not require testing for the following reasons:

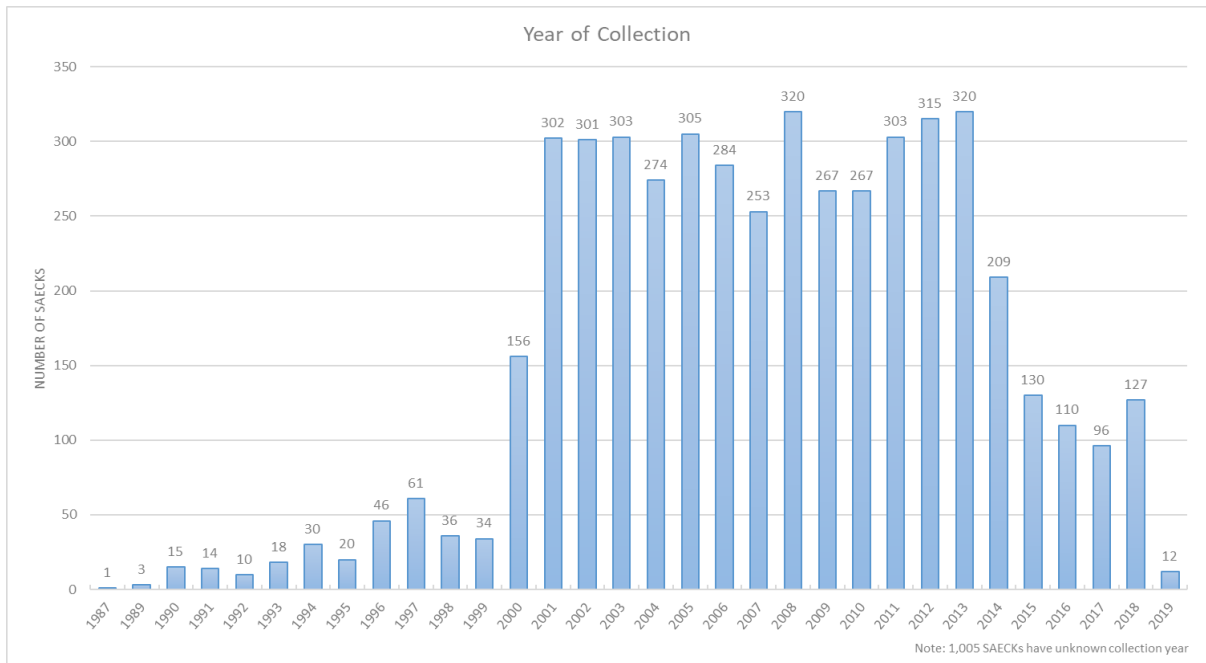
1. SAECK is non-investigatory (SAECK was not reported to Law Enforcement or no crime occurred);
2. Out-of-state SAECK (SAECK collected at a hospital in MA, but the assault occurred in another state);
3. Negative screening results (initial testing of SAECK did not yield items suitable for DNA testing);
4. Previously tested for DNA (Initial data set contained all SAECKs regardless of testing status; many SAECKs had already completed DNA testing);
5. Duplicate record of a SAECK (Initial data set contained more than one record for the same SAECK); or
6. The SAECK was destroyed (SAECK was confirmed to be destroyed or cannot be located by the Law Enforcement Agency).

The breakdown of SAECKs that do not require testing is as follows:

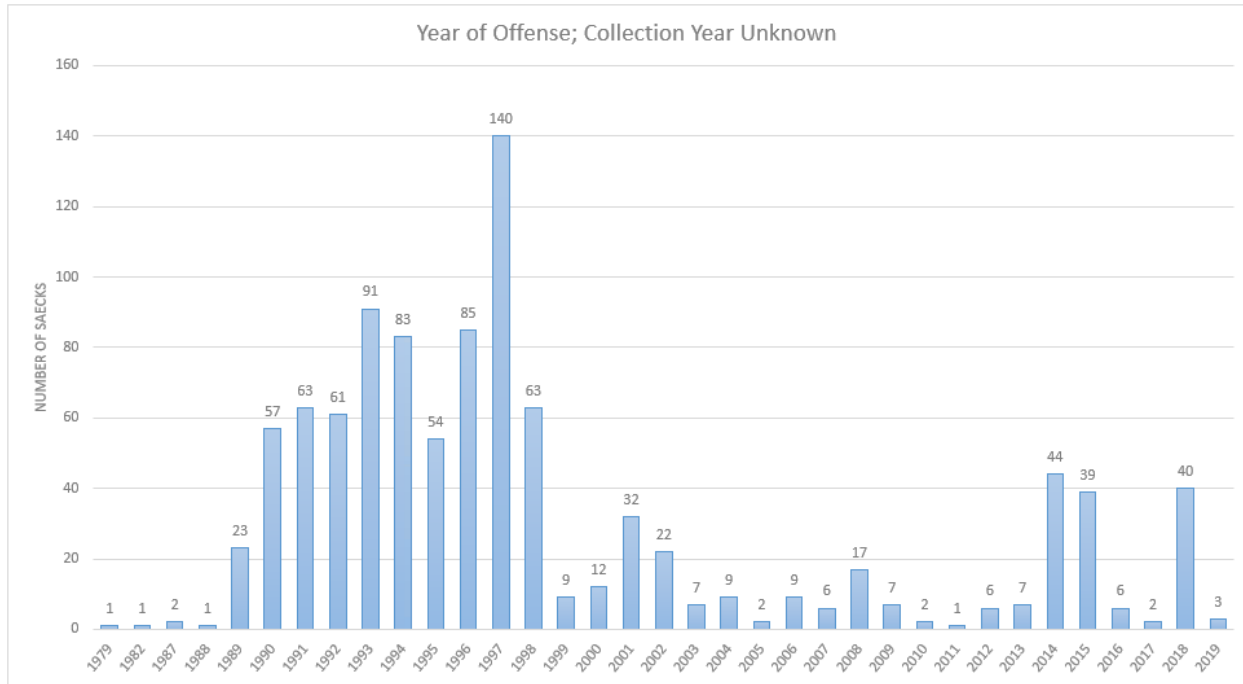


3. SAECK Yearly Collection

A review of the 6,504 SAECKs reveals yearly collection as follows:



The MSPCL was unable to determine the collection year for 1,007 SAECKs. The MSPCL does, however, know the year of offense for these SAECKs and those kits are broken down as follows:



The collection year for the 555 SAECKs identified in December 2021 that do not require testing is not included.

4. SAECK TESTING

a. Quantity Limited (QLIM) Evidence

Prior to testing any SAECKs, the MSPCL must first determine if the SAECK contains quantity limited (QLIM) evidence, as defined in 515 CMR 8.02:

“ . . . an item of evidence is quantity limited when the MSPCL determines that the item’s limited quantity will require exhaustive testing during DNA analysis in order to maximize the potential for obtaining DNA results.”

The Act requires, in accordance with 515 CMR 8.03, the MSPCL to notify the prosecuting attorney’s office when a SAECK is QLIM, and for the prosecuting attorney’s office to determine if they will authorize the MSPCL to proceed with testing. Only after the prosecuting attorney’s office has provided authorization can the MSPCL proceed with testing.

Forensic Scientists at the MSPCL conducted an extensive review and identified that of the 5,947 eligible untested investigatory SAECKs, 2,090 contain QLIM samples and require review and approval of the prosecuting attorney’s offices prior to testing. Information on all 5,947 kits was sent to prosecuting attorney’s office to determine, (1) if the kit was post-conviction; (2) if a QLIM kit was appropriate for testing; and (3) which kits required testing. The review of QLIM status was completed and provided to the relevant prosecuting attorney’s offices by December 13, 2021.

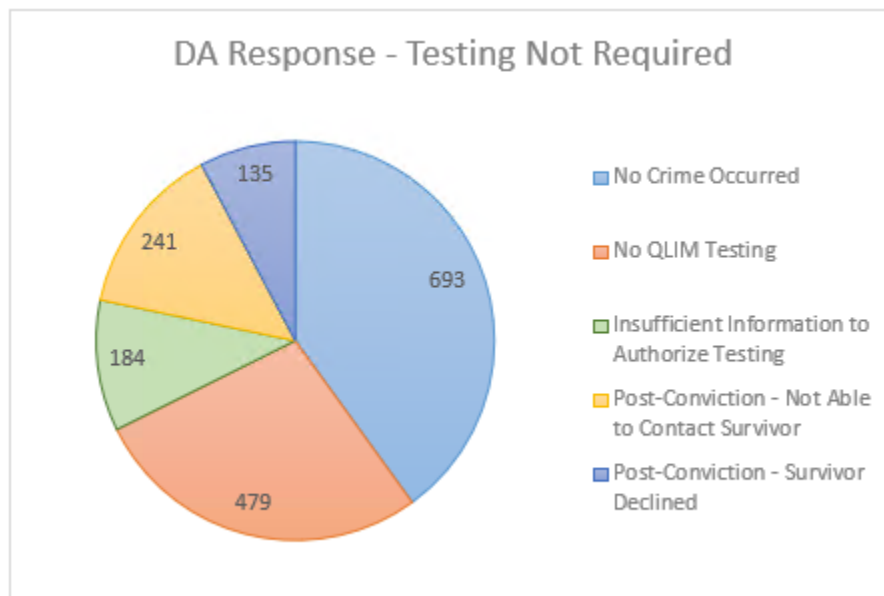
b. Prosecuting Agency Review

As of March 31, 2023, the MSPCL has received approval from the prosecuting attorney's offices to proceed with testing for 3,523 of the untested SAECKs. Prosecuting attorney's offices have informed the MSPCL that after review, 1,732 SAECKs do not require testing. The remaining 443 SAECKs are still under review by the prosecuting attorney's offices.

The prosecuting attorney's offices have determined that 1,732 SAECKs do not require testing pursuant to the Act for the following reasons:

1. The prosecuting attorney's office determined that no crime occurred;
2. The prosecuting attorney's office does not authorize the testing of QLIM samples pursuant to 515 CMR 8.03;
3. The prosecuting attorney's office has insufficient information to authorize testing;
4. The SAECK is related to a post-conviction case and the prosecuting attorney's office was not able to contact the survivor for consent to test; and,
5. The SAECK is related to a post-conviction case and the survivor did not consent to test.

The breakdown of SAECKs that do not require testing is as follows:



c. SAECK Testing

The MSPCL, in accordance with the Act, sends SAECKs ready for DNA testing to a private laboratory designated by the Secretary of EOPSS for testing. As the MSPCL receives information from the prosecuting attorney's office regarding eligibility for testing, the MSPCL can then organize and prepare the SAECKs for bulk shipments. This includes contacting the law enforcement agency to resubmit evidence, if applicable, obtaining necessary documentation of authorization for QLIM samples, and sample preparation and

recording of chain of custody prior to shipment. As such, as of March 31, 2023, the MSPCL has sent 2,974² approved SAECKs to the private laboratory for testing. Testing of approved SAECKs is reported back to the MSPCL by the private laboratory in monthly batches.

As of March 31, 2023, testing has been completed on 1,058 SAECKs.

5. CODIS Submission

The DNA samples contained in the SAECKs are processed and analyzed by the laboratories in order to develop DNA profiles. If the DNA profiles meet specific criteria established by the FBI (e.g., evidence is connected to a crime, evidence is from a crime scene, DNA profile is from the putative perpetrator), the profiles may be entered into the state and national DNA database (CODIS). When the MSPCL receives the test results from the private laboratory, the MSPCL will be able to review and upload eligible DNA profiles into the CODIS and state DNA databases.

The MSPCL may be unable to develop DNA profiles for SAECKs due to the following reasons:

1. The DNA quantity or quality was not sufficient for analysis; and,
2. DNA testing produced a Y-STR profile³, which is not eligible for entry into CODIS.

As of March 31, 2023, the MSPCL was able to upload 201 DNA profiles into the CODIS and state DNA databases from 200 of the completed tested SAECKs. Five hundred eighty-two (582) SAECKs were either not suitable for DNA testing or did not produce a DNA profile suitable for upload, and thus no information was entered into the databases. The other 276 SAECKs are pending review for CODIS suitability.

6. Conclusion

EOPSS and the MSPCL look forward to the continuing work of testing all eligible untested investigatory SAECKs within the custody of the MSPCL in the coming year. In accordance with the Act, EOPSS will continue to provide quarterly updates on the progress of testing. The MSPCL will continue to collaborate with the prosecuting attorney's offices and other stakeholders to achieve the Commonwealth's ultimate goal of reviewing all untested SAECKs.

² The MSPCL sent 201 SAECKs for testing in January 2022, 198 in February, 237 in March, 219 in April, 225 in May, 193 in June, 242 in July, 310 in August, 336 in September, 296 in October, 261 in November, 101 in December, 55 in January 2023, 8 in February, and 92 in March.

³ At the MSPCL, and across the nation, STR (autosomal) DNA testing is the primary forensic testing method used to test biological evidence. This is due to the ability to individualize a profile to a person and the ability to use CODIS, the federally regulated DNA database. Y-STR testing is a type of DNA analysis that specifically analyzes male DNA by testing regions (loci) of the Y-chromosome only, as opposed to autosomal STR analysis, which test multiple loci on different chromosomes. Y-STR profiles are paternally inherited and therefore not unique to an individual, making them not nearly as discriminating as autosomal data and not suitable for forensic searches through CODIS.