

Report by the Sexual Assault Response Team Advisory Committee to the
Kentucky General Assembly
Pursuant to requirements specified by
The SAFE Act of 2016
August 2018¹

Background

The Sexual Assault Response Team Advisory Committee (SART AC) is co-chaired by the Kentucky Association of Sexual Assault Programs (KASAP) and the Commissioner of the Kentucky State Police, with members from various agencies.² This committee is responsible for creating protocols and policies, providing support and resources, and reporting on outcomes all as they relate to professionals who interact with survivors of sexual violence. A number of SART AC resources can be found on KASAP's website including a SART toolkit.³

One goal of the SART AC is to support the creation of local sexual assault response teams (SARTs). The presence of functioning SARTs in communities has been associated with improved access to resources for victims, higher rates of victim participation in the criminal legal system, improved forensic evidence collection, and higher arrest rates. In addition to law enforcement agencies, healthcare facilities and RCCs, there are a number of other stakeholders whose services are critical to victims, such as the Kentucky Claims Commission, Kentucky State Police Crime Labs, and the County and Commonwealth Attorneys to name just a few.

With passage of 2016 Senate Bill 63, the Sexual Assault Forensic Evidence Act (SAFE Act), the SART AC was tasked with creating a report for the Kentucky General Assembly. This is the first report and some context is in order. After a 2015 report by the State Auditor found more than 3,000 untested sexual assault forensic evidence kits (kits) in the Commonwealth,⁴ the 2016 General Assembly passed a law that created comprehensive reform of our sexual assault response that, if faithfully implemented, will successfully prevent a backlog of untested kits from ever happening again, as well as foster more trust in the system by sexual assault survivors. This report will detail the success of implementation "by the numbers", as required, of both the untested kits as

¹ KRS 403.707(5)(g), the report was due in July. It was delayed in order to accurately gather and assess data.

² KRS 403.707

³ www.kasap.org

⁴ These kits were in possession of law enforcement agencies across the state after a victim chose to report the crime. For various reasons, they were not sent to the lab for testing. See audit for more information https://docs.wixstatic.com/ugd/feffe2_d6785a12b7a6403cad6ece66bcd0b3b7.pdf.

well as kits being submitted going forward in the first year after passage. Although not required by the authorizing legislation, numbers will also be reported of kits that are referred to as “boomerang” kits. Boomerang kits were not recognized as needing to be tested in the first collection of kits audited. However, those kits fall within the intent of the SAFE Act since many of them were sent to the lab but returned to the jurisdiction without being tested or only partially tested. In addition to the boomerang kits, the SAKI team⁵ has been able to uncover other reported kits that were never submitted. Now that there is an understanding of how important it is that every reported kit be tested, as well as now being required by law, those kits have been retrieved by the lab and have been sent out for testing.

The requirement in the law to report specific numbers on an annual basis is an effort to get an annual snapshot of anticipated and hoped for systems change in how sexual assault cases are handled by the criminal legal system, thereby instilling confidence in victims who want to seek justice in the future or perhaps feel that they have had justice denied because their kit was not tested. The numbers in this first report will serve as the baseline in hopes that future numbers and cases considered by victims to have been satisfactorily handled will rise. Ultimately the intent of the SAFE Act is to send the message that the crime of sexual assault will be comprehensively addressed so that perpetrators are held accountable and victims will be treated in a manner that is trauma-informed by hospitals, mental health and physical health providers, law enforcement, and courts.

⁵ More information on Kentucky’s SAKI team in next section.

KSP Forensic Laboratory Numbers

Kentucky has been fortunate to receive funding under DANY and SAKI grants to complement SAFE Act requirements. The original kits identified in the audit are referred to by the Kentucky State Police Forensic Lab (KSP Lab) as “DANY” kits. The authorizing resolution sponsored by Senator Denise Harper Angel to have an audit of untested kits performed by the State Auditor (SJR 20) allowed the KSP Lab to apply to the District Attorney of New York (DANY) for available funds. KSP Lab was granted \$1.9 million for what they estimated to be about 3,090 previously reported but untested kits. These funds were designated for testing the kits by an outside vendor. Sorenson, a lab in Utah, won the contract bid for testing, which is now completed. To date, 3,173 kits have been tested at Sorenson, the results of 2,604 of these kits have undergone the process of technical review by the KSP Lab, with 486 remaining. Of those 2,604 kits, 1,229 DNA profiles that meet the required guidelines have been entered into CODIS⁶ which has resulted in 398 hits.⁷ A “hit” means that the DNA entered from the kit matched a DNA profile which was already in the CODIS database.

In order to have funding to test the “boomerang” kits, the Kentucky Office of the Attorney General applied for a three year Sexual Assault Kit Initiative (SAKI) grant from the federal Department of Justice’s Bureau of Justice Administration, in partnership with the Kentucky State Police and the University of Louisville. Funds were granted in the amount of nearly \$3 million to inventory and test an additional estimated 1500 kits, hire a SAKI Coordinator, create a SAKI Task Force, form a Cold Case Unit within the Office of the Attorney General comprised of a special prosecutor, detective, and advocate, as well as hire a detective within Kentucky State Police to assist jurisdictions to investigate and prosecute cold cases. The SAKI team will also conduct training, develop protocols and conduct extensive research to prevent a future backlog and determine evidence-based methods for improving sexual assault investigations and prosecutions.⁸ Kentucky is one of 17 SAKI Statewide sites in the nation and recently hosted the national meeting of the SAKI Statewide sites. The DANY kits have been included into the inventory of SAKI kits. Testing has been completed of 1,424 SAKI kits shipped thus far by the private lab; the data from those kits is awaiting technical review. A number of investigations have been initiated by the Cold Case Unit and KSP investigator.

Looking forward, in calendar year 2017, the KSP Lab received a total of 1,362 sexual assault forensic evidence kits. Of the 1,362 kits, 340 are kits in active law enforcement investigations to be worked by KSP Lab. The other 1,022 kits are from inactive or cold

⁶ CODIS is the acronym for the Combined DNA Index System, generic term used to describe the FBI’s program of support for criminal justice DNA databases as well as the software used to run these databases.

⁷ See www.kentuckybacklog.com

⁸ More information on this research, conducted by Dr. Brad Campbell of University of Louisville, is available at http://louisville.edu/justice/CJ-research-1/cj-uofl-research/#Rape_Kit_Backlog_Processing.

case investigations. During the same time period, KSP Lab analyzed a total of 450 sexual assault forensic evidence kits, dating back to 2015.

Turnaround times for testing have fluctuated over the past five years, and currently stand at 8 months from receipt to completion. Although the deadlines of 90 days by year 2018 and 60 days by year 2020 may be delayed, KSP Lab is intent on meeting those benchmarks, which greatly depend on the ability to retain trained staff.

Beyond the SAFE Act requirements, the KSP Lab has created an internal bar code tracking method to determine where each kit is in the process from the point of collection. This tracking system is being implemented in hospitals throughout the Commonwealth. As of August 2018, 67 hospitals are using this method. The tracking system is important for us to collect data on the total number of kits being completed, and then if reported or not reported. Once completed, a victim can choose to report the crime to police, therefore turning over the kit, or not to report and the hospital will retain the kit for one year.⁹ In cases where the victim chooses to report to police, the tracking system will show whether the required time for hospitals to notify law enforcement to pick up the kit are met, whether or not the kit is picked up within 5 days, and whether or not the kit is submitted to the lab within 30 days.¹⁰ There is some discussion of creating a victim portal in the future so that a victim can confidentially search where their kit is in the process. Other states, including Utah, have created this type of victim portal.¹¹

⁹ KRS 216B.400(10)

¹⁰ Time periods were established in the SAFE Act.

¹¹ <https://publicsafety.utah.gov/sexual-assault-kit-initiative-saki/sexual-assault-kit-tracking-system-2/>

Law Enforcement Numbers of Reports and Charges

The SAFE Act, under KRS 16.132, requires the Kentucky State Police to collect statewide statistical data on the number of crimes reported and investigated under the following statutes:

KRS 510.040 (rape 1st degree), 510.050 (rape 2nd degree), 510.060 (rape 3rd degree), 510.070 (sodomy 1st degree), 510.080 (sodomy 2nd degree), 510.090 (sodomy 3rd degree), 510.110 (sexual abuse 1st degree), 510.120, (sexual abuse 2nd degree) 510.130 (sexual abuse 3rd degree), 510.140 (sexual misconduct), 530.020 (incest), 530.064(1)(a) (unlawful transaction with a minor – illegal sexual activity, 1st degree), and 531.310 (use of a minor in a sexual performance).

<u>KRS Number</u>	<u># of Citations</u>	<u>Sum of counts</u>	<u># of Crimes</u>	<u># Sum of Counts</u>
510.040	293	485	890	1003
510.050	68	96	122	147
510.060	87	157	127	153
510.070	300	534	394	452
510.080	40	77	52	70
510.090	62	105	42	53
510.110	618	1354	1042	1408
510.120	38	51	84	90
510.130	99	123	383	392
510.140	37	41	156	169
530.020	82	223	54	64
530.064(1)(a)	92	291	75	112
531.310	42	192	37	39

2017 Total Citations	1858
2017 Total Citation Counts	3729
2017 Total NIBERS Cases	3458
2017 Total NIBERS Counts	4152

A total of 3,458 cases were opened for the statutes referenced above with 4,152 counts (or instances) of those crimes. There were 1,858 citations issued for 3,729 sexual assaults that occurred in 2017.

Any reported crimes under the statutes listed will be reflected under the 4,152 crimes investigated in 2017. The only caveat would be if someone spoke to police about an alleged sex crime and for some reason the officer did not document the interaction. "Report" here means that a person speaks with a sworn officer to tell them they were sexually violated. This would not include calls to 911. The 4,152 crimes investigated include cases where a report was made and documented. These "cases" could include no further action taken after the report, a larger narrative, witness statements, interviews and more. The numbers could reflect multiple charges within the same case.

The number of incident violations received, or citations issued, is 3,729, or 1,858 with 3,729 counts. "Citations" are the actual charges brought and could follow before, during or after a case is started. The citation is the paper ticket with charges. Citations are brought when an officer finds enough evidence to attempt to move forward and criminally charge a suspect.

It is possible that some of the 2017 citations issued were for cases reported/opened in 2016 or earlier.

Although, as stated above, the intent is to get an annual snapshot of the number of sexual assaults reported to police and disposition of sexual assault cases, reporting data to KSP by all Kentucky police departments is not mandatory. Currently there is no method to accurately account for reports of sexual assault, as there is for child abuse and domestic violence. Perhaps an alternative method for more accurate data collection would be in order in the future. One idea would be to create a uniform form for officers to complete when a victim reports a sexual assault.

Case Outcomes from Court Data

The Administrative Office of the Courts (AOC) is required by the SAFE Act to submit data to the SART AC “regarding the prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to commit a sexual offense as defined by KRS 510.040 (rape 1st degree), 510.050 (rape 2nd degree), 510.060 (rape 3rd degree), 510.070 (sodomy 1st degree), 510.080 (sodomy 2nd degree), 510.090 (sodomy 3rd degree), 510.110 (sexual abuse 1st degree), 510.120, (sexual abuse 2nd degree) 510.130 (sexual abuse 3rd degree), 510.140 (sexual misconduct), 530.020 (incest), 530.064(1)(a) (unlawful transaction with a minor – illegal sexual activity, 1st degree), and 531.310 (use of a minor in a sexual performance).¹² This is the same set of statutes as required to be collected on by KSP in the previous section.

The AOC data provide information on the number of sexual offenses handled by Circuit, District, and Juvenile Courts throughout the Commonwealth. The AOC has provided data on the total number of charges levied and cases processed by the Courts in 2017. The AOC data provides information on the total number of sexual offense charges and cases, as well as the number of charges and cases falling into seven disposition categories including (1) Acquitted, (2) Amended, (3) Convicted, (4) Dismissed, (5) Diverted, (6) FTA/FTV/AP, and (7) Others. Summary data for 2017 indicate that Circuit Courts handled a total of 3,232 charges in 808 cases, District Courts processed 728 cases with 1,481 charges, and Juvenile Courts processed 222 cases with 452 charges. In Table 1, the number of cases and charges falling into the seven disposition outcomes are displayed for Circuit, District, and Juvenile Courts.

Table 1. Circuit, District, and Juvenile Courts Sexual Offense Dispositions in 2017									
Court		Acquitted	Amended	Convicted	Dismissed	Diverted	FTA/FTV/AP	Others	Total
Circuit	Charges	91	614	1158	1222	9	97	41	3232
	Cases	28	362	438	346	6	17	11	808
District	Charges	1	128	52	210	5	5	1080	1481
	Cases	1	98	48	174	5	5	466	728
Juvenile	Charges	3	85	76	131	8	2	147	452
	Cases	3	67	53	77	6	2	63	222
Total	Charges	95	827	1286	1563	22	104	1268	5165
	Cases	32	527	539	597	17	24	540	1758

These numbers provide a snapshot of prosecution outcomes for the Commonwealth in 2017. It is possible that many of these cases are derived from reported/opened sexual offenses that occurred in 2016 and earlier. Currently, the AOC data and the Kentucky

¹² KRS 27A.305

State Police data cannot be linked to provide a detailed description of sexual offense case progression from reporting to prosecutorial outcomes. Requiring a common case number that follows each case throughout investigation and prosecution would allow the Commonwealth to tell the full story of each case and could help identify causes of case attrition and advancement.

In the fall of 2018, researchers from the University of Louisville's Department of Criminal Justice will complete a study of reporting and prosecution rates at the county level. The research will examine data provided by the Kentucky State Police and AOC. This study aims to provide a broad picture of sexual offense reporting, arrest, and prosecution rates in the Commonwealth. The study will provide insights into resource needs for the processing of sexual offense cases in Kentucky.

Law Enforcement Training on Sexual Assault Investigations

Although not required to be reported to the General Assembly, the SAFE Act established guidelines for law enforcement training to be conducted by the Department of Criminal Justice Training (DOCJT).¹³ To date, 197 law enforcement agencies are compliant with the Sexual Assault Investigations training required under the SAFE Act. An additional 118 agencies have members enrolled in the remaining classes to become compliant. DOCJT is reaching out to the remaining 80+ agencies that are non-compliant and do not have members currently registered to attend a class. It was noted that some agencies were compliant, however, due to staffing/personnel changes, they became non-compliant.

Evaluation of these trainings is being conducted under contract by Dr. Bradley Campbell, professor in the Criminal Justice Department at the University of Louisville. To date, over 400 officers have participated in a quasi-experimental evaluation of the effects of the Sexual Assault Investigations course. Early review of the evaluation show promising knowledge and attitude change by the officers trained from Monday through Friday of the training week. Specifically, the evaluation has found that the DOCJT training has reduced rape myth acceptance, improved knowledge of Kentucky sexual offense laws, and improved perceptions of the utility of sexual assault kits. The research is now conducting follow up surveys to determine whether these changes are sustained over time. As of August 23, 2018, 91 participants from this course have completed follow up surveys. Preliminary analyses of the 91 follow up surveys indicate that the initial changes in knowledge and attitude change by officers has remained stable. As such, early results show the training has provided lasting change in perceptions of victims and knowledge among participants who complete the course. Once follow up data has been completed, a full report of evaluation results will be publicly available.

¹³ KRS 15.334(2)(c)

Sexual Assault Nurse Examiners and SANE-Ready Hospitals

The SAFE Act included a provision to designate hospitals as “SANE-ready” if they were able to provide 24/7 coverage of sexual assault nurse examiners (SANEs) to treat “persons seeking treatment as victims of sexual offenses.”¹⁴ We know that there are a limited number of SANEs available throughout Kentucky. To encourage additional nurses to become certified SANEs and hospitals to push for the SANE-ready designation, the Kentucky Association of Sexual Assault Programs (KASAP) offered additional SANE courses, paired with many of the law enforcement Sexual Assault Investigation courses. The summer edition of the Kentucky Board of Nursing's publication, KBN CONNECTION, reported 278 active SANEs practicing in the Commonwealth. This is the highest number of SANEs in Kentucky to date. With the additional certified SANEs, as of August 2018, 7 hospitals have received the SANE-ready designation.¹⁵

Gaps still remain. In FY 2017, Kentucky rape crisis centers (RCCs) statewide reported providing medical advocacy services on 1,232 occasions¹⁶ when RCC advocates were requested to be available to a victim during a sexual assault forensic medical exam (SAFE exam). SANEs were only available for 53% of these exams as reported by advocates. When a SANE is present, a victim is more likely to receive information regarding consent to the exam, privacy, and STIs and pregnancy prevention. RCCs also report that in hospital facilities that do not employ SANEs, advocates are less likely to be called to accompany a victim during an exam so it is difficult to gauge the information passed on and the care that the victims receives. There is a major knowledge gap in what the law requires in care and response to sexual assault victims seeking care in hospitals. For example, Kentucky law requires all hospitals that offer emergency services to provide a free sexual assault forensic exam to all victims; contact a local rape crisis center to provide advocacy; contact law enforcement to collect reported kits when a victim consents; and preserve all kits not reported to law enforcement for one year in compliance with state law.¹⁷

To address these gaps, there is continuous training by RCCs and KASAP with hospitals and encouragement to employ SANEs. Additionally, in June 2018, the Office of the Attorney General awarded KASAP \$30,000 to create a training video for hospitals to ensure that they understand the law and serve all victims appropriately.

¹⁴ KRS 216B.401

¹⁵ https://chfs.ky.gov/agencies/os/oig/dhc/Documents/Directories/SANE_Ready_Hospital_Directory.pdf

¹⁶ Rape Crisis Center Programs Quarterly Reports combined

¹⁷ KRS 216B.400 and 502 KAR 12:010

Conclusion

The SAFE Act is moving Kentucky forward regarding the treatment, beliefs, and knowledge around sexual violence. After almost two years of implementation, we are reviewing remaining needs and modifications, many mentioned throughout this report. Although we have made great strides of progress, we acknowledge that there is still a long road ahead.

Thank you to the contributors of this report.

Kentucky State Police Forensic Laboratory System – Laura B. Sudkamp, Laboratory Director, Laura.Sudkamp@ky.gov

Department of Criminal Justice Training – John C. Schwartz, Assistant Director, Training Operations Division, JohnC.Schwartz@ky.gov

Administrative Office of the Courts - Cameron A. Brown, Research and Statistics Data Analyst | Information & Technology | Administrative Offices of the Courts, cameronbrown@kycourts.net

Kentucky State Police - Lieutenant Paul Blanton U/99, Kentucky State Police, Criminal ID & Records, howard.blanton@ky.gov

Kentucky Office of the Attorney General – Gretchen Hunt, Director Office of Victims Advocacy, Gretchen.hunt@ky.gov; Carey A. Aldridge, SAKI Coordinator, carey.aldrige@ky.gov

University of Louisville - Bradley A. Campbell, PhD., Bradley.campbell@louisville.edu

Kentucky Association of Sexual Assault Programs – Eileen A. Recktenwald, Executive Director, erecktenwald@kasap.org, and Laela Kashan, Staff Attorney, lkashan@kasap.org