# SEMIANNUAL SEXUAL ASSAULT KIT INITIATIVE REPORT

July 2020 – December 2020

In response to Nevada's backlog of nearly 8,000 untested sexual assault kits, the Office of the Attorney General created a statewide Working Group comprised of forensic scientists, local investigators, prosecutors, victim advocates, legislators and other criminal justice partners to address the backlog. The following report houses information on the progress of this statewide project.

Aaron D. Ford
Nevada Attorney General

Assembly Committee: Judiciary
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Submitted by: Aaron Ford

## Announcing the Completion of Testing Inventory of Sexual Assault Kits

The Office of the Nevada Attorney General (OAG) is proud to announce the completion of testing of all inventoried previously untested sexual assault kits in the state of Nevada. This inventory was performed in January 2015 in the southern portion of the State, and April 2016 in the northern portion of the State. Testing on this inventory of 7,855 kits began in 2015 and was completed in December 2020.

## The Nevada Attorney General's Sexual Assault Kit Initiative Report

In response to a letter of intent dated September 29, 2017 from the Senate Committee on Finance and the Assembly Committee on Ways and Means, the Office of the Nevada Attorney General (OAG) submits this report. The report details the progress of Nevada's Sexual Assault Kit Backlog Project, first initiated by the OAG to address the state's previously untested sexual assault kits. The report provides historical background on the backlog, a summary of the progress made, and an update on significant developments within the initiative between July 1, 2020 and December 31, 2020. The report also includes statistics on the number of backlogged kits tested, DNA profiles uploaded to the Combined DNA Index System (CODIS), CODIS hits obtained, arrest warrants issued, arrests made, and prosecutions initiated by county district attorneys.

The OAG has dedicated nearly $3 million in non-taxpayer settlement funds to build forensic laboratory testing capacity and to fund testing of previously untested kits. Additionally, the OAG—on behalf of Nevada—has been awarded six competitive federal grants totaling approximately $8.2 million from the Bureau of Justice Assistance's Sexual Assault Kit Initiative. Nevada is the only Attorney General's Office in the country to have been awarded a new SAKI grant for each of the six SAKI award periods. These funds have been allocated towards inventorying and testing previously untested sexual assault kits throughout the state, in addition to funding investigations, victim services, prosecution activities, professional training for best practices in the response to sexual assaults, and the collection and testing of lawfully-owed DNA samples.

Nevada's sexual assault kit backlog took decades to create. The OAG is proud to report that 100% of backlogged sexual assault kits from prior to 2015 in southern Nevada have completed testing, and from prior to 2016 in northern Nevada have completed testing. This represents over 30 years of forensic work completed within approximately six years. Although we have now eliminated the inventory of untested kits prior to the dates shown above, and are working to establish the laboratory capacity to keep up with the state's relatively new test-all-kits policy, it will take years of continued hard work and resources to address the backlog of casework associated with testing those older kits.

## The History of the Sexual Assault Kit Initiative in Nevada

### The 1980s to 2020 – The Backlog and the OAG's Sexual Assault Kit Initiative

For decades many sexual assault kits in Nevada and throughout the country went untested. This caused the accrual of what has been called a backlog of untested kits. There are many complex reasons for this backlog, including financial and human resource constraints, the manner in which sexual assault cases were investigated and tracked in the past, and limitations of DNA technology in the past. It is important to realize that for many years, the evidence collected in sexual assault kits was used only to confirm a suspect, and even then only if the suspect claimed to have not had any contact with the victim. Limitations in then-used technology, both DNA testing and database technologies, meant the evidence in the kits were seen as having only limited usefulness. With improvements over the last two decades in DNA testing technologies and increased usage of the CODIS database, as well as improved societal recognition of the devastating effects of sexual violence in our culture, the value of testing sexual assault kits for DNA evidence is now generally accepted as vitally important in law enforcement, social justice, and victim advocacy.

In order to understand the progress that has already been made it is critical to understand what the backlog is, how it came about, and the reasons for the decisions made by local district attorneys and police departments to not submit certain sexual assault kits for testing. In the past, DNA evidence from a sexual assault kit was used to confirm a suspect in a rape case. This was needed if the suspect claimed not only that no rape occurred, but that no sexual contact occurred. DNA evidence from the kit could then potentially prove that sexual contact had indeed occurred. But, if a suspect did not deny sexual contact, and simply claimed that the contact was consensual, many law enforcement officers or district attorneys would not find it necessary to test the evidence collected in the kit. For many years, this was the standard reasoning behind whether or not to test a kit. Furthermore, if a victim chose not to go forward with a case, or recanted his/her statement, or, sadly, if a victim was not believed by law enforcement to be truthful, then the kit would not be tested. This led many kits to remain untested in evidence lockers and has contributed to a nationwide backlog that continues to be the subject of widespread news reporting.

Recognizing the need to rectify the problem of Nevada's backlog of untested sexual assault kits, the Attorney General's Office assembled a statewide coalition to find solutions to reduce the decades-in-the-making backlog. The Sexual Assault Kit Backlog Working Group (Working Group) included stakeholders from state and local law enforcement, forensic laboratories, prosecutors, legislators, victim advocates, researchers, and sexual assault nurse examiners. The Working Group collectively addressed policy matters associated with testing of the kits for local governments including: victim notification, statewide training, resources for victims, testing of sexual assault kits collected in connection with a crime, entering all eligible DNA profiles into CODIS, following up on investigative leads, identification of subjects, prosecuting cases associated with these kits, collecting data for academic research, and identifying statewide resources, processes and legislation to prevent future backlogs.

## Defining the Backlog under this Project

Nevada's sexual assault kit backlog fell into two broad categories created as a function of funding streams. First, there was a backlog of kits that were in the possession of law enforcement on or before December 31, 2014 in southern Nevada, and before April 1, 2016 in

northern Nevada. The funding obtained by and provided from the OAG and federal grants has been sufficient to fund the testing of every sexual assault kit in this category, and this testing is now complete. Second, despite the best efforts of the Las Vegas Metropolitan Police Department Forensic Lab and the Washoe County Forensic Lab, sexual assault kits collected since those dates initially continued to backlog since the beginning of 2015, in large part due to new policies that greatly increased the numbers of kits tested, which created an additional burden for the state's forensic laboratories. The post-2015 kits in southern Nevada and the post-2016 kits in northern Nevada are not covered by the acquired SAKI grants. The funding provided by the OAG and the Nevada Legislature through Assembly Bill 97 in late-2017 has helped to build capacity at the local forensic laboratories to not only test these remaining kits but to test all future kits in a timely manner. Reporting on these kits and the progress of the state laboratories is provided to the Legislature directly from the state laboratories.

### Federal Grants and OAG Settlement Funds Obtained for the Sexual Assault Kit Initiative

After the large number of backlogged sexual assault kits was identified, the OAG began looking for ways to fund the testing of these kits. In 2015, the OAG applied for and was awarded $1,983,533 in funding by the Bureau of Justice Assistance for a 2015 federal Sexual Assault Kit Initiative grant. These funds were used to inventory and test backlogged sexual assault kits, arrange victim services for the necessary notifications and psychological needs for those victims, and investigate the results of any CODIS hits from those tested kits. The application focused on the geographical and jurisdictional area covered by the Las Vegas Metropolitan Police Department Forensic Lab, and included the Douglas County Sheriff's Office, which self-selected to be included in this project. The goal of the application was to effectively reduce the number of untested sexual assault kits and build a framework to ensure that a backlog of untested kits would not develop again in the future. This award has been spent out and is now closed.

Also in 2015, following an investigation of Chase Bank, USA N.A. and Chase Bankcard Services, Inc. (collectively, "Chase") concerning their business practices, the OAG and Chase reached a settlement agreement to address the OAG's claims that Chase engaged in multiple violations of Nevada's Deceptive Trade Practices ("the Chase Settlement.") The terms of the Chase Settlement are found in the Assurance of Discontinuance filed in the Eighth Judicial District Court, Clark County, Nevada. Using this OAG settlement along with the grant funding, the OAG was able to pledge over $3.68 million towards its goal of ensuring a backlog of untested sexual assault kits never occurs again.

In 2016, the OAG applied for and was awarded its second Sexual Assault Kit Initiative grant in the amount of $1,962,414. This award has been used to address the statewide issue of untested sexual assault kits; increase investigation and prosecution resources statewide to address CODIS hits; assess statewide policies and practices relating to sexual assault and its victims; develop supportive victim-centered, trauma-informed responses to sexual assault; and provide systemic training and assistance with the goal of forming effective community partnerships and implementing policies and practices to ensure that backlogs of untested kits do not develop throughout the state in the future.

Also in 2016, the OAG applied to the National Institute of Justice for a 2016 Sexual Assault Forensic Evidence - Inventory, Tracking and Reporting (SAFE-ITR) grant. The OAG's application included a proposal to address research and implementation of sexual assault kit tracking and record-keeping systems, and NIJ awarded funding for this project in the amount of $523,268.

In 2017, the OAG applied to the Bureau of Justice Assistance (BJA) for its third Sexual Assault Kit Initiative grant. These funds were requested in order to meet the goal of collecting lawfully-owed DNA from certain offenders in correctional facilities whose DNA is not in CODIS. Generally these offenders are long-time prisoners who were incarcerated prior to the standard collection of DNA. The OAG was awarded $933,656 for this project. The Nevada Department of Corrections and the University of Nevada Las Vegas are coordinating this part of Nevada's SAKI project.

In 2018, the OAG applied for funding under the 2018 BJA Sexual Assault Kit Initiative. Although the State already had sufficient funding in place from multiple sources to test all its backlogged kits, each one of those kits came from a reported sexual assault that needs to be reviewed and, if appropriate, re-investigated and potentially prosecuted. The first SAKI grant in Nevada, in 2015, had a three-year term, ending September 30, 2018. Although the OAG was awarded a one-year extension in which to continue the working toward the project goals, it was very clear that there was not enough funding to continue the necessary investigatory and prosecutorial activities. The OAG was awarded funding in the amount of $1 million, which will help to provide LVMPD with support to continue investigating the leads developed by testing backlogged sexual assault kits.

In April 2019, the OAG applied for and was subsequently awarded its fifth consecutive grant under BJA's Sexual Assault Kit Initiative. These funds will primarily assist the Clark County District Attorney's Office to address prosecution activity created by investigations into the southern Nevada cases associated with the tested kits.

In 2020, the OAG applied for and was subsequently awarded its sixth consecutive grant under BJA's Sexual Assault Kit Initiative. Funds under this award are intended to provide administrative support for a Task Force in southern Nevada relating to investigations and prosecutions developing directly out of testing kits prior to 2015 in southern Nevada.

## The 2017 Legislative Session –AB 97

In February 2017, Assemblywoman Teresa Benitez-Thompson, Assemblyman Steve Yeager, and then-Senator Aaron Ford sponsored Assembly Bill 97. AB 97 provided that all law enforcement agencies must submit a sexual assault kit to the applicable forensic laboratory for testing not later than 30 days after it receives a kit. Furthermore, each forensic laboratory was mandated to test a sexual assault kit it received not later than 120 days after taking custody of the kit. AB 97 also mandated that the Sexual Assault Kit Backlog Working Group designate a department or division of State government to establish a statewide program to track sexual assault kits, and provide a recommendation to the governor and the Subcommittee to Review DNA of the Advisory Commission on the Administration of Justice on

or before July 1, 2021. Finally, AB 97 appropriated $3 million from the State general fund to the OAG to form interlocal agreements with public entities for the purpose of making payments to forensic laboratories toward reducing the backlog of sexual assault kits that have not been tested in the state. On June 8, 2017, Governor Sandoval signed AB 97 into law.

The day that AB 97 was signed into law, the OAG, in conjunction with members of the Sexual Assault Kit Backlog Working Group, solicited information from the Washoe County Sheriff's Office Forensic Laboratory and the Las Vegas Metropolitan Police Department Forensic Laboratory concerning appropriate funding levels needed to conduct tests on untested sexual assault kits received on or after January 1, 2015. The Washoe County Sheriff's Office Forensic Laboratory and the Las Vegas Metropolitan Police Department Forensic Laboratory submitted funding requests totaling approximately $1,641,617 and $2,709,288, respectively. Accordingly, the $3 million appropriation within AB 97 was insufficient to fully address the needs of the Washoe County Sheriff's Office Forensic Laboratory and the Las Vegas Metropolitan Police Department Forensic Laboratory.

### State Funding to the Clark County and Washoe County Forensic Laboratories to Prevent Recurring Backlogs

Augmenting the appropriation within AB 97, the Interim Finance Committee authorized the allocation of $1,350,905 in OAG non-taxpayer settlement funds to assist Clark County and Washoe County with their efforts to reduce the backlog of sexual assault forensic evidence kits received after January 2015 that had not been tested.

In late 2017, the OAG and the Washoe County Sheriff's Department entered into a contract for the amount of $1,641,617, and the OAG and Las Vegas Metropolitan Sheriff's Department entered into a contract for the amount of $2,709,288. These contracts included a mixture of non-taxpayer settlement monies from OAG funds and the general fund appropriation from AB 97, and the amounts were based on stated needs of the forensic laboratories of each agency.

Based on the Washoe County Sheriff Department's stated needs, the contract authorized hiring six new DNA criminalists and expanding the Washoe County crime lab. In addition, the contract provided for consumable supplies to test kits in-house, as well as funds for outsourcing kits to be tested at other labs. In total, this contract provides for the testing of nearly 1,000 kits, and will help Washoe County maintain compliance with AB 97 moving forward.

The Washoe County Sheriff's Office completed the remodel of its forensic laboratory to accommodate six new DNA criminalists. All six criminalists were hired. With one recent resignation, there are now five criminalists currently in training, and plans to begin the hiring process to replace the sixth within a few short weeks. It is expected that four of these criminalists will be fully trained by June 2020 and the fifth in the fall of 2020. During this report period, 190 sexual assault kits were outsourced to Sorenson Forensics for testing. These have been tested and are currently undergoing the review process in the laboratory to determine CODIS eligibility. The contract with Sorenson Forensics expired in September 2019, and a competitive bid process led to a contract with Bode Technology to undertake

testing of the remainder of 110 untested kits. All sexual assault kits in northern Nevada's pre-April 2016 backlog have now been tested as of December 2020.

Based on the Las Vegas Metropolitan Police Department's (LVMPD) stated needs, their contract authorized spending for outsourcing kits to be tested at other labs and the hiring of three forensic lab technologists. The contract funds testing nearly 1,575 kits, and will help the Las Vegas Metropolitan Police Department maintain compliance with AB 97 going forward.

Pursuant to its funding contract with the OAG, the LVMPD hired all three DNA Forensic Laboratory Technologists in July 2018. The technologists have been processing sexual assault kits collected in southern Nevada since they completed their training in spring 2019. Funding to retain all three positions has been extended through June 2021. Additionally, LVMPD has completed outsourcing pre-2015 southern Nevada sexual assault kits and is currently internally processing kits received January 1, 2015 and after.

Please note: the state's two forensic laboratories provide Legislative reports on the use of these funds directly.

## Nevada's Sexual Assault Website

In May 2018 the OAG launched a SAKI website, *endnevadasbacklog.ag.nv.gov*, dedicated to the state's Sexual Assault Kit Initiative. The site provides quarterly statistical information tracking the progress of Nevada's sexual assault kit testing initiative. Also included is information for victims/survivors about where to get help, contact information for advocates, medical help, and law enforcement in all areas of the state, as well as explanations of victims' rights in Nevada.

Background about the national sexual assault kit backlog is also explained, and updated information about Nevada's progress in eliminating its backlog of untested sexual assault kits is provided. Also included is a video demonstration of how sexual assault kits are used to collect DNA samples for testing and information on the goals and objectives of Nevada's statewide Sexual Assault Kit Backlog Working Group.

With sensitivity toward survivors the ever-present goal, an "Escape Site" tab giving users a quick and disguised exit from the website is available on every page.

## Sexual Assault Kit Tracking System

As noted above, the OAG received a grant from the National Institute of Justice in January 2017 entitled Sexual Assault Forensic Evidence – Inventory, Tracking and Reporting (SAFE-ITR) in the amount of $523,268. Additionally, AB 97 mandates that the Sexual Assault Kit Backlog Working Group designate a department or division of state government to establish a statewide program to track sexual assault kits. The Working Group endeavored to use the SAFE-ITR grant as a "head-start" to comply with the requirements within AB 97. Namely, the OAG sought to obtain software which will initially be utilized to track sexual assault kits by the two state forensic labs—Washoe County Sheriff's Office Forensic Laboratory and Las

Vegas Metropolitan Police Department Forensic Laboratory—with the possibility of enhancing the software to meet the needs of AB 97.

To that end, in the March 2018 Working Group meeting, more than three years ahead of AB 97's 2021 deadline, the OAG announced that the Department of Public Safety (DPS) would manage the State's sexual assault kit tracking system once the OAG fulfills its SAFE-ITR grant requirements, which includes the tracking of sexual assault kits for a minimum of 12 months. An official designation letter was sent out in May 2018. The designation allows DPS to manage the tracking system acquired with SAFE-ITR grant funds and then transition to tracking kits throughout the entire state.

On November 13, 2018, the Board of Examiners approved a contract for the tracking software chosen by the Working Group after an extensive Request For Proposal process. This software, "Track-Kit: Sexual Assault Kit Tracking Software" from STACS/DNA, was successfully launched in Nevada on June 17, 2019. The OAG and DPS worked closely together to ensure the program is accessible and easy to use. The launch of this tracking system occurred after a lengthy, in-depth collaboration period between STACS/DNA, the OAG, DPS, the state's two forensic laboratories, multiple law enforcement agencies, district attorneys' offices, medical facilities with Sexual Assault Nurse Examiners (SANEs) and victim support professionals. The initial launch included mostly agencies in Clark and Washoe counties, and with the diligent activities of DPS and the OAG, the rest of the state now has access as well. Sexual assault kits collected anywhere in the state of Nevada are now being tracked from distribution, through collection, transport between medical facilities, law enforcement agencies and state forensic laboratories as the kit is tested and eventually returned to law enforcement evidence lockers after testing. Information is provided to victims/survivors at the time of their forensic examination on how to access the tracking system, where they are able to find where their kit is in the testing process.

With the OAG's SAFE-ITR grant ending December 31, 2020, the sexual assault kit tracking system operations have now successfully transitioned entirely to DPS.

## The 2019 Legislative Session - AB176

During the 2019 Legislative Session, Senator Nicole Cannizzaro and Assemblyman Steve Yeager sponsored Assembly Bill 176, the Sexual Assault Survivors' Bill of Rights. Among other objectives, this law created the Advisory Commission on the Rights of Survivors of Sexual Assault (Advisory Commission.) In accordance with AB 176, the OAG notified SAKI Working Group members that although the Working Group would be phased out, they may request to be an Advisory Commission member. The Advisory Commission met three times during the second half of 2019 to begin its work to study the State's response to sexual assault and to finalize the Sexual Assault Survivors' Bill of Rights.

## Testing Progress of Backlogged Sexual Assault Kits

As noted above, Nevada's sexual assault kit backlog took decades to create. It has taken six years to fully test this backlog of evidence, and will take years of continued hard work and

resources to resolve all new leads. As of December 31, 2020, 7,855 backlogged sexual assault kits, each one representing a victim who submitted to an intrusive forensic medical examination, have been tested for evidence.

Generally speaking, DNA testing has greatly improved in the last two decades, and the storage of DNA profiles in a database that may be searched has only become widely used within the last decade. In 1994, the FBI was authorized to set up a national DNA database commonly referred to as the Combined DNA Index System (CODIS). CODIS stores DNA profiles associated with offenders, as well as profiles associated with crime scenes (referred to as a forensic unknown). But, it has only been in the last few years that the number of profiles within that database has rapidly begun to grow, in large part due to states' legislation regarding the collection of DNA from arrestees. CODIS is now a powerful source of information in the investigation of crimes and in linking offenders and crimes around the country. This has made the testing of sexual assault kits and other DNA evidence more important than ever before.

According to the Washoe County Sheriff's Office (WCSO) Forensic Division as of December 31, 2019, approximately 1,172 untested sexual assault kits from prior to April 2016 existed in northern Nevada. To date, 310 profiles have been uploaded to CODIS, with 120 hits. It is important to note that the Washoe County Sheriff's Office inventory uses a cut-off date of April 2016, rather than southern Nevada's inventory count using "pre-2015" versus "post-2015."

According to the Las Vegas Metropolitan Police Department Forensic Laboratory, 6,681 untested sexual assault kits existed in southern Nevada as of December 31, 2014. All 6,681 kits have now undergone DNA testing. As a result of testing these kits, approximately 1,646 DNA profiles have been uploaded to CODIS and approximately 918 CODIS hits were obtained. To date, there have been 118 arrest warrants submitted, 64 arrests, and 26 suspects convicted in court.

In addition to the statistics provided, the chart below demonstrates the same information above, but from a county-by-county perspective. Esmeralda, Eureka, Humboldt, Lander, Mineral and Storey counties reported no backlog and are not listed below.

## July 2020 – December 2020 Legislative Report
## Nevada Sexual Assault Kit Initiative

| Region | County | Untested Kits Inventoried | | Kits Tested through December 2020 | Total DNA Profiles Logged | Total CODIS Hits Obtained | Kits Remaining | | Status |
|---|---|---|---|---|---|---|---|---|---|
| | | Number | Funding Source | | | | Shipped to lab | Waiting to ship | |
| Northern Nevada | Carson City | 77 | FBI (5) SAKI (72) | 77 | 0 | 0 | 0 | 0 | Completed |
| | Churchill | 3 | FBI | 3 | 0 | 0 | 0 | 0 | Completed |
| | Douglas | 9 | SAKI | 9 | 0 | 0 | 0 | 0 | Completed |
| | Elko | 32 | FBI (13) SAKI (19) | 32 | 8 | 4 | 0 | 0 | Completed |
| | Lyon | 16 | FBI | 16 | 0 | 0 | 0 | 0 | Completed |
| | Pershing | 7 | FBI | 7 | 3 | 0 | 0 | 0 | Completed |
| | Washoe | 1020 | FBI (260) AG/SAKI (740) | 1020 | 298 | 116 | 0 | 0 | Completed |
| | White Pine | 8 | FBI | 8 | 1 | 0 | 0 | 0 | Completed |
| | Total | **1172** | | **1172** | **310** | **120** | **0** | **0** | |
| Southern Nevada | Clark | 6586 | NIJ (169) FBI (169) DANY (2383) AG/SAKI | 6586 | 1614 | 915 | 0 | 0 | Completed |
| | Lincoln | 1 | FBI | 1 | 0 | 0 | 0 | 0 | Completed |
| | Nye | 96 | SAKI | 96 | 32 | 3 | 0 | 0 | Completed |
| | Total | **6683** | | **6683** | **1646** | **918** | **0** | **0** | Completed |
| | **State Total** | **7855** | | **7855** | **1956** | **1038** | **0** | **0** | Completed |