



SEMIANNUAL SEXUAL ASSAULT KIT INITIATIVE REPORT

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

Adam Paul Laxalt
Nevada Attorney General

July –
December
2017

I. 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 Attorney General Adam Paul Laxalt's Sexual Assault Kit Backlog Working Group created to reduce Nevada's decades-in-the-making sexual assault kit backlog. The report provides historical background on the backlog, a summary of the progress made under AG Laxalt's leadership, and an update on significant developments within the initiative between July 1, 2017 and December 31, 2017. The report also includes statistics on the number of backlogged kits tested, DNA profiles logged, Combined DNA Index System (CODIS) hits obtained, arrest warrants issued, arrests made, and prosecutions initiated by county district attorneys.

As the legislature is well aware, AG Laxalt has led the charge on Nevada's Sexual Assault Kit Initiative (SAKI). The OAG has dedicated nearly \$3 million in non-taxpayer settlement funds to build lab testing capacity and to fund testing of outsourced kits. Additionally, the OAG—on behalf of Nevada—has been awarded three competitive federal grants totaling approximately \$4.9 million from the Bureau of Justice Assistance's Sexual Assault Kit Initiative. AG Laxalt is proud that Nevada is the only one of two statewide agencies to have been awarded a new SAKI grant for each of the three SAKI grants. These funds are 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.

The OAG will continue to explore creative ways to fund this initiative with the intent of reducing untested backlogged kits. Nevada's sexual assault kit backlog took decades to create, and will take years of continued hard work and resources to permanently reduce the number of untested kits. The OAG is proudly dedicated to this mission.

II. The History of the Sexual Assault Kit Initiative in Nevada

a. The 1980s to 2017 – The Backlog and AG Laxalt's Sexual Assault Kit Initiative

For decades, certain sexual assault kits in Nevada went untested. A backlog of untested kits accrued. The reasons behind the generation of this backlog are complex, but include challenges with financial and human resources, the advent of DNA technology, and the way sexual assault cases were investigated and tracked in the past. A few months into his term, AG Laxalt assembled a statewide coalition to find solutions to reduce the decades-in-the-making backlog. The Sexual Assault Kit Backlog Working Group (Working Group) includes stakeholders from state and local law enforcement, forensic laboratories, prosecutors, legislators, victim advocates, researchers, and sexual assault nurse examiners. The Working Group collectively addresses 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.

Since the Working Group's formation, the group has met approximately every quarter. One of the first objectives of the Working Group was to audit the number of untested sexual assault kits statewide. Initially, Nevada was reported to have approximately 6,500 untested sexual assault kits. However, through letters and calls to agencies around the state, the Working Group discovered that the number of backlogged kits totaled approximately 7,634. This included kits dating back to the early 1980s.

b. Federal Grant and OAG Settlement Funds Obtained for the Sexual Assault Kit Initiative

Now that a number of backlogged sexual assault kits had been identified, the OAG began looking for ways to fund the testing of these kits without using taxpayer dollars. On May 5, 2015, the OAG applied to the Bureau of Justice Assistance for a 2015 federal SAKI grant. The OAG's application included a proposal 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 Crime Lab, and included the Douglas County Sheriff's Office, who self-selected to be included in this project. The goal of the application was to effectively address the issue of untested sexual assault kits and build partnerships to ensure that a backlog of untested kits does not develop again in the future. On September 10, 2015, the Bureau of Justice Assistance awarded the OAG \$1,983,533 pursuant to its application. On July 8, 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 sexual assault initiative.

On December 16, 2015, the OAG presented two work programs to the Nevada Legislature's Interim Finance Committee for approval. The first work program proposed the addition of \$1,983,533 in federal Sexual Assault Kit Initiative grant funds to assist recipients with inventorying and reducing current backlogs for sexual assault kits, as well as developing policies, procedures and practices to resolve cold cases and prevent future backlogs from developing. The second work program proposed that proceeds of the Chase Settlement be allocated to the Washoe County Sheriff's Office Forensic Laboratory and the Las Vegas Metropolitan Police Department Forensic Laboratory for outsourcing the testing of backlogged sexual assault kits. The work programs were unanimously approved.

On April 26, 2016, the OAG applied to the Bureau of Justice Assistance for a 2016 federal Sexual Assault Kit Initiative grant. The OAG's application included a proposal 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. On September 26, 2016, the Bureau of Justice Assistance awarded the OAG \$1,962,414 pursuant to its application. On or about December 17, 2016, the OAG presented a work program related to the 2016 SAKI grant to the Nevada Legislature's Interim Finance Committee for approval. The work program sought authorization to expend the federal grant funds on the project. It was unanimously approved.

Then, on May 31, 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. Thereafter, the OAG presented a work program related to SAFE-ITR grant to the Nevada Legislature's Interim Finance Committee for approval. The work program sought authorization to expend the federal grant on the project.

The funding obtained by and provided from the OAG is sufficient to fund the testing of every sexual assault kit in the backlog obtained by law enforcement on or before December 31, 2014.

c. The 2017 Legislative Session – AB 55 and AB 97

As a part of AG Laxalt's commitment to not only work to reduce Nevada's backlog of untested kits, but to ensure that Nevada honors future victims and survivors of sexual assault through mandatory kit testing, his office proposed Assembly Bill (AB) 55. Pre-filed with the Nevada Legislature's Assembly Judiciary Committee on November 17, 2016, AB 55 was developed with input from the Working Group, and 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 they receive a kit. Furthermore, each forensic laboratory was mandated to test a sexual assault kit they received not later than 180 days after taking custody of the kit.

On February 2, 2017, Assembly Bill 97, a measure proposed by members of the Nevada Legislature, was filed. Although the language of AB 97 originally mirrored the language of AB 55 in many respects, the final version of AB 97 contained certain differences. First, the period of time in which a forensic laboratory was required to test a sexual assault kit it received was reduced from 180 days to 120 days. Second, AB 97 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 very 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.

III. AG Laxalt's Progress Between July 1, 2017 to December 31, 2017

a. Funding the Clark County and Washoe County Laboratories to Prevent Recurring Backlogs

In an effort to augment the appropriation within AB 97 and to test kits received by the Clark County and Washoe County forensic labs after January 2015, AG Laxalt proposed allocating an additional \$1,350,905 from OAG non-taxpayer settlement dollars to Clark and Washoe Counties.

On June 27 2017, a mere 19 days after AB 97 was signed, the OAG submitted its proposal for the allocation of OAG funds to the Interim Finance Committee. On August 24, 2017, the Interim Finance Committee of the Nevada Legislature unanimously authorized the OAG to implement AG Laxalt's proposal to use non-taxpayer settlement funds to assist Clark County and Washoe County with their efforts to reduce the backlog of sexual assault forensic evidence kits that had not been tested.

Following Interim Finance Committee approval, on October 10, 2017, the OAG and the Washoe County Sheriff's Department entered into a contract for the amount of \$1,641,617. The contract permitted Washoe County to spend a mixture of non-taxpayer settlement monies from OAG funds and the general fund appropriation from AB 97. Based on the Washoe County Sheriff Department's stated needs, the contract authorized spending for the expansion of the Washoe County crime lab to accommodate six new DNA criminalists also funded through this contract. 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.

Months later, the Clark County Commission approved a similar contract. Subsequently, on December 12, 2017, the OAG and the Las Vegas Metropolitan Sheriff's Department entered into a contract for the amount of \$2,709,288. The contract permitted Clark County to spend a mixture of non-taxpayer settlement monies from OAG funds and the general fund appropriation from AB 97. Based on the Las Vegas Metropolitan Police Department's

stated needs, the contract authorized spending for outsourcing kits to be tested at other labs, and the hiring of three Forensic Lab Technologists. The contract will fund the testing of nearly 1,575 kits, and will help the Las Vegas Metropolitan Police Department (LVMPD) maintain compliance with AB 97 going forward.

Since the approval of these contracts, the Washoe County lab has hired two criminalists. Moreover, it has been working with a contractor and finalized construction plans to build capacity to begin testing kits in-house. As the contract with the LVMPD was approved in mid-December 2017, LVMPD has not hired for the aforementioned positions.

b. Training to Improve Responses to Evidence Obtained from Tested Kits

The OAG and the Working Group seeks to assist in training efforts wherever possible. During the relevant time period for this report, the LVMPD has been actively developing a training module for patrol officers regarding the proper response to reports of sexual assault. The training includes a victim-centered approach and trauma-informed behaviors. LVMPD is also developing a training video to assist officers and victim advocates with contacting victims of cold sexual assault cases that are being re-opened. In the next two months, officers from the Reno Police Department, the Henderson Police Department, LVMPD, and Nevada Department of Corrections will be attending additional meetings to receive training in this area.

c. Nevada's Sexual Assault Website

During the last quarter of 2017, AG Laxalt's staff was hard at work developing a website for victims and survivors of sexual assault. The website provides information and updates concerning progress being made, as well as links to appropriate victim services available for survivors of sexual assault. The website is expected to be available to the public in 2018.

d. Establish Policies for Victim Engagement, Notification and Support

At its August 2017 meeting, the Working Group approved a Victim Notification Protocol for use in investigating cold cases due to testing the backlogged kits. This protocol, and others developed by the Working Group, are available from the Working Group, and will be posted on the sexual assault website currently in development by the OAG. As noted above, the website is expected to be available to the public in 2018.

e. Establish Policies for Evidence Collection, Testing, and Tracking

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. Under the guidance of AG Laxalt, a Working Group Sub-Committee was established to research sexual assault kit tracking systems with the goal of identifying a system suitable for use throughout Nevada. The sub-committee met several times between July and December 2017. It is currently engaged in the RFP process for such technology. Identification of the system and initial implementation in the larger urban areas of Nevada is expected to occur in 2018. This system will track the location and status of all sexual assault kits for which a police report has been filed. Additionally, at the recommendation and urging of AG Laxalt and the Working Group, the Nevada Legislature passed AB 97 in 2017. As the legislature is aware, AB 97 mandates a sexual assault kit

tracking system be established in the state by the year 2021. Nevada is well on its way to meeting that goal.

f. Overall Testing Progress of Backlogged Sexual Assault Kits

As noted earlier, Nevada's sexual assault kit backlog took decades to create and will take years of continued hard work and resources to permanently resolve. Although all parties involved seek a prompt and expedited resolution, it is important to note that approximately 2,883 kits have been tested thus far. This represents approximately 12 years of backlogged forensic work completed in approximately two years. Members of the Working Group are proud of the progress made thus far, but will continue to strive for more speed without compromising forensic testing quality.

Generally speaking, DNA testing has improved greatly 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 (now CODIS). CODIS stores DNA profiles associated with offenders, as well as profiles associated with crime scenes (referred to as a forensic unknown). However, it has only been in the last few years that the number of profiles within that database has really 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.

g. Defining the Backlog

In order to understand the progress that has already been made, an understanding of what the backlog is and how it came about is critical. The reasons for the decision for local district attorneys and police departments to not submit certain sexual assault kits for testing are many. 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. However, if a suspect did not deny sexual contact, and simply claimed that the contact was consensual, law enforcement 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. Additionally, 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 to many kits in evidence lockers never being tested at all, and this is the backlog that is so evident in the news today.

Nevada's sexual assault kit backlog falls into two broad categories—created as a function of funding streams. First, the backlog of kits that were in possession of law enforcement on or before December 31, 2014. The funding obtained by and provided from the OAG (as detailed in Sections II.A. and II.B above) is sufficient to fund the testing of every sexual assault kit in this category. Second, despite the best efforts of the Clark County and Washoe County Forensic Labs, kits have continued to backlog since the beginning of 2015. The post-2015 kits are not covered by the acquired SAKI grants. However, the funding

provided by the OAG and AB 97 in late-2017 endeavors to create capacity at the local forensic laboratories to test all kits.

h. Testing of Backlogged Sexual Assault Kits

As noted above, after auditing the number of backlogged kits statewide in the beginning of 2015, the Working Group discovered that approximately 7,634 sexual assault kits remained untested statewide. The Working Group sought to reduce this backlog by sending a sample batch of kits to the FBI for testing free of charge, and later contracting with laboratories outside of the state that conduct bulk testing. Selecting these laboratories was an arduous process in and of itself, as there are only a handful of bulk laboratories operating throughout the country. In order to use the grant funding to test as many kits as possible, both the Washoe County Sheriff's Office and the Las Vegas Metropolitan Police Department engaged in a competitive bid process with out-of-state laboratories. Additionally, the bulk testing laboratories available for testing are operating at maximum contractual capacity due to the overwhelming volume of work resulting from multiple jurisdictions around the country undertaking similar backlog initiatives. Although all parties involved seek a prompt and expedited resolution, it is important to note that the kits already submitted for testing represent approximately 12 years of backlogged forensic work, completed in an a very short timeframe. Members of Nevada's Sexual Assault Kit Backlog Working Group are proud of the progress made thus far, and will continue to strive for more speed without compromising forensic testing quality.

According to the Washoe County Sheriff's Office Forensic Division, approximately 1,161 untested sexual assault kits existed in northern Nevada.¹ One hundred ninety-five have been sent to the FBI for complimentary testing, and 120 have been outsourced to Sorenson Laboratory. As of December 31, 2017, testing has been completed on 162 backlogged kits. As a result of this testing, approximately 58 DNA profiles have been logged and approximately 27 CODIS hits were obtained. Since early fall of 2017, Washoe County Sheriff's Office has been working through issues in the outsourced testing labs prior to additional testing. The Washoe County Sheriff's Office forensic lab anticipates that the remaining 846 sexual assault kits will be shipped for testing during 2018–2019. To date, no arrests have been made by local prosecutors in northern Nevada who maintain jurisdiction over these prosecutions.

According to the Las Vegas Metropolitan Police Department Forensic Laboratory, approximately 6,473 untested sexual assault kits existed in southern Nevada as of December 31, 2014. A total of 4,772 kits have been shipped for testing, of which 169 were shipped to the FBI, and 4,562 have been shipped to Bode Cellmark Forensics. Testing has been completed on 2,721, of which 169 were tested by the FBI, and 2,552 were tested by Bode Cellmark Forensics. As a result of the tested kits, approximately 621 DNA profiles have been logged and approximately 274 CODIS hits were obtained. Local prosecutors have obtained 15 arrest warrants, and eight arrests have been made. The Las Vegas

¹ It is important to note that the Washoe County Sheriff's Office has not historically tracked kits using the "pre-2015" versus "post-2015" system. Indeed, the 1,161 number includes some untested kits from 2015 and 2016.

Metropolitan Police Department Forensic Laboratory anticipates the remaining 1,701 sexual assault kits will be shipped for testing before the end of April 2019.

In addition to the statistics provided, the chart below demonstrates the same information above, but from a county-by-county perspective:

Region	County	Kits Inventoried	Shipped for Testing	Pending Shipment	Kits Tested through December 2017		DNA Profiles Uploaded	CODIS Hits Obtained	Notes
					Number	Funding Source(s) Available			
Northern Nevada	Carson City	77	5	72	0	FBI (5 kits) SAKI (remaining kits)	0	0	Five of Carson City's kits are being tested by the FBI and the remaining kits will be tested via WCSO lab in 2018-2019.
	Churchill	3	3	0	0	FBI	0	0	Churchill County's kits are being tested by the FBI.
	Douglas	8	0	8	0	SAKI	0	0	Douglas County's kits will be tested via LVMPD lab in 2018.
	Elko	32	13	19	12	FBI (13 kits) SAKI (remaining kits)	3	1	Thirteen of Elko's kits have been tested by the FBI (1 not completed yet) and the remaining kits will be tested via WCSO lab in 2018-2019.
	Lyon	16	16	0	0	FBI	0	0	Lyon County's kits are being tested by the FBI.
	Pershing	7	7	0	7	FBI	3	0	Testing has been completed by the FBI.
	Washoe	1,010	263	747	143	FBI (143 kits) FBI, AG & SAKI (remaining kits)	52	26	One hundred forty-three of Washoe County's kits have been tested by the FBI. Washoe County's remaining kits will be tested in 2018-2019 using FBI, AG and SAKI funds.
	White Pine	8	8	0	0	FBI	0	0	White Pine County's kits are being tested by the FBI.
	Total	1,161	315	846	162		58	27	
Southern Nevada	Clark	6,389	4,772	1,617	169 169 <u>2,383</u> Total: 2,721	NIJ (169 kits) FBI (169 kits) DANY (2,383 kits) AG & SAKI (remaining kits)	621	274	One hundred sixty-nine of Clark County's kits have been tested with NIJ funds. Another 169 kits were tested by the FBI and 2,383 kits have been tested with DANY funds. Clark County's remaining kits will be tested by April 2019 with SAKI and AG funds.
	Nye	84	0	84	0	AG	0	0	Nye County's kits will be tested via LVMPD lab in 2018-2019.
	Total	6,473	4,772	1,701	2,721		621	274	
Statewide Totals		7,634	5,087	2,547	2,883		679	301	

Esmeralda, Eureka, Humboldt, Lander, Lincoln, Mineral and Storey counties reported no backlog and are not listed above.

The reduction in the number of untested kits is being addressed through Nevada's Sexual Assault Kit Initiative, in addition to assistance from the FBI, funding from the Manhattan District Attorney's Office and the National Institute for Justice, and settlement funding from the OAG. All SAKs in law enforcement evidence vaults from prior to January 2015 are scheduled to be tested in or before the end of 2019.