

**2019 HOUSE JUDICIARY COMMITTEE**

**HB 1425**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1425  
1/28/2019  
31616

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Caitlin Fleck
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## Explanation or reason for introduction of bill/resolution:

Relating to treatment standards for victims and medical screening and acute forensic medical examinations and relating to prosecution for sexual abuse of minors.

## Minutes:

1,2,3,4
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**Chairman Koppelman:** Opened the hearing on HB 1425

**Rep. Mike Brandenburg:** Introduced the bill and went over it. **(Attachment #1)** This has been a journey in understanding someone who has survived sexual abuse as a child. What is it like being the husband of someone with this history? Discussed how he dealt with it every day with issues that come up. This bill sets up a basis where law enforcement can do something. There should be laws that can be in place to do something about this when it is done. It also talks about the criminal versus civil side, and having evidence in hand or not.

**Rep. Rick Becker:** For cases that have no statute of limitation isn't that going to cause a 100 years' buildup of evidence?

**Rep. Brandenburg:** That is part of the discussion that has come out, and there may need to be a study that deals with that. How do we deal with this evidence, store it and keep it? I don't have that answer. A lot of times, when the victim is younger they won't have any idea that what happened to them was wrong. So as they age they begin to realize that it was wrong, and that is when they come forward with the charges. The statute of limitation may be gone by then, but many times where there is one victim, there are many more so there may be evidence from one party to another that will show that the person was in the wrong.

**Rep. Bob Paulson:** What if the abuser is a parent? Then the abuser can also get a copy of the complaint from the child.

**Rep. Brandenburg:** Exactly some of the reasons why there needs to be a study done on this so that it is done right. We are going into a new area here and you are right; it is within families.

**Chairman K. Koppelman:** On the first part of the bill; Section 1 lines 9-11 where it talks about access to law enforcement report upon request of the victim. Is that during the proceeding or is it intended to be years later.

**Rep. Brandenburg:** I know Senator Hogan would be able to explain that better than I would. We've been working on these bills together, and I won't give a false answer because I'm not an attorney, I am just trying to help get something accomplished.

**Rep. Paur:** Page 2 you have 29-04003.1 which you are amending and then 03.2 has to do with the statute of limitations, has that affected anyway by what you are doing?

**Rep. Brandenburg:** We had the statute of limitation that we extended; we probably need legislative counsel to clarify the sections, and what the statutes refer to.

**Chairman K. Koppelman:** I believe in previous sessions we had decided to extend the statute of limitations to begin at the point at which the victim was aware of the issue. I think murder is the only other statute where there is no statute of limitations. You think this should be in that category?

**Rep. Brandenburg:** I do, it is a lifelong sentence. Right now there is abuse going on, and people just say just move on with life and get it over with. There is no punishment right now for the offenders and they know that they can do it.

**Chairman K. Koppelman:** What about on the civil side?

**Rep. Brandenburg:** If you have a big checkbook, you can do anything. That doesn't solve anything, but the real healing is when you are dealing with it.

**Chairman K. Koppelman:** Would this be retroactive?

**Rep. Brandenburg:** No I don't think so.

**Chairman Koppelman:** If there is no statute of limitations, if something happened 20-30 years ago could anyone then bring actions?

**Representative Brandenburg:** That is what we are trying to discern.

**Lovice Brandenburg:** Discussed the situation of incest with her two brothers. The statute of limitation has expired and there is nothing anyone can do, and they just say we're sorry. They too will be in therapy for years, if drugs, suicide, or the streets don't take them first. I am asking to please vote yes on eliminating the statute of limitations in our state.

Opposition Testimony:

**Paula Condol, Director for the Children's Advocacy Centers of ND; Executive Director of the Dakotas Children's Advocacy Center: (Attachment #2)**

**Rep. McWilliams:** Your main concern is if the parent gets this information?

**Ms. Condol:** Usually the parent is the offender or a family member. Unfortunately, we would like to think that if you aren't the offender, you would believe your child. However, a majority of the time when the non-offending caregiver comes in, they don't believe what their child is saying to them.

**Rep. Rick Becker:** Has there been discussion of when we go into the area of unlimited time, the memory of what happened may not be as reliable?

**Ms. Condol:** The likelihood someone would prosecute a case that was 40 years old is slim, regardless. There is value in those few cases though, that would come to life. There won't be floods of cases that can be conducted because there is a lack of evidence that it happened. However, there will be those occasional cases where there will be evidence for it.

**Chairman K. Koppelman:** Have you seen an increase in these types of older cases being prosecuted? Have the provisions of Marcy's Law provided that information to a victim?

**Ms. Condol:** That might be a question for some of the prosecutors here. No the Marcy's Law does not provide access to that.

**Rep. McWilliams:** What about the statute of limitations and what they exactly are?

**Ms. Condol:** I am not a prosecutor, but I was here when it went from 7 to 10 years. It previously was 7 years from their 18<sup>th</sup> year to come forward and make that disclosure.

**Chairman K. Koppelman:** I think it is started at the time the victim remembers and makes their report.

Supportive Testimony:

**Senator Hogan: (Read Attachment #3 and Handed out Attachment #4)**

**Rep. Satrom:** Do you have any solutions on how we can address this?

**Senator Hogan:** I think the 2 key pieces are eliminating that statutes of limitations and them taking and keeping a report of what happened so then if you get 5 or 6 reports we can have evidence.

**Rep. McWilliams:** The bill talks about having evidence being given to a parent or guardian of the minor, based on the opposed testimony, would it be permissible if that evidence was given to the minor come 18?

**Senator Hogan:** Absolutely. We have to protect the victim.

**Rep. Rick Becker:** Now there is no statute of limitation for deoxyribonucleic acid (DNA) evidence?

**Senator Hogan:** Yes, that is true.



**Chairman K. Koppelman:** Normally bills that pass and become statutes are not redirect unless they say so. Yet here we will be lifting the statute of limitations, how would that work?

**Senator Hogan:** We have not talked about that, and I don't really have the answer to that.

**Chairman K. Koppelman:** The concerns of parents having access; we value parental rights and in healthy situations there may be no better advocate. How do we balance that?

**Senator Hogan:** Those are the complex issues in this bill. I always want to be on the side of protecting the victim. Maybe we need a comprehensive study on victim's rights in sexual abuse cases.

**Chairman K. Koppelman:** What if people are then falsely accused, so if we remove the statute of limitations do we risk the chance of having people come forward and falsely accuse others of these crimes.

**Senator Hogan:** I have a friend who was falsely accused, so I have been on that side of the table too. The 2 critical aspect of this are the quality of the investigation has to be really good. Secondly, you need to have strong prosecutor authority.

**Chairman K. Koppelman:** After checking with legislative counsel, this bill would open the doors to anything, anywhere, anytime. If that were not the intent, there would be to be an application clause put in.

No more testimony. Hearing closed.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1425  
1/30/2019  
31816

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Caitlin Fleck
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## Explanation or reason for introduction of bill/resolution:

Relating to treatment standards for victims and medical screening and acute forensic medical examinations and relating to prosecution for sexual abuse of minors.

## Minutes:

1
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**Chairman Koppelman:** Re-opened the hearing on HB 1425.

Neutral Testimony:

## Travis Finck, Deputy Director ND Comm. On Legal Counsel for Indigents: (Attachment #1)

**Rep. Jones:** Are you suggesting that if we were to put this in, if they did this as a juvenile but weren't prosecuted until they were an adult, the same benefits that would have been adjudicated to them as a juvenile still would remain as an adult?

**Mr. Finck:** Those possibilities do exist. If there is a 17-year-old and a 14-year-old, if an act occurs through those two, and that case was not reported for about 20 years, that person would then be deemed solely in adult court. If this bill were to go through, you could have someone who was 14 years old, be convicted of a sex charge when they are 70 years old.

**Rep. Jones:** This is hypothetical. In reality, what do you see today? What would happen in ND if when someone is 50 years old, and someone came up and charged them with sexual charges from back when they were in middle school, realistically, what would happen?

**Mr. Finck:** There are a lot of cases that go forward and time can change the memory if it is a long time ago. A lot of the evidence does disappear over time. Could someone be convicted? Yes. Would it be incredibly difficult to prosecute? Yes. That is why we are not taking a stance on this bill.

**Rep. Jones:** I want to protect victims, and people that have false accusations against them. I would be interested in what you'd suggest for situations where they were both adolescents.

Hearing closed.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1425  
2/12/2019  
32550 (0:00-15:37)

☒ Subcommittee  
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Donna Whetham
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## Explanation or reason for introduction of bill/resolution:

Relating to treatment standards for victims and medical screening and acute forensic medical examinations and relating to prosecution for sexual abuse of minors.

## Minutes:

1
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**Chairman Satrom:** Opened the subcommittee on HB 1425. Committee consists of Chairman Satrom, Rep. Paulson, Rep. Buffalo. Here are some of the parameters, dig deeper. Find best solution and see if we can amend it or see if we should go for a do not pass. We can request additional information if we need it. Went over the first section of the bill.

**Rep Buffalo:** Is there an amendment to this bill?

**Rep Paulson:** There is a proposed amendment. In contents of the amendment is basically to remove the forensic medical examination from the bill. (See Attachment #1)

**Chairman Satrom:** What are we trying to accomplish. Obviously in reference to the first paragraph, apparently people weren't able to get access to their records.

**Rep. Paulson:** Specifically the parents or guardian is the perpetrator and now you are providing with the child's testimony and then they go home and get repercussions from the parent or guardian having that information.

**Chairman Satrom:** In the first section is that a good change?

**Rep Paulson:** I think so because with the proposed amendment it give the child sex abuse victim who is over the age of 18 a copy of the law enforcement report.

**Rep Buffalo:** I don't have any issues, the amendments look good.

**Chairman Satrom:** Section 13-16 No change recommended. Any issues in 19 -23. Went over the amendment which removes that entire section and the first couple of lines on page

2. How can you do a forever thing? This basically says there is no statute of limitation. We can leave this open for a committee discussion.

**Rep Paulson:** what was significant to me in testimony is when this happens the ability to articulate is suppressed until they are a lot older, because so much time has transpired. The frustration is that there is no justice for these things that are sometimes admitted to. I still struggle with something after that many years later. Is there actual evidence or people to come forward to testify about the allegation?

**Rep Buffalo:** I think of the public health perspective of trying to be proactive and prevent that from happening, I mean the whole assault and also years later how can we encourage people to come forward now. That is tough.

**Rep Paulson:** I like the original language. Where it says 10 years after the offense. You could say maybe there is something between 10 years and forever. There were other ideas brought up that would not be forever.

**Chairman Satrom:** Do you prosecute someone when they are 50- years old that happened when they were 10. How does that work? 11:10

**Rep Paulson:** Maybe we should leave the original language as it is I might be comfortable with adjusting those 10 years. Basically the amendment takes away all of that and just says there is no limitations. I don't think I am comfortable with that. I would be more comfortable adjusting the 10 years. It is the first word on line 10 page 2.

**Chairman Satrom:** the 3 years they have to start the prosecution, you can't just let it hang once you have come to the authorities.

**Rep Paulson:** 1 would you propose changing that 10 years to a particular number and go back to the original language. I would be open to 20 years.

**Rep Buffalo:** If we change 10 years and you might want to change the 3 years?

**Rep Paulson:** I think we keep the 3 years because that is just a limitation on how long they have after they reported it or after they are identified.

**Chairman Satrom:** We will ask the committee if we should adjust the time on the 10 years and also the 3 years. So we will come to the committee with a couple of suggestions.

Hearing closed.  
15:37

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1425  
2/12/2019  
#32627

☒ Subcommittee  
☐ Conference Committee

Committee Clerk: DeLores D. Shimek
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**Explanation or reason for introduction of bill/resolution:**

**Minutes:**

1
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**Present:** Rep. Satrom, Chairman; Rep. B. Paulson, Rep. Buffalo

**Rep. Satrom:** No limitation on time. I am concerned about that.

**Rep. Bob Paulson:** Most of them are ten years and up to 21 years.

**Rep. Satrom:** Most states are running with 21 years.

**Rep. Bob Paulson:** Do you know what type of violations are in this section?  
(directed to intern)

**Intern 10:** Went over different levels of felonies. (inaudible)

**Rep. Buffalo:** Question on sexual abuse of minor's section.

**Rep. Bob Paulson:** What is your preference, Rep. Buffalo, with what is in the bill. There are other bills out there that have statute of limitations on them. Should we send the bill back to the committee eliminating the statute of limitations?

**Rep. Buffalo:** Yes

**Rep. Bob Paulson:** I'm not sure that I am okay with eliminating the statute of limitations.

**Rep. Bob Paulson:** It appears that we would be way beyond the norm if we went with no Statute of Limitations at all.

Discussion: It seems as if the microphones are not on for Rep. Satrom and Rep. Buffalo and most of the conversation is missing. Mics cut in and out.

**Rep. Bob Paulson:** We accepted the Hogan amendments.

Continued discussion on different statute of limitations. Some do have no statute of limitations.

**Rep. Bob Paulson:** What would be your preference with the statute of limitations? Go with what was submitted in the bill based on the two links that we were sent – to eliminate the statute of limitations? There are states out there that have no statute of limitations when it come to the sexual abuse of minors. Are you comfortable sending the bill back to the committee and eliminating the statute of limitations?

**Rep. Buffalo:** Yes

**Rep. Satrom:** I am getting there.

**Rep. Paulson:** If we change that in here, we would be taking away the DNA. Right now, if there is DNA and it can be matched, there is no statute of limitations. If we were to change it to 21 years, we are changing that unless we have the whole thing rewritten.

**Rep. Paulson:** I move that we send HB 1425 back to committee with the Hogan Amendments and a DO PASS recommendation. Attachment 1.

**Rep. Buffalo** seconded the motion.

All in favor. The motion carried.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1425  
2/13/2019  
#32681

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: DeLores D. Shimek typed by Jeanette Cook
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## Explanation or reason for introduction of bill/resolution:

**Minutes:**

1
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**Chairman Koppelman:** Opened the meeting on HB 1425.

**Rep. Bob Paulson:** (Attachment #1 Senator Hogan's amendments) Went over the proposed amendment along with the bill. We also recommend that we remove the statute of limitations, by going back to the original language and change 10 years on line 10 to 21 years. It is a balance between the current law which is a 10-year statute of limitations and going to 21. This is a common statute of limitations in many states.

**Rep. Paulson moved the amendments.**  
**Rep. Satrom seconded the motion.**

**Chairman K. Koppelman:** You have removed all of the other changes that section 3 would make to current law, is that correct?

**Rep. Paulson:** Yes, we reverted back to current law.

**Rep. Koppelman:** In the motion we accepted the Hogan amendments as written and in Section 3 of the bill Section 29.04.03.1 of the North Dakota Century Code would remain the same except on Line 10 the word 10 would be deleted and 21 inserted.

**A voice vote was taken. The motion carried.**

**Rep. Hanson:** Did you (the subcommittee) discuss any language saying that this is only going forward, or any retroactivity?

**Rep. Paulson:** We did not.

**Representative Hanson moved a DO PASS as amended on HB 1425.**  
**Representative Magrum seconded the motion.**

**Rep. Vetter:** Is there no retroactivity unless stated, correct?

**Chairman K. Koppelman:** That is correct.

Discussion on statute of limitations.

**Chairman K. Koppelman:** This will not be applicable to this bill.

**A voice vote was taken: Aye 11 Nay 3 Absent 0**

**The motion passes.**

**Representative Paulson will carry HB 1425.**



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1425

- Page 1, line 1, remove "and a new"
- Page 1, line 2, remove "subsection to section 12.1-34-07"
- Page 1, line 3, remove "and acute forensic medical examinations"
- Page 1, line 9, after the first "the" insert "child sexual abuse"
- Page 1, line 9, after "victim" insert "over the age of eighteen"
- Page 1, line 10, replace the first "a" with "the"
- Page 1, remove lines 17 through 23
- Page 2, remove lines 1 and 2
- Renumber accordingly

DP 2/13/19

19.1036.01002  
Title.02000

Adopted by the Judiciary Committee

February 13, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1425

Page 1, line 1, remove "and a new"

Page 1, line 2, remove "subsection to section 12.1-34-07"

Page 1, line 3, remove "and acute forensic medical examinations"

Page 1, line 9, after the first "the" insert "child sexual abuse"

Page 1, line 9, after "victim" insert "over the age of eighteen"

Page 1, line 10, replace the first "a" with "the"

Page 1, remove lines 17 through 23

Page 2, remove lines 1 and 2

Page 2, line 6, remove the overstrike over "~~4. Except as provided in subsection 2, a prosecution~~"

Page 2, line 6, remove "There is no limitation on the time"

Page 2, line 7, remove "within which prosecution"

Page 2, line 8, remove "must be commenced"

Page 2, line 9, remove the overstrike over "~~must be commenced in the proper court within~~"

Page 2, line 10, after "ten" insert "twenty-one"

Page 2, line 10, remove the overstrike over "~~years after the commission of the offense or, if the victim failed to report the~~"

Page 2, remove the overstrike over lines 11 through 16

Page 2, line 17, remove the overstrike over "~~deoxyribonucleic acid testing or fingerprint authentication~~"

Re-number accordingly

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION HB 1425**

House	Judiciary	Committee
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Subcommittee

Amendment LC# or Description: Hogan Amend 19.1036.01001

Recommendation: ☒ Adopt Amendment  
☒ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider    ☐

Motion Made By Paulson Seconded By Buffalo

[illegible]

Total (Yes) 3 No 0

Absent 0

## Floor Assignment

If the vote is on an amendment, briefly indicate intent:

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1425

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Hogan Amend as written and as described below.

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐

Motion Made By Paulson Seconded By Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Vote carried*

19.1036.01001  
plus- return to original  
language in Section  
29.04.03.1  
Line 10 Change 10 yrs  
to 21

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1425

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 19.1036 .01002

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
 Other Actions: ☐ Reconsider ☐

Motion Made By Hanson Seconded By Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo	✓	
Vice Chairman Karls	✓		Rep. Karla Rose Hanson	✓	
Rep. Becker		✓			
Rep. Terry Jones	✓				
Rep. Magrum	✓				
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur	✓				
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons		✓			
Rep. Vetter		✓			

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep Paulson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1425: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1425 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and a new"

Page 1, line 2, remove "subsection to section 12.1-34-07"

Page 1, line 3, remove "and acute forensic medical examinations"

Page 1, line 9, after the first "the" insert "child sexual abuse"

Page 1, line 9, after "victim" insert "over the age of eighteen"

Page 1, line 10, replace the first "a" with "the"

Page 1, remove lines 17 through 23

Page 2, remove lines 1 and 2

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Page 2, line 6, remove "There is no limitation on the time"

Page 2, line 7, remove "within which prosecution"

Page 2, line 8, remove "must be commenced"

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Page 2, line 10, after "~~ten~~" insert "twenty-one"

Page 2, line 10, remove the overstrike over "~~years after the commission of the offense or, if the victim failed to report the~~"

Page 2, remove the overstrike over lines 11 through 16

Page 2, line 17, remove the overstrike over "~~deoxyribonucleic acid testing or fingerprint authentication~~"

Renumber accordingly

**2019 SENATE JUDICIARY**

**HB 1425**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1425  
3/11/2019  
#33476 (28:06)

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Meghan Pegel
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## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new subsections to section 12.1-34-02 of the North Dakota Century Code, relating to treatment standards for victims and medical screening; and to amend and reenact section 29-04-03.1 of the North Dakota Century Code, relating to prosecution for sexual abuse of minors.

## Minutes:

2 Attachments
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**Chair Larson** opens the hearing on HB 1425. Senator Osland was absent.

## Mike Brandenburg, District 28 Representative, testifies in favor

**Representative Brandenburg:** This was introduced in the House and had a good hearing. Section 1 talks about access to law enforcement report and the preservation of the evidence. It ties to the age of 18. If there was something that happened, and there was a report filed when you were under 18 years of age, the evidence would be kept for up to 21 years. A lot of times now, the report is filed, but the evidence is gone after the period of time we have right now. This would say that if there was a law enforcement report, you would have to keep it for 21 years and not destroy any of the evidence. Offenders could be people within the family, so you don't want the people within the family to get access to that evidence, but available for the person who's been offended when he or she becomes the age of 18. Then at that point, that person can take the evidence and decide if they'd like to prosecute depending on what the evidence may be. It may be that the evidence was not enough at that point for the states attorney to move it as a criminal offense, but this way the evidence would be protected for that person when they turn 18. Two sessions ago we changed it from 7 years to 10 years. Then last session we added in DNA and fingerprints, which is forever. If someone was offended when they were 10 years old, now it takes them to the age of 31. Current law allows up to 3 years after the 10-year period. This gives the time to allow for the ability, mentally and financially, to fight back. We tried to eliminate the statute of limitations completely, but we got 21 years. We also have protection for and access to the evidence. These are good moves, and I encourage a do pass.



**Senator Myrdal:** If the evidence wasn't enough when it was submitted for the prosecution, how can it be enough 21 years later?

**Representative Brandenburg:** Usually if these offenders have some case filed against them, there's probably another case somewhere from somebody else that filed an assault. You can tie them together and find out that there's more than one assault on different people. With that protected evidence, you can build a case in that situation.

**(7:35) Lovice Brandenburg, citizen, testifies in favor**

**L. Brandenburg:** I'm an incest survivor. My road has been long with unbelievable pain. I've spent years in therapy to overcome what my two brothers did to me. I've had the states attorney, doctors and therapists tell me it's not my fault, and it wasn't my fault. That's it. I had a life sentence. My two brothers got nothing as the statute of limitations had expired. Again they said it wasn't my fault. My two brothers are free to walk around among all of us as if they've done nothing wrong. Other family members greet them with open arms and welcome them to holidays, family reunions, hunting trips, vacations, weddings and baptisms. Meanwhile I was thrown away like a piece of garbage, never given another thought. I was pegged as the problem child, but it wasn't my fault. There are so many young girls, boys and teens that will be told that it's not their fault, that the statute of limitations has expired and there's nothing anyone can do. They tell you they're so sorry. They too will be in therapy for years of drugs and the streets if suicide doesn't take them first. It is unacceptable for a child to be a victim of any type of sexual assault. It is our responsibility as a state to protect our children. Please vote do pass.

**Chair Larson:** I heard your story four years ago, and the road you've taken and the strength you show now is inspirational to a lot of people. Well done.

**(10:50) Kathy Hogan, District 21 Senator, testifies in favor (see attachment #1)**

**(16:05) Travis Finck, Deputy Director of the Commission on Legal Counsel for Indigents, neutral party (see attachment #2)**

**Finck:** The Commission is in the process of defending children. We also on many occasions defend victims. By no means is the Commission in opposition to this bill. However, we also represent children who are accused of crimes. The concern is if an offender is committing an offense, under the transfer provisions, once that offender turns the age of 18, the juvenile court no longer has jurisdiction over them. There's a reason we have a juvenile court; we believe all kids are worth trying to save. If that's reported, there's a secretive process to the juvenile court, registration provisions for a felony level sex offense and a process to deviate from requiring a juvenile offender who's adjudicated delinquent from having to register. That's if they show no predatory conduct or no mental abnormality, and those reasons have been in place for a long time. What I ask to the committee to consider is how that plays with the juvenile court and those transfer provisions.

One case was a consensual relationship between two persons with an age difference more than three years. It's illegal if the person is under 15 years of age under our statute, whether it be a sexual act or sexual contact which could even be touching on the outside of the clothing. Many years down the road, when there was a breakup in the relationship, that's

when the allegations came. I'm a big believer that we should prosecute those people who commit these offenses, but I also think that people should not use this as a sword as well. The concern is that there can be a defeating of the juvenile court's purpose by delayed reporting. That situation does exist, and there are bad actors in any system.

**Senator Myrdal:** I agree, there's no reason whatsoever to question the testimony today and this subject that is sadly growing in our nation. We're also sadly in a he said she said situation. On the national level, people are coming out with accusations that are found later to be untrue. The statutes are different for sex crimes if you're under 18 than if you're over, correct?

**Finck:** In certain places, that's correct.

**Senator Myrdal:** It goes back to the question I had that if the evidence wasn't enough at the time, it's a dangerous road to go down for the defendant. We all have equal rights. With accused juveniles who go beyond 18, what's your experience of them facing that and having the opportunity to defend themselves?

**Finck:** It's increasingly hampered. I ask people to try to recall what they did 3 years ago, 10 years ago and 21 years ago. Add on top of that the fact that you may be 12-14 years old at the time of the offense. We know that your brain and memory are still developing at that stage. It can be significantly difficult for both the accused and the victim. In order to prosecute a case, the victim's statement in and of itself could be enough to go forward. The question being is it enough to convict?

**Senator Luick:** Is 18 the legal age for both male and female for this type of crime?

**Finck:** Under 12.1-20, which is the sex offense chapter, age of 15 is the consent. However, there is a provision in the definitions section which says if age is the consideration, the offender would have to be more than three years older. It's treated the same; there's no distinction.

**Senator Luick:** 18 would set off the differences in age for being considered an adult for both male and female?

**Finck:** Correct. Once you meet the age of majority, the transfer provision 27-20-34 provides that once you reach age 18, the juvenile court is no longer the appropriate jurisdiction.

**Vice Chairman Dwyer:** Is the problem that you indicate with this bill the same whether it's 10 years or 21 years statute of limitations?

**Finck:** It is. The fact of the matter is that the length of time really doesn't matter. Under current law, we're seeing those problems now. I'm simply notifying the committee of what's happening out there and how this is being litigated.

**Vice Chairman Dwyer:** Do you have an idea for a solution for that?

**Finck:** We're having conversations.

**Senator Hogan:** We had an email from Children's Advocacy Network about this concern. Representative Brandenburg and I then went to legislative counsel and asked for their opinion about how the juvenile court interfaced with this particular bill. Chris Joseph reviewed it and sent us a memo saying that he thought it was still clean, that there were sections in juvenile code that protected people. We tried to due diligence on your concerns because we thought they were legitimate, so we did a follow up with that. Samantha Kramer was also in the room. We had a number of lawyers from legislative counsel look at it.

**Chair Larson closes the hearing on HB 1425.**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1425  
3/11/2019  
#33502 (26:00)

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Meghan Pegel
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## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new subsections to section 12.1-34-02 of the North Dakota Century Code, relating to treatment standards for victims and medical screening; and to amend and reenact section 29-04-03.1 of the North Dakota Century Code, relating to prosecution for sexual abuse of minors.

## Minutes:

No Attachments
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**Chair Larson** begins discussion on HB 1425.

**Senator Luick:** As it stands, I would have a hard time supporting it. Reaching out there for that long of a time frame would be problematic for getting that evidence in proper form.

**Senator Myrdal:** The longer we go between the occurrence and the prosecution of a crime, the more likelihood we have for the defendant not to have an opportunity to have a defense. We should go after those evil perpetrators; however, I think there's a reason that we have the statute of limitations the way it is. We passed the DNA last session with no statute of limitations. Later on if a perpetrator gets caught and matches that DNA, it is an open case. The human mind is bizarre. Guilty or not, we have a standard that you are innocent until proven guilty. I'm very uncomfortable with extending that. There's a reason in law that we have that in there.

**Senator Bakke:** I understand your logic, but oftentimes when children are in that much trauma, they suppress it. It isn't until they're much older that they're able to voice it. Just because the voice it, doesn't mean that legal action will be taken. It just means that they could go to court, and the court will still have to prove beyond a reasonable doubt that this occurred. It's just holding that person accountable for their actions. Just because we're extending the limitations, doesn't mean the person will automatically get convicted. I don't have a problem with this bill because as far as I'm concerned, there should be no statute of limitation if you have sexually abused a child. It's criminal what has happened in some cases when someone has finally been brave enough to come forward 20-30 years later, and nothing can be done about it. You're responsible for your actions.

**Senator Luick:** I was thinking about the statute of limitations being seven years after their 18<sup>th</sup> birthday.

**Senator Myrdal:** My problem is that the court, whether the accused is found guilty or not, wrecks their lives for good. It's being used as a weapon against people in some cases. It's a tough vote for sure.

**Senator Luick:** As it stands right now, the age of 21 years for a 17-year-old could put it out to 38 years. If we look at a 10-year-old being accused, it's only up to age 31. There's a discrepancy of time to file cases.

**Senator Bakke:** Then you'll get into a situation of when the abuse started or ended. In most cases, if they've been successful the first time, they'll be back. I had an 8-year-old who lived with me and had been sexually abused from the age of 4. As an 8-year-old, she got on the stand and in detail took her dad down. Currently it's 10 years, and we're moving it up to 21. I have no problem changing that. It's difficult for someone in their early 20s to stand up to somebody that they see is an authority figure with power. Sometimes they need some years to deal with it before they can actual feel the power to defend themselves. I want to make sure we aren't taking the opportunity for a victim to have their justice at some point. My youngest son was a shaken baby. His biological parents have never had to pay the price for what they did to my son. He's fine now, but I feel they should have been prosecuted for that child abuse.

**Senator Myrdal:** I thought for sex crimes, statutes don't start until after their 18.

#### **Travis Finck, Deputy Director of the Commission on Legal Counsel for Indigents**

**Finck:** 29-04 is the provision for the statute of limitations. Section 3.2 it says if the victim was a violation of chapter 12.1-20, which is the sex offenses, or human trafficking under the age of 15, the applicable period of limitation doesn't begin until they become the age of 15. The 10 years under current law gives them until age 25. Even if it's not reported in that first 10 years, there is that three-year time period that if they do report it later on, then it just has to be prosecuted within that time period. Currently if the victim of a crime is 13, they would have until they're 23. However, under the statute of limitation section, it says that statute of limitations does not begin to run until that victim becomes the age of 15, so they would have until 25. A child victim would have until age 25 to report it. Then there's that three-year component. I'm not sure if that's been interpreted by the court, but that's the way I read the statute.

**Chair Larson:** We've looked into brain development where the prefrontal cortex is not fully developed until the mid-20s. Having that executive functioning fully developed in your brain can play into that age portion.

**Senator Bakke:** When a child experiences trauma, that decreases that development even more. There's a lot of research on the trauma that a child goes through when they're abused sexually, physically or emotionally.

**Chair Larson:** I don't have a problem with this bill. It doesn't make it easier to make an accusation against someone, and if you make an accusation, they need to find corroborating evidence. I agree with the balance that we need to take. We need to show some protection for both the victims and also protections in place so that an innocent person doesn't become a victim of an accusation. However, an innocent person wouldn't have evidence against them. I plan to support the bill the way it is. I think there's concern with the juvenile portion of it, but I don't think we should be addressing that in this particular legislation. I'm comfortable with extending it from 10 to 21 years.

**Senator Luick:** In the current law today, has there been a problem with the statute of limitations with the information from victims or the ability to prosecute?

**Finck:** You can prosecute with only the victim's statement. If that prosecutor feels strongly enough, you can go forward on that; it doesn't have to be corroborating evidence. Many times in sexual assault cases, there is no corroborating evidence because there is a delayed report or something along that line. Usually it's not done in the open, so it becomes a he said she said case. That's how most of these cases are prosecuted. I was asked about the Justice Kavanaugh case in the House and how this would play out if it were to happen in North Dakota. People can make allegations. It may simply be that there's a change in prosecutor, and now that prosecutor feels they can get a conviction versus maybe the first prosecutor felt they could not. A lot of that is up to the prosecutor, whether they bring charges.

**Chair Larson:** Though if Jane Doe decides to accuse her teacher when she's 50, that still then begins the 3 years?

**Finck:** The way I read the statute, yes. I'm not aware of case law or any attorney general opinion, but it's interpreted that way. If you report it on day one after it first occurs, they would have 10 years to bring that case to justice. If they don't report it in the first 10 years, then that would have to be brought to court within three years.

**Senator Luick:** That's in statute today?

**Finck:** Yes.

**Senator Luick:** This is serious stuff. The victim is absolutely due justice for what has happened, but is that going to fix the problem?

**Finck:** I've represented a lot of victims that will never see their day in court and never get their justice, and it is heart wrenching. On the other hand, we have cases where there's been a he said she said allegation where there's been some convictions and some acquittals. When people have allegations, it's put in front of a jury, and that jury decides on credibility.

**Vice Chairman Dwyer:** If a minor is under the age of 15, the statute of limitations doesn't start until they are 15. If they're 17, it starts at that moment and goes until the age 27. This essentially would change it to age 36 or age 38.

**Finck:** Yes, that would be my understanding of the legislation.

**Senator Myrdal:** The statute of limitations is there to protect the integrity of the court system at large for the accuser and the accused. With something like this that is deeply emotional and disgusting, there is a greater risk of conviction from juries for innocent people than not. Is there any data that shows that current laws are putting the public at risk?

**Finck:** I don't have that information. Historically the arguments against the long periods of limitations is the due process concerns of the defendants, and that's always balanced against the rights of the victims.

**Senator Bakke:** Senator Luick, are you looking at an amendment?

**Senator Luick:** No. I like it better as the law is today.

**Senator Bakke: Motions for a Do Pass.**

**Chair Larson: Seconds.**

**A Roll Call Vote Was Taken: 3 yeas, 2 nays, 1 absent. Motion carries.**

**Senator Bakke will carry the bill.**

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1425**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Bakke Seconded By Chair Larson

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick		X			
Senator Myrdal		X			
Senator Osland	AB				

Total (Yes) 3 No 2

Absent 1

Floor Assignment Senator Bakke

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**HB 1425, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman)** recommends **DO PASS** (3 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1425 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**HB 1425**

#1  
HB1425  
1-28-19  
pg 1

## CLOSS

From Page 1

"When I heard about Jayme's return, it reminded me so much of Jasmine," Block said. "It brought back all my memories. I'd cry and then I'd cry again. It reminded me of the whole overwhelming experience."

Closs is the 13-year-old who was abducted after her parents were brutally murdered in their home in Barron, Wis. She was missing for more than 80 days when she escaped and was found last Thursday, Jan. 10.

"She escaped and then ran up to someone and asked for help. Jasmine did that, too," Block said. "The guy who kidnapped Jayme kept her hidden when people would come over. That is what happened to Jasmine, too. Jasmine was locked in a closet. And I just found out that Jayme's favorite color is blue. That is Jasmine's favorite color."

Block said even though there were so many similarities to the teenage girls' stories, there is one big difference: Closs doesn't have her parents to come home to.

"Jayme lost her parents. She watched her parents get murdered," Block said.

That sadness is what Alexandria Police Chief Rick Wyffels has been thinking about since he heard the news of Closs being found alive.

"This young lady doesn't have her parents. Jasmine was fortunate to have her mother," Wyffels said.

"It really hit me hard that this girl doesn't even have her mommy, the one person most girls would want most. She doesn't have her dad, either. They are not there for her and that is sad."

### Beating the odds

While following the case, Wyffels said he

to share thoughts on the case and about the girl being found alive. But he knows the authorities have their hands full right now. Once things settle down a bit, he expects to make that call.

Wyffels said after hearing that Closs was found alive, he received a very welcome phone call.

"Sarah Block called me and it was touching to us, the department," he said, adding that the news of Jayme Closs being found made the department revisit the Jasmine Block case and that the department talked about both of the cases. "When Sarah called, she thanked us for everything again. It makes me feel like what we do, our jobs, is definitely worth it."

### Heroes

When Sarah Block heard that the Wisconsin teen was found alive, she knew it would make an impact on her daughter so she decided to keep her home from school. She asked her daughter to come sit by her on the couch and told her now 16-year-old daughter about the incident. When Jasmine sees anything about missing kids, whether on the news or through social media, it brings back awful memories, her mom said.

"I explained to her what happened," what Jayme escaped just like she did," Block said. "She said, 'Oh my gosh,' and then said that Jayme is a hero. To this day, however, Jasmine doesn't think of herself as a hero. And Jayme probably won't, either."

Jasmine's mom believes that both young girls will eventually come around to realizing that is what they are. At least she hopes they each will come to understand that.

"They both beat the odds and were brave, and are heroes."

Block said her daughter is interested in reaching out to Jayme Closs. Block

is hopeful that the two girls will meet one day because she has a feeling they would have plenty to talk about.

### Details don't matter

Sarah Block said her daughter still struggles daily and that she believes a kidnapping victim will never truly recover or "get over it." It is something, she said, that will stick with them their whole lives.

"Jasmine is now known as that kidnap girl and Jayme probably will be, too," she said. "But people have to realize that this is not just a story. This is real life. It is their life. And it is our life. I'm known as the mom of the kidnap girl. I still get messages all the time."

Block said so many people have tried to push the details out of her, as well as out of her daughter. Kids have friended her daughter just so they could ask her details of what happened. Block fears Jayme Closs and her family will be subjected to the same sort of questions.

"It becomes intrusive. The fact is, the details aren't what matter," she said. "These are little girls and they don't need everyone knowing the exact details of what happened to them. ... But what matters is that they survived. They were brave. They escaped."

If Block could give any advice to all of those who have been following the Closs story, it would be to not ask questions about the details. They need to focus on healing and not answering all the questions.

"And don't blame the victim. Don't put blame of any kind of Jayme. That becomes hurtful," Block said, adding that she knows that from experience.

Don't talk bad about the people in western Wisconsin responded to what happened here. victims because they will and elsewhere is to just be supportive. She said "You don't know how big the world is until you have a kid go missing," although not everyone said Block. "It changes smine." was supportive in their case, she has high praise everything." Block reiterated that the case, she has high praise for the way area residents

#1  
HB 1425  
1-28-19  
PJ 2

House Judiciary Committee  
Testimony in Opposition of House Bill #1425  
1-28-19

#2  
HB 1425  
1-28-19

Chairman and Members of the Committee.

For the record, my name is Paula Condol. I am the Director for the Children's Advocacy Centers of North Dakota and the Executive Director of the Dakota Children's Advocacy Center, here in Bismarck. I am here today to oppose HB 1425.

The Children's Advocacy Centers of North Dakota (or CAC's) provide a compassionate and effective way to bring services to children and families affected by abuse. Our collaboration with multidisciplinary team members significantly reduces the trauma associated with child abuse and improves case outcomes. We help coordinate care and investigation from the first report to conviction and beyond, while keeping the child at the center of everything the team does. This multidisciplinary team brings professionals from social services, law enforcement, prosecution, victim advocacy and the medical and mental health communities together so that a child only has to tell of his or her abuse one time, and so that we can build better case and start that child on the road to healing. The CAC model is seen as the gold standard response to child abuse across the country at over 800 CAC's, in all 50 states. Including three CAC's in ND, covering six regionally placed sites; one in Bismarck, Dickinson, Minot, Fargo, Belcourt and Grand Forks. In 2018, we served 2628 children and family members who have been affected by abuse and provided 21,486 services to them.

Every year our centers see children that are sexually abused, beaten and threatened. They have witnessed violence and at times been exploited through pornography and



trafficking. Children's Advocacy Centers offer environments that are free of intimidation. This welcoming atmosphere makes the situation less stressful for the child and as a result they may be more open to sharing their horrific experiences. House Bill 1425, although, has some good components, could take away that safety.

Last session we passed Senate Bill 2189 that protects Children's Advocacy Center (CAC) records. The underlying premise of that amendment was safety. Safety for the child who trusted their story to us and believed we would keep them safe. Safety to the non-offending parent, who stays awake at night worried that their abusive partner, spouse or family member will gain access to the records and take it out on the child or them and safety for the evidence that might be used to hold the offender accountable. In 2018 71% of all offenders for children seen at CAC's across the state were family members. 36% of the offenders were the child's parent and if you add in their significant others that number jumps to 50%. This bill essentially would be handing very sensitive investigative information over to these offenders and putting many kids at risk.

I realize that this bill isn't specific to CAC's and that bill references "findings and results". However, it is important to know that the majority of kids seen for sexual abuse across the state are seen at CAC's, who all offer a medical component and all who send the report to law enforcement. Giving copies of these records/results to parents, knowing that 50% of the time they are the one that has caused the abuse is very scary. Imagine being that child and how frightening it must be to seek out help and tell their story, only to find out later that the person who inflicted this harm has access to that information.

As a parent I understand the complexity of wanting my child to be safe while preserving the right to know about their care. CAC's also understand the complicated situations of the families we deal with and work with non-offending caregivers on multiple levels to ensure that they are informed of every step of the process, as we can. We visit with them prior to the interview and after the interview to inform them of the process and to talk about what happens next. An advocate visits with them regularly to see how they are doing, updates them on case statuses and provides support and services. The medical provider visits with them during and after the examination and follows up with them to let know of any findings and recommended care. During therapy their clinician visits with them at every session to let them know how the child is doing and helps the non-offending caregiver with their trauma. Communication is key to our services. These things are already happening. The difference is that we currently can do this while protecting the child's story and their safety. We are not asking to keep parents in the dark, we are asking that the child's records and our team member's evidence be kept confidential for the child's protection. Nor are we asking to take away rights of alleged offenders. Alleged offenders are already afforded rights through the discovery process. In addition, judges also have the authority to release records they deem appropriate.

All that said. This bill would erase statute of limitations for victims and we wholeheartedly support that.

Children's Advocacy Centers in ND play a critical role in ensuring the safety of abused children in our state. A large part of protecting those children relies on us being able to communicate with our Multidisciplinary Team partners and at the same time, protecting that information so that the abuser is unable to misuse this

information to further hurt the child. We greatly appreciate the support and confidence the Legislature has in the services we provide. I am the first to wish our centers could close our doors and go out of business, but until we can do so knowing that NO child in North Dakota needs our help, I ask you for your support.

Chairman and Members of the Committee, thank you for allowing me the opportunity to testify before you today and I will be happy to try and answer any of your questions.



#3  
HB 1425  
1-28-19  
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**TESTIMONY**  
**House Judiciary Committee**  
**House Bill 1425**  
**January 23, 2019**  
**Senator Kathy Hogan**

Chairman Koppelman and members of the House Judiciary Committee. My name is Kathy Hogan and I represent District 21 - the heart of Fargo.

For the last 8 years, we have been looking at these statutes related to childhood sexual abuse. Eight years ago, many people did not understand the serious reality of childhood sexual abuse. We have made major changes over the last 8 years but there are still a few areas that I hope this committee will consider.

The one issue that has been discussed annually is the statute of limitation on criminal child sexual abuse. Based on the tragic situation faced by USA Gymnastic where over 300 children were sexually abused Dr. Larry Nasser Over a 15-year period. Several young women could not participate in the criminal prosecution because of the statute of limitation.

Based on several high-profile situations, the method of identifying the pattern of abuse typically comes from a series of related allegations being gathered and reviewed often over many years.

Recently, there has been a national movement to implement Survivors' Bill of Rights. ND has already implemented three of those recommendations but there are three additional issues we would like you to consider.

In section 1 this law would require that a victim have a right to a copy of the law enforcement report and it would require that all evidence of child sexual abuse allegation never be destroyed.

Section 2 Would give a victim access to a copy of the medical evaluation. I understand that there are some advocated concerned about the language of this section. Because if the alleged abuser was their parent/guardian and the victim

#3  
HB 1425  
1-28-19  
pg 2  
was still a child, the abuse could have access to the information. We always want to protect the victim first and would suggest that issue be clarified.

Section 3 Would eliminate the statute of limitation on child sexual abuse cases.

Let me briefly describe the situation which brought this issue to my attention. Going door to door in 2010 a constituent told me the story of his friend, Joe who had been sexually abused by a professional when he was 10 years old. Joe first disclosed his sexual abuse when he was in his late 40's and then went to law enforcement who told him it was too late to investigate. Several years later at a high school gathering, he was visiting with a friend who had just gotten out of substance treatment. Joe's friend disclosed he had been a victim of child sexual abuse which had been a factor in his addiction. In conversation, they discovered that they had both been abuse by the same professional. They again went to law enforcement and they were told that they could do nothing.

Over the next 4 years, these two friends identified two other victims. One summer in 2008, they found the receptionist who worked with this professional and talked to her about their experience. She was in her late 80s and she fell apart in tears. She shared with the two men that she was aware and had kept a list of the young men she thought had been abused by her boss. With all this evidence, there was nothing that could be done.

If that situation happened after this bill was passed, law enforcement could pursue an investigation and the states attorney could independently evaluate that evidence to see if prosecution was appropriate. Combining reports are often the trigger for real justice because most victims do not know that there are other victims. A prosecutor is in control of the evidence before charges are filled.

Thank you Chairman Koppelman, I am more than willing to answer any questions.

#3  
HB1425  
1-28-19  
R73

### ***Survivors' Bill of Rights Act***

- the right to not have evidence be destroyed before the statute of limitations

some states destroy untested rape kits in as little as 30 days. However, evidence is often never destroyed in other crimes, such as murder. Moreover, in many states, convicted rapists have the right to have evidence kept for the duration of their conviction, but a survivor does not have the right to have evidence kept for the entirety of the statute of limitations

- the right to be notified of your rights
- the right to not be charged for the rape kit examination
- the right to access one's own medical record in the rape kit examination
- the right to a copy of the survivors' police report
- elimination of statute of limitation for child sexual abuse

HB1425  
1/28/2019  
#4



# Survivors' Bill of Rights Act Working Group

## Report to Congress October 2018

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U.S. Department of Justice  
U.S. Department of Health and Human Services

Department of Justice leadership directed the Office on Violence Against Women in consultation with the Department of Health and Human Services, to convene a working group to develop, coordinate, and disseminate non binding best practices regarding the care and treatment of sexual assault survivors and the preservation of forensic evidence.

Multiple offices and components of the Department of Justice and the Department of Health Human Services participated in this joint effort. This report reflects a true cooperative effort.

This report, submitted in fulfilment of the requirement found in section 3 of the 2016 Survivors' Bill of Rights Act (Pub. L. No. 114-236 [codified at 34 USC § 12512]), describes:

- Voluntary best practices, protocols, and other resources that communities can use to improve the care and treatment of sexual assault survivors and the preservation of forensic evidence;
- Themes that emerged in listening sessions with experts on the care and treatment of survivors and the preservation of evidence; and
- Information about what both Departments are doing to help communities strengthen their responses to sexual assault.

HB 1425  
1-28-19  
#4

## Contents

About the Survivors' Bill of Rights Act Working Group .....	4
Fulfillment of Senate Committee Report Requirement .....	5
What We Heard: Themes from Listening Sessions .....	8
Theme 1: Medical/Forensic Care .....	8
Theme 2: Trauma-informed Approaches .....	9
Theme 3: Beyond DNA .....	10
Theme 4: Coordinated Community Response .....	11
Theme 5: Tracking Evidence .....	12
Theme 6: Best Practices and Standards .....	14
Existing Best Practices and Recommendations .....	17
What We Are Doing: Current and Planned Federal Efforts Related to Care and Treatment of Sexual Assault Survivors and Evidence Preservation .....	24
Appendix – Glossary of Terms .....	58

## About the Survivors' Bill of Rights Act Working Group

The Survivors' Bill of Rights Act, enacted in October 2016, identifies rights that must be afforded to sexual assault survivors in federal criminal cases, authorizes the Attorney General to administer grants to ensure that survivors receive certain notifications, and directs the Attorney General, in consultation with the Secretary of Health and Human Services, to establish a joint working group to *develop, coordinate, and disseminate best practices regarding the care and treatment of sexual assault survivors and the preservation of forensic evidence*.<sup>1</sup> The working group was required to consult with certain stakeholders, including at least one sexual assault survivor.<sup>2</sup> Membership of the working group must comprise "governmental or nongovernmental agency heads at the discretion of the Attorney General, in consultation with the Secretary,"<sup>3</sup> and the working group is required to develop and submit a report to Congress by October 7, 2018.

Subject matter experts within the Department of Justice (DOJ) and the Department of Health and Human Services (HHS) were identified to participate in the working group, following a meeting in February 2018 of leadership from both Departments. Federal working group members represent the following offices/bureaus:

- Department of Justice
  - Office on Violence Against Women (OVW)
  - Office for Victims of Crime (OVC)
  - National Institute of Justice (NIJ)
  - Bureau of Justice Assistance (BJA)
  - Executive Office for United States Attorneys (EOUSA)
  - Federal Bureau of Investigation (FBI)
    - FBI Laboratory
    - Victim Services Division (VSD)
- Department of Health and Human Services
  - Immediate Office of the Secretary (IOS)
  - Office of the Assistant Secretary for Health (OASH)
  - Administration for Children and Families (ACF)
  - Indian Health Service (IHS)
  - Health Resources and Services Administration (HRSA)
  - Office on Women's Health (OWH)

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<sup>1</sup> Pub. L. No. 114-236 (codified at 34 USC § 12512)

<sup>2</sup> 34 USC § 12512(b)

<sup>3</sup> Id. § 12512(c)

The working group met four times in 2018. Furthermore, experts corresponding to the stakeholder groups identified in the Survivors' Bill of Rights Act—including survivors,<sup>4</sup> victim advocates and counselors, forensic laboratory personnel, healthcare providers and forensic healthcare providers, law enforcement officers, and prosecutors—were invited to participate in a series of seven telephonic listening sessions conducted between April and June of 2018. In addition, an in-person session was held at the DOJ's National Advocacy Center with federal victim witness personnel who work with victims in Indian country. To accommodate stakeholders who were not able to participate in a listening session or who wished to provide more information, the working group also invited stakeholders to submit written comments. Finally, in August 2018 the working group met with Amanda Nguyen, Founder and President of Rise, an organization that works with the United States Congress and state legislatures to strengthen rights for sexual assault survivors. Ms. Nguyen's perspective as a leader in shaping groundbreaking legal reforms helped inform the working group's report.

Given that many of the best practices the working group is charged with identifying and disseminating exist as guidelines, protocols, toolkits, and other resources, the listening sessions focused on where there are gaps in best practices and where persistent challenges to implementing effective approaches exist. This report summarizes what was heard in the listening sessions, resources available to guide communities in strengthening their response to sexual assault, and what DOJ and HHS are doing to ensure that survivors have access to care and treatment and that evidence is preserved according to best practices.

## Fulfillment of Senate Committee Report Requirement

This report is submitted also in fulfillment of a second Congressional reporting requirement contained in the Senate Committee on Appropriations report to accompany the Departments of Commerce and Justice, Science, and Related Agencies Appropriations Bill, 2018. The Senate report requests an update on the Department of Justice's investigating and litigating components' "efforts to update prosecution, victim, and witness assistance guidelines, protocols, procedures, and other relevant regulations in order to be consistent with recent changes in the law associated with crime victims and sexual assault survivors rights, including those victim and survivor rights that apply regardless of whether the victim participates in a subsequent investigation or whether or not a report results in a formal charge or indictment."<sup>5</sup>

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<sup>4</sup> The terms "victim," "survivor," and "patient" are used in this report. "Survivor" acknowledges and honors the reality that many victims of sexual assault escape violence and rebuild their lives. "Victim" recognizes that sexual assault is a violent crime, and not everyone survives it. "Patient" is the term used in healthcare for the person receiving medical treatment.

<sup>5</sup> S. Rep. No. 115-139 at 62 (2017).



HB 1425  
1-28-19  
#4

The Federal Bureau of Investigation (FBI)'s Victim Services Division (VSD) and the Executive Office for United States Attorneys participated in the Survivors' Bill of Rights Act working group, and supplied updates on their efforts to afford sexual assault survivors the rights enumerated in the Survivors' Bill of Rights Act. Those updates can be found in the *What We Are Doing* section of this report.

HB 1425  
1-28-19  
#4

Figure 1: Listening Session Themes



## What We Heard: Themes from Listening Sessions

Experts in law enforcement, prosecution, forensic science, forensic medicine, healthcare and healthcare administration, and victim services and advocacy were invited to participate in listening sessions during the spring of 2018. Seven listening sessions, including one to hear from survivors, were convened by conference call. More than 50 people participated. An additional listening session was held in Columbia, South Carolina, in May 2018 to hear from federal Victim Witness Specialists on the unique challenges in caring for sexual assault patients and preserving evidence in sexual assault cases in Indian country.

Participants were invited to share their perspectives on barriers to post-assault forensic healthcare and evidence preservation in sexual assault cases, as well as promising approaches to mitigating those barriers. They were asked to speculate on what is and is not working in their states and communities, including the impact of recent law and policy changes. They were asked to identify guidance, tools, and other resources they find especially helpful for fulfilling their roles in the response to sexual assault.

Participants were provided with background on the Survivors' Bill of Rights Act at the start of each listening session, and they were informed that remarks made in the listening session would not be attributed to individual speakers in this report. Everyone who was invited to participate in a listening session was given the opportunity to provide written comments on the discussion questions, whether or not they were able to participate in the listening session. Six overarching themes emerged across multiple listening sessions. Those themes are discussed below and summarized in Figure 1 on the previous page.

Experts invited to participate in listening sessions shared diverse local, state, and national perspectives on what needs to be done to better respond to survivors and preserve evidence. Their reflections and recommendations offer a starting point for crafting solutions to long-standing problems. However, the working group emphasizes that the listening session themes summarized in this report are just that: a starting point. What makes a response to sexual assault effective—in terms of minimizing further trauma for the survivor, tending to her/his healthcare needs, and maximizing the value of forensic evidence—varies across jurisdictions and states.

### ***Theme 1: Medical/Forensic Care***

Participants discussed sexual assault's enduring physical, psychological, and emotional health consequences for which immediate and ongoing treatment may be in short supply or inaccessible to survivors. They explained that sexual assault can cause physical injuries ranging from minor cuts and bruising to blunt force trauma, defensive wounds, attempted strangulation, traumatic brain injury, and internal and anogenital



injuries. A nurse stressed that limited access to timely and complete medical/forensic care can jeopardize a patient's health:

*"It is particularly difficult for patients looking to access care in rural communities because of the extreme cost of [HIV prophylaxis] medication. The hospitals and the community pharmacies do not stock the medication. And this is one of the only things that's really time dependent—it has to be initiated within 72 hours of the contact, and it's very difficult for patients to get access to this medication, not only in my state but across the country."*

Healthcare practitioners and victim advocates worried that the medical component of the medical forensic exam gets lost in the larger discussion about sexual assault kits (SAKs). They cautioned that mistaking the exam as exclusively for evidence collection can conflate the role of the healthcare provider who conducts the medical forensic exam with that of law enforcement.

### **Theme 2: Trauma-informed Approaches**

Participants in each listening session described a critical need to inculcate trauma-informed approaches in justice and healthcare systems through training, leadership and supervision, and policymaking. A "trauma-informed" approach is one built on an understanding of how trauma affects a person's physical, emotional, and psychological health, and accounts for the potential for systems—like healthcare and criminal justice—to cause further trauma. A law enforcement officer explained:

*"A lot of victim blaming still exists in society, including in the medical and law enforcement communities. A lack of understanding of how trauma affects memory has the potential to make a victim completely shut down before the detective has a chance to talk to her. From the initial reporting officer, first responder medic, ambulance attendant, hospital nurse or doctor, all it takes is for somebody in that chain to engage in victim blaming and create an environment not conducive to a victim wanting to participate in the investigation."*

Citing similar observations, a victim advocate said, "We need to make sure everyone gets some training on trauma-informed response." Such training can teach investigators to interview survivors in ways that are not interrogatory and accusatory, but rather, invite the survivor to describe what happened, at whatever pace, in whatever order, and with as much detail as she/he can recall. Training on trauma-informed approaches to care can help healthcare providers treat a patient's emotional trauma while tending to her/his medical needs and collecting evidence.

Participants explained that trauma-informed approaches are necessary not just in the interaction between a detective and a victim or a nurse and a patient, but in the way a system's response is structured and how resources are used. Investigators may carry

unmanageably large caseloads and prosecutors in many jurisdictions may be discouraged from charging cases for which a conviction is not certain. Sexual Assault Nurse Examiner (SANE) programs and victim services providers face high turnover rates in their fields and chronic resource shortages. Across sectors, practical, day-to-day difficulties such as these can interfere with the ability to implement trauma-informed practices.

### **Theme 3: Beyond DNA**

Participants agreed that advances in DNA analysis over the past several decades have made serological evidence (i.e., bodily fluids, including blood, semen, and saliva) a powerful tool for solving sexual assaults by confirming that sexual contact occurred, identifying offenders, and linking crimes through the Combined DNA Indexing System (CODIS) and other databases. However, some participants cautioned against an overreliance on DNA and a narrow focus on DNA as the solution to the proof challenges in investigating and prosecuting sexual assault cases. One prosecutor said:

*“What I see in many places is an overreliance on the use of DNA, and that can lead to case attrition. In some cases the victim has a medical forensic exam, and then police and prosecutors wait for a year for the lab results to come back. In some of these cases proving whether there was sex isn’t the issue because the defendant admits he had sex with the victim but says it was consensual. In a small, tribal community the victim has continued to see the offender at parties, events, ceremonies for the 12 months everyone is waiting for the crime lab results...that can lead to case declinations as the victim is no longer interested in working with the criminal justice system. It’s a training issue for law enforcement and prosecutors—if the case isn’t a whodunit, do you really need to wait on the forensic results to move forward?”*

Conversely, another prosecutor reported that her team “doesn’t wait for forensic results to come in if it’s an acquaintance rape, so a wait at the lab isn’t holding us back from working those cases.” Participants also noted that not all sexual assault cases have SAKs associated with them, not all SAKs contain DNA, and not all DNA profiles generated from SAKs are eligible for upload in CODIS. Because many sexual assault cases cannot, or will not, hinge on DNA evidence, it is important that the public, policymakers, and practitioners understand the role of non-DNA evidence in solving sex crimes, and avoid viewing the speedier testing of SAKs as a panacea.

When asked what, besides DNA, is useful for investigating sexual assault, law enforcement participants cited strategies including: obtaining witness accounts and other evidence that corroborate the victim’s version of events; reviewing medical records, including notes recorded by the medical forensic examiner; facilitating pretext phone calls between the victim and the accused to obtain admissions; collecting digital evidence such as text messages, pictures, and GPS data from cell phones; retrieving surveillance footage from home and business security systems and traffic light cameras;

searching social media; and inviting assistance from the public through canvassing neighborhoods and holding press conferences.

What can be achieved in a forensic laboratory—and DNA analysis, in particular—has transformed how the justice system fights violent crime. CODIS and other databases are a valuable investigative tool for linking crimes and identifying serial offenders. Yet, participants reported that access to advocacy and services for the survivor, good police work, and skilled, thorough prosecution are just as critical to bringing offenders to justice as anything that happens in the laboratory. “While focusing on the kit is important, it’s just one aspect of addressing sexual assault,” said a victim advocate.

#### **Theme 4: Coordinated Community Response**

Participants described how coordinated community responses—meaning teams of professionals within and outside the justice and healthcare systems—can benefit survivors and yield better case outcomes. The difference between a well-coordinated approach and a disjointed one was stark in two survivors’ accounts of their experiences:

*“The right hand never knows what the left hand is doing. I had to facilitate, and write letters, and call, and pound on doors to try to get this information. Not only am I exhausted from being sexually assaulted—I’m exhausted from trying to find my rape kit. I’m exhausted from trying to get answers from the prosecuting attorney and from getting the runaround at the state level. Going through what I’ve gone through, I don’t understand why any victim would want this prosecuted.”*

*“I had a really great experience, in terms of the prosecutors, the detectives, and the forensic nurse. Everyone was so supportive of me, but I know how unusual*

Figure 2. Non-DNA Forensic Evidence

### **The Importance of All Forensic Evidence**

**It is imperative that all types of forensic evidence be considered and pursued in sexual assault cases.**

While DNA is a powerful tool, data obtained from six different cites show that DNA profiles that were of sufficient quality for CODIS upload were obtained in only 38 percent of more than 7,000 SAKs submitted for DNA testing. Samples collected for a SAK are not the only sources of evidence in sexual assault cases. Other types of evidence can include:

- In drug-facilitated sexual assault (DFSA) cases, powders, pills, syringes, or beverages left at the crime scene and toxicological analysis of urine or liquid blood samples;
- Latent prints on victim’s belongings and on weapons, bindings, or other items at the crime scene;
- Digital or other multimedia analysis of phone calls, texts, photos, GPS data, or other items that may help to place the suspect and/or victim at the crime scene;
- Chemical analysis of swabs collected from the victim’s body for spermicides or other lubricants that can be associated with certain types of condoms; and
- Trace evidence analysis of fibers from clothing or examination of fabrics for cuffs or tears and comparison to weapons.

NIJ administers a critical program focused on research and development in the forensic sciences with the objectives of developing highly precise, accurate, reliable, cost-effective, and rapid methods for the identification, analysis, and interpretation of physical evidence. Survivors of these horrific crimes deserve every possible consideration because DNA evidence may not be probative.

See: Sexual Assault Cases: Exploring the Importance of Non-DNA Forensic Evidence, at: <https://www.nij.gov/journals/279/Pages/non-dna-evidence-in-sexual-assault-cases.aspx>

HB 1425  
1-28-19  
#4

*that is. My experience went well because there was a great team structure...it made everything go smoothly."*

Advocates also voiced concern that, in some places, community-based victim advocates may "be left out of the equation" and victim notification strategies may suffer as a result. An advocate remarked:

*"With a concentrated focus on getting kits tested, the one area where I've seen less attention to is victim notification...One of the unintended consequences is that community-based victim advocates are being seen as less vital partners...I see a lot of dollars going to states' testing of kits and less to prosecution and victim notification teams, and where there are victim notification teams there is a lot of confusion around different roles and the role of system- and community-based advocates."*

A survivor said that "the advocate was the only person who helped [her]," and advocates offered a reminder that victims can understand and pursue justice in ways that differ from traditional, legal definitions of justice. They explained that many survivors might require services to help them rebuild their lives, regardless of whether they ever report their assaults.

### **Theme 5: Tracking Evidence**

Participants pointed to a need for evidence tracking systems to ensure timely transfer and analysis of SAKs and other evidence, prevent the loss or destruction of SAKs, maintain an accurate inventory of SAKs, and keep survivors apprised of the status of their SAKs. "I can track my pizza order from a mobile phone app. We need a system in place where there's a barcode, or something, so I can have access to information about where my rape kit is," a survivor said.

Participants described a DOJ-funded project in West Virginia that tracks SAKs from the hospital through the forensic laboratory. The West Virginia Foundation for Rape Information and Services (FRIS), in partnership with the state police laboratory and the Marshall University Forensic Science Center, established a tracking system that includes a feedback mechanism by which laboratory personnel can report to SANEs about whether evidence was dried and packaged properly, which swabs tested positive for DNA, and more. This system allows the state to maintain an accurate inventory of SAKs and monitor data to spot bottlenecks in the workflow and areas for quality improvement. In Idaho, the state police developed its own tracking system after gathering extensive feedback from stakeholders, including law enforcement, laboratory personnel, and representatives from prosecution, criminal defense, courts, victim advocacy, the medical community, hospital administration, and victim compensation administration. State legislation and accompanying funding have reportedly made it possible for SAKs to be tracked from the hospital through analysis and storage using a



serial number. Survivors are given the serial number associated with their SAK so they can monitor the status of the kit. Case submissions requiring DNA analysis increased following the first year of the Idaho Kit Tracking System (IKTS) implementation, increasing laboratory workload such that the state relies on the NIJ-FBI SAK Partnership to try to keep pace and test SAKs in as timely a manner as possible, given a higher volume of work for the laboratory.

Participants in the forensic scientists' listening session described a challenge related to tracking SAKs collected from patients who have not elected to report a crime to law enforcement. A condition of Violence Against Women Act (VAWA) funding requires states to provide victims with access to medical forensic exams, regardless of whether they choose to report to law enforcement. This helps ensure that survivors can get prompt medical treatment and have evidence collected from their bodies before it degrades or washes away, so that it is available to law enforcement if and when the survivor chooses to report. One survivor explained that she declined to report her assault to law enforcement at the time of her medical forensic exam because she expected to encounter victim-blaming attitudes among police, and that her involvement in a criminal investigation could jeopardize her career.

However, participants in the forensic scientists' listening session described a challenge related to tracking unreported SAKs, meaning those collected from patients who have not elected to report a crime to law enforcement. They articulated the need for guidance on how to track and store SAKs that do not have accompanying police reports. Speaking from the perspective of a technical assistance provider who assists communities across the country in implementing SAK-testing efforts, one participant said:

*"I'm seeing a big variety in the ability to record and track 'anonymous' or 'Jane Doe' kits and, associated with that, protocols and mechanisms for reaching out to those victims to see if they want to move ahead with reporting...One of the biggest concerns with some of the agencies we're working with is that they're just not aware of where their evidence is, how it's stored, how it's tracked, and whose responsibility it is to monitor those cases."*

Likewise, a laboratory director explained:

*"My lab is one of the few that is independent of law enforcement. But even in our lab we have no right—or any kind of access to—anonymous or non-law enforcement kits; we just don't have authority to take them because there's not a criminal case attached."*

While the need for kit tracking systems was a common theme in the listening sessions, participants also cautioned that knowing the location and status of a SAK does not in



itself fix the problem of kits not being tested in a reasonable period of time, nor does it correct shortfalls in the overall response to sexual assault that lead to cases being poorly handled in the justice system, victims suffering additional trauma as a result, and offenders remaining free to cause further harm.

### ***Theme 6: Best Practices and Standards***

Participants cited several resources as being helpful in terms of describing the features of an effective response to sexual assault, as well as being “something to point to” when encouraging others in their professions and in their communities to implement model policies and practices. They also cautioned that the utility of those resources is limited when the best practices and recommendations contained in those resources are not seen by individuals who have the ability to put them into practice, are poorly implemented, or are not implemented at all. *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*<sup>6</sup> (hereafter referred to as *National Best Practices*)—especially its recommended timeframes for logging SAKs into evidence and submitting SAKs to a laboratory—was mentioned as a valuable resource, as were the Adult/Adolescent and Pediatric SAFE Protocols for performing medical forensic exams. (Figure 3 on page 16 provides information on recommended SAK retention periods.) Several participants agreed that resources available through the Bureau of Justice Assistance (BJA)’s Sexual Assault Kit Initiative Training and Technical Assistance (SAKI TTA, <https://sakitta.org/>) are useful for communities taking a coordinated community approach to testing previously unsubmitted SAKs. Discussions also referenced the value of training and technical assistance available through the Office on Violence Against Women (OVW), the National Institute of Justice (NIJ), and the Office for Victims of Crime (OVC) for aligning law enforcement, prosecution, medical forensic, and victim advocacy efforts with best practices.

Some participants discussed the impact of recent legislation in their states to establish evidence tracking systems, perform audits and assemble inventories of SAKs, and mandate timeframes for evidence submission, testing, and retention. It is both too early and beyond the scope of this report to speculate as to which new laws are having their intended impact and which are more difficult to implement or are yielding unintended consequences. However, several participants noted that unfunded mandates present a host of challenges that could be avoided if funding and resources accompanied the mandates. Furthermore, when legislative or policy changes set unrealistic targets, it can be tremendously frustrating for survivors who, reasonably, expect compliance with those laws. One survivor, citing how much longer it took for her SAK to be tested than stipulated in her state’s law, said: “I had to call the prosecuting attorney to find out what was going on. Testing my kit got pushed out and pushed out and pushed out until I had to write to the governor on down to find out where my rape kit was.”

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<sup>6</sup> <https://www.ncjrs.gov/pdffiles1/nij/250384.pdf>

Participants acknowledged that challenges around the care and treatment of survivors and preservation of forensic evidence vary across communities, as do the solutions to those challenges. However, they discussed two areas where they see a need for uniformity and standards:

- **Protocols to use when patients seeking medical forensic care have not yet reported a crime to law enforcement.** Participants described a lack of good models for handling so-called “anonymous,” “Jane Doe,” and “unreported” SAKs and cited a need for guidance related to presenting patients with their options when they request a medical forensic exam, maintaining chain of custody, SAK tracking and storage, and mechanisms for communicating with the survivor about the SAK and linking SAKs and police reports if and when a survivor chooses to report to law enforcement. “If there’s not access to specialized care providers who understand what the law is, what the options are for the victim, and the victim’s rights, then the victim doesn’t hear that they have the option not to report to law enforcement and still have the medical forensic exam,” a participant stated.
- **Consistency and clarity around payment for medical forensic exams,** including identifying the appropriate payment source, especially when the exam is performed in a different jurisdiction than where the assault was committed, and which aspects of the exam are covered by the payment source. A SANE shared that “in talking with colleagues across the country, you have states who will only pay for a kit that’s collected in their state. That’s a big issue between the states and the funding sources.” While there is genuine confusion around who has to pay and which costs must be reimbursed, it was clear from the listening sessions that, in some places, deficient policies for ensuring that victims are not charged for their medical forensic exams mean that survivors are not getting adequate post-assault care and are having to foot some of the bill.

Figure 3: Best Practices for Sexual Assault Kits

## Best Practices for Sexual Assault Kits

How soon after a sexual assault kit (SAK) is collected should it be sent to a lab? What methods are critical to the proper collection and analysis of evidence? How should survivors be cared for when they seek medical forensic care?

In 2017, a working group convened by the National Institute of Justice (NIJ) published a set of 35 recommendations to help communities answer these and other questions as they work to enhance their response to sexual assault.

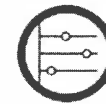
## For How Long Should SAKs be Kept?

Best Practices for SAKs recommends retaining biological evidence from uncharged or unsolved reported cases for **50 years** or the length of the statute of limitations (whichever is greater).

For SAKs associated with unreported sexual assaults, the recommended retention period is the length of the statute of limitations or a maximum of **20 years**.

<https://www.ncjrs.gov/pdffiles1/nij/250384.pdf>

## Recommendation Topics



Evidence Retention Periods



Audit, Inventory, and Evidence Tracking Systems



Trauma-informed Response



Access to Medical Treatment and Evidence Collection



Timely Submission of SAKs to Laboratory



Methods and Efficiencies for Processing SAKs



Law Enforcement Accountability



Victim Notification

HB 1425  
1-28-19  
#4

## Existing Best Practices and Recommendations<sup>7</sup>

Sexual assault is a traumatic crime that levels a heavy toll on victims and communities. The response to it must be one that balances victims' rights, needs, and preferences with public safety concerns. Critical to striking that balance is a coordinated community response that brings professionals inside and outside the justice and healthcare systems together to ensure that victims are met with compassion and competence at every step of the way, and to hold offenders accountable for their crimes.

Many of the best practices the working group is expected to "coordinate," "encourage the implementation of," "promote," "disseminate," and "develop and implement incentives to encourage the adoption of" exist as protocols, guides, and sets of recommendations. The U.S. Department of Justice already published three documents—*A National Protocol for Sexual Assault Medical Forensic Exams*<sup>8</sup> (Adult/Adolescent [2013] and Pediatric [2016]) and *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*<sup>9</sup> (2017)—that recommend evidence-based approaches to, respectively, the care and treatment of sexual assault survivors and the handling of sexual assault kit (SAK) evidence. Both documents offer recommendations that vary in their degree of specificity, largely because what constitutes a best practice evolves as new research and technology emerge, and because state and local policies and resources, which vary, necessarily factor into a community's response to sexual assault.

The third Department of Justice document, *National Best Practices for Sexual Assault Kits* is a set of 35 recommendations for the "accurate, timely, and effective collection and processing of DNA evidence,"<sup>10</sup> developed by NIJ in response to the Sexual Assault Forensic Evidence Reporting (SAFER) Act of 2013. The recommendations are organized under six categories that match the steps of a coordinated response to sexual assault: 1) a multidisciplinary approach in which healthcare personnel, law enforcement, prosecutors, and victim advocates work together in a trauma-informed way to meet victims' needs and uphold public safety; 2) a medical forensic exam that

<sup>7</sup> Note: This section of the report describes existing best practices and recommendations for the care and treatment of survivors of sexual assault and the preservation of forensic evidence. This report's referencing of best practices and recommendations is not binding, has no force or effect of law, and does not create or affect any rights or obligations binding on persons or entities outside the federal government. To the extent that this section uses terms such as "should," or "may" — or describes protocols, best practice guides, and other resources that contain such terms — the section is making nonbinding recommendations, not issuing requirements. Alignment of practices for the care and treatment of sexual assault survivors and the preservation of forensic evidence with suggestions contained in this report is voluntary, and deviation from this report's suggestions will not result in any enforcement action by the Department of Justice.

<sup>8</sup> <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>

<sup>9</sup> <https://www.ncjrs.gov/pdffiles1/nij/250384.pdf>

<sup>10</sup> P.L. 113-4 § 1002 (a)(1)



involves the collection of forensic evidence in the course of treating a patient's post-assault medical needs; 3) law enforcement accountability for evidence retrieval, submission for analysis, storage, and tracking; 4) effective investigations; 5) evidence processing in a laboratory; and 6) victim notification and evidence retention following the laboratory's analysis.

The recommendations were issued after the Survivors' Bill of Rights Act was enacted, and they correspond closely to the problems the Survivors' Bill of Rights Act is intended to fix. Therefore, the table below follows the recommendation categories in *National Best Practices* and identifies government-issued guides and recommendations and selected other resources that offer best practices in these six categories. The index of cited documents follows the table.

Existing resources (Letters correspond to resources listed after this table)	
<b>Multidisciplinary approach</b>	
Cross-system collaboration	A, B, C, D, a, b, e, g, h, i, j, l, o
Trauma-informed approach	A, B, C, D, J, a, b, c, e, g, h, i, j, o
Advocacy	A, B, C, D, a, b, g, h, l, o
Underserved and vulnerable populations	A, B, C, D, b, l, o
<b>Medical care and the medical forensic exam</b>	
Treatment of the patient's medical needs	A, B, C, D, H, I, J, a, c, d, e, f, h, k, o
Forensic evidence collection and packaging	A, B, C, D, E, a, c, e, g, h, m, n, o
Billing and payment	A, B, D, h, o
Record retention	A, B, D, F, c, e
<b>Law enforcement transparency and accountability</b>	
Evidence tracking systems and data standards	D, l, g
Timely retrieval of SAK from hospital or clinic	D, g
Timely submission of SAK to lab	D, g, l
SAK storage	D, E, a, g, l
SAK inventory and audit	D, a, g, l
<b>Investigative considerations</b>	
Effective investigation strategies and training for investigators	D, a, g, h, l
Testing SAKs from victims who reported to police	D, F, a, h
CODIS hit follow up	D, F, a, g, h, l
<b>Processing evidence in the laboratory</b>	
Evidence submission policies and prioritization	D, E, G, g, l, m, n
DNA analysis methods	D, E, G, g, l
Business improvements and efficiency	D, G, g, l
Systems and software for analysis and reports	D, F, G, g, l
<b>Post-analysis communication and policy considerations</b>	
Victim notification	D, a, g, h, l
Evidence retention and storage	D, E, F, a, g, h, l

The first group of resources listed below and cited above—government-published recommendations and protocols—are documents of United States federal government agencies or the United Nations's World Health Organization. The second group—selected other resources—includes toolkits, manuals, and other documents published by governmental and nongovernmental entities that offer practical assistance to professionals who provide survivors with medical forensic care or other services, or are involved in the criminal justice response to sexual assault.

### ***Government-published Recommendations and Protocols***

- A. A National Protocol for Sexual Assault Medical Forensic Examinations, Adult/Adolescents<sup>11</sup> (National Protocol) (2013). As mandated by the Violence Against Women Act of 2000 (VAWA 2000), this protocol contains the Department of Justice's recommendations for a multidisciplinary approach to providing medical/forensic care to the sexual assault patient. It offers recommendations to help standardize the quality of care for sexual assault victims throughout the country and is based on the latest scientific evidence.
- B. A National Protocol for Sexual Abuse Medical Forensic Examinations<sup>12</sup> (Pediatric Protocol) (2016). Also mandated by VAWA 2000 and published by OVW, this protocol provides evidence-based, trauma-informed recommendations for health care providers who conduct sexual abuse medical forensic examinations on pediatric patients.
- C. National Training Standards for Sexual Assault Medical Forensic Examiners<sup>13</sup> (updated in 2018). This companion to the National Protocol offers a framework for the specialized education of health care providers who wish also to practice as sexual assault forensic examiners.
- D. Best Practices for Sexual Assault Kits: A Multidisciplinary Approach<sup>14</sup> (2017). Mandated by the SAFER Act of 2013 and issued by NIJ in 2017, this guide contains 35 recommendations for collecting evidence during a medical forensic exam of a sexual assault patient, investigating sexual assault, storing, maintaining, tracking, and processing evidence; and maintaining communication with victims.
- E. The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers<sup>15</sup> (2013). This handbook was developed by a technical working group convened by the National Institute of Science and Technology (NIST) and NIJ. It

<sup>11</sup> <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>

<sup>12</sup> <https://www.justice.gov/ovw/file/846856/download>

<sup>13</sup> <https://www.ncjrs.gov/pdffiles1/ovw/213827.pdf>

<sup>14</sup> <https://www.ncjrs.gov/pdffiles1/nij/250384.pdf>

<sup>15</sup> <http://www.evawintl.org/library/DocumentLibraryHandler.ashx?id=653>

describes best practices for collecting, examining, tracking, packaging, storing, and disposing of biological evidence.

- F. National DNA Indexing System (NDIS) Operations and Procedures Manual<sup>16</sup> (2017). This manual explains the FBI's and NDIS participants' responsibilities in using NDIS.
- G. Publications of the Scientific Working Group on DNA Analysis Methods<sup>17</sup> (SWGDM). SWGDM is "a forum to discuss, share, and evaluate forensic biology methods, protocols, training, and research to enhance forensic biology services as well as to provide recommendation to the FBI Director on quality assurance standards for forensic DNA analysis."
- H. Sexually Transmitted Diseases Treatment Guidelines<sup>18</sup> (2015). These guidelines for the treatment of persons who have or are at risk for sexually transmitted diseases (STDs) were updated by CDC after consultation with a group of professionals knowledgeable in the field of STDs.
- I. Updated guidelines for antiretroviral postexposure prophylaxis after sexual, injection drug use, or other nonoccupational exposure to HIV—United States<sup>19</sup> (2016). These guidelines from the U.S. Department of Health and Human Services provide recommendations on the use nonoccupational postexposure prophylaxis (nPEP) and other aspects of case management for persons with isolated exposure outside healthcare settings to blood, genital secretions, or other potentially infectious body fluids that might contain human immunodeficiency virus (HIV).
- J. World Health Organization Clinical and Policy Guidelines
  - Responding to Children and Adolescents Who Have Been Sexually Abused WHO Clinical Guidelines<sup>20</sup> (2017). Guidelines aimed primarily at front-line healthcare providers (e.g., general practitioners, nurses, pediatricians, gynecologists) providing care to children and adolescents who have, or may have, experienced sexual abuse, including sexual assault or rape.
  - Responding to intimate partner violence and sexual violence against women –World Health Organization clinical and policy guidelines<sup>21</sup> (2013). These guidelines are intended to equip healthcare providers with

<sup>16</sup> <http://www.fbi.gov/about-us/lab/biometric-analysis/codis/ndis-procedures-manual>

<sup>17</sup> <https://www.swgdam.org/>

<sup>18</sup> <https://www.cdc.gov/std/tg2015/default.htm>

<sup>19</sup> <https://aidsetc.org/resource/updated-guidelines-antiretroviral-postexposure-prophylaxis-after-sexual-injection-drug-use>

<sup>20</sup> <http://apps.who.int/iris/bitstream/10665/259270/1/9789241550147-eng.pdf%3Fua%3D1%26ua%3D1>

<sup>21</sup> <http://www.who.int/reproductivehealth/publications/violence/9789241548595/en/>

HB 1425  
1-28-19  
#4

evidence-based guidance on how to respond to intimate partner violence and sexual violence against women.

- World Health Organization Guidelines for medico-legal care for victims of sexual violence<sup>22</sup> (2003). These guidelines are designed to build health workers' capacity to respond to cases of sexual assault in a sensitive and comprehensive manner.

### ***Selected Other Resources***

- a. Sexual Assault Kits: Using Science to Find Solutions.<sup>23</sup> This NIJ website consolidates the best available science, guidance, and other resources related to sexual assault kits.
- b. Sexual Assault Response Team (SART) Toolkit.<sup>24</sup> Available from the Office for Victims of Crime (OVC), this is a collection of resources that service providers can use to formalize, expand on, or evaluate their interagency responses to sexual assault.
- c. Non-Fatal Strangulation Documentation Toolkit.<sup>25</sup> (2016). This toolkit from the International Association of Forensic Nurses (IAFN) provides the forensic nurse with detailed guidance on assessment techniques, documentation, and evidence collection for this patient population.
- d. Post-Sexual Exposure nPEP Toolkit.<sup>26</sup> (2018). From the AIDS Education & Training Center Program (AETC) National Coordinating Resource Center, this toolkit compiles clinical reference tools, healthcare professional guideline training resources, healthcare provider and clinical setting posters and clinical pocket guides, links and contact information for live consultation services, and a library of clinical references.
- e. Sexual Assault Nurse Examiner (SANE) Education Guidelines.<sup>27</sup> These guidelines, established by the IAFN, "set forth the minimum level of instruction for each key target competency in the adult/adolescent and/or pediatric/adolescent populations, while allowing for flexibility to meet the educational needs of registered nurses in diverse practice settings and communities."

<sup>22</sup> <http://apps.who.int/iris/bitstream/10665/42788/1/924154628X.pdf>

<sup>23</sup> <https://nij.gov/unsubmitted-kits/Pages/default.aspx>

<sup>24</sup> <http://ovc.ncjrs.gov/sartkit/about-toolkit.html>

<sup>25</sup> <http://www.forensicnurses.org/page/STOverview>

<sup>26</sup> <https://aidsetc.org/resource/post-sexual-exposure-npep-hiv-prevention-toolkit>

<sup>27</sup> [http://c.ymcdn.com/sites/www.forensicnurses.org/resource/resmgr/2015\\_SANE\\_ED\\_GUIDELINES.pdf](http://c.ymcdn.com/sites/www.forensicnurses.org/resource/resmgr/2015_SANE_ED_GUIDELINES.pdf)



HB 1425  
1-28-19  
#4

- f. Intimate Partner Violence and Sexual Violence Victimization Assessment Instruments for Use in Healthcare Settings<sup>28</sup> (2007). Published by the CDC, this is a compilation of existing tools for assessing intimate partner violence and sexual violence victimization in clinical/healthcare settings.
- g. National Sexual Assault Kit Initiative<sup>29</sup> –This Bureau of Justice Assistance (BJA) website contains essential guidance and resources related to the inventory and testing of previously unsubmitted sexual assault kits, investigation and prosecution of cold case sexual assaults, and support for survivors, including survivor notification, advocacy, and engagement in the criminal justice system.
- h. End Violence Against Women International (EVAWI)'s<sup>30</sup> free Online Training Institute<sup>31</sup> (OLTI) offers knowledge and skills for investigating and prosecuting sexual assault. See in particular: Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations.<sup>32</sup>
  - o EVAWI also provides technical assistance and resources<sup>33</sup> on forensic compliance, which refers to the VAWA provision ensuring that victims have access to medical forensic exams regardless of whether they wish to assist in an investigation.
- i. International Association of Chiefs of Police (IACP) Sexual Assault Response Policy and Training Guidelines<sup>34</sup> (2017). These guidelines “include procedure and policy recommendations that address various levels of law enforcement response from dispatch to supervisors, as well as collaborating with community partners. Additionally, these guidelines present training curriculum content that should accompany the implementation of a new or updated sexual assault policy in order to ensure that officers understand the complex nature of these crimes.”
- j. Aequitas: The Prosecutor’s Resource on Violence Against Women: Library.<sup>35</sup>
  - o Model Response to Sexual Violence for Prosecutors (RSVP): An Invitation to Lead<sup>36</sup> (2017)
  - o Alcohol- and Drug-Facilitated Sexual Assault: A Survey of the Law<sup>37</sup> (2016)

<sup>28</sup> <https://www.cdc.gov/violenceprevention/pdf/ipv/ipvandsvscreening.pdf>

<sup>29</sup> <https://www.sakitta.org/>

<sup>30</sup> <https://www.evawintl.org/>

<sup>31</sup> <http://olti.evawintl.org/Default.aspx?ReturnUrl=%2f>

<sup>32</sup> <http://olti.evawintl.org/Courses.aspx>

<sup>33</sup> <https://www.evawintl.org/Forensic-Compliance>

<sup>34</sup> <https://www.theiacp.org/resources/sexual-assault-response-policy-and-training-content-guidelines>

<sup>35</sup> <http://www.aequitasresource.org/library.cfm>

<sup>36</sup> <http://www.aequitasresource.org/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf>

<sup>37</sup> [http://www.aequitasresource.org/Alcohol-Facilitated-Sexual-Assault-A-Survey-of-the-Law\\_SIR1.pdf](http://www.aequitasresource.org/Alcohol-Facilitated-Sexual-Assault-A-Survey-of-the-Law_SIR1.pdf)

k. World Health Organization Manuals and Handbooks

- o World Health Organization: Health care for women subjected to intimate partner violence or sexual violence: A clinical handbook - Field testing version<sup>38</sup> (2014). This handbook contains job aids to help healthcare providers care for and support a patients affected by intimate partner and/or sexual violence.
- o Strengthening health systems to respond to women subjected to intimate partner violence or sexual violence: A manual for health managers<sup>39</sup> (2017). This manual is based on and accompanies the WHO guidelines listed under the Authoritative Guidance section of this document.

l. Sexual Assault Kit Initiative (SAKI) Toolkit.<sup>40</sup> The toolkit offers tailored resources for professionals working to support and ensure justice for sexual assault victims, including resources on evidence tracking, victim engagement, investigation, and prosecution.

m. United Nations Office on Drugs and Crime (UNODC)'s Guidelines for the forensic analysis of drugs facilitating sexual assault and other criminal acts<sup>41</sup> (2012). A guide of best practices to assist in the investigation, analytical detection, and prosecution of drug-facilitated crimes.

n. Society of Forensic Toxicologists (SOFT) – Drug-facilitated Crimes Committee resources

- o Drug-facilitated Crimes Cutoffs<sup>42</sup> (2017). A list of commonly encountered drugs used to facilitate crimes, such as sexual assault, and recommended urine testing expectations for toxicological analyses of such cases.
- o Drug-facilitated Sexual Assault Fact Sheet.<sup>43</sup> Recommendations for collection of biological specimens for toxicological analyses in drug-facilitated sexual assaults.

o. SANE Program Development and Operation Guide.<sup>44</sup> Available from the Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC), this guide provides a blueprint for communities that would like to start a SANE program. For communities with existing SANE programs, the guide serves as a resource to help expand or enhance services provided to the community.

<sup>38</sup> <http://www.who.int/reproductivehealth/publications/violence/vaw-clinical-handbook/en/>

<sup>39</sup> <http://www.who.int/reproductivehealth/publications/violence/vaw-health-systems-manual/en/>

<sup>40</sup> <https://sakitta.org/toolkit/index.cfm>

<sup>41</sup> [http://www.unodc.org/documents/scientific/forensic\\_analysis\\_of\\_drugs\\_facilitating\\_sexual\\_assault\\_and\\_other\\_criminal\\_acts.pdf](http://www.unodc.org/documents/scientific/forensic_analysis_of_drugs_facilitating_sexual_assault_and_other_criminal_acts.pdf)

<sup>42</sup> [http://www.soft-tox.org/files/MinPerfLimits\\_DFC2017.pdf](http://www.soft-tox.org/files/MinPerfLimits_DFC2017.pdf)

<sup>43</sup> [http://www.soft-tox.org/files/DFSA\\_Fact\\_Sheet.pdf](http://www.soft-tox.org/files/DFSA_Fact_Sheet.pdf)

<sup>44</sup> <https://www.ovcttac.gov/sanesart/?tab=1>

HB 1425  
1-28-19  
#4

## What We Are Doing: Current and Planned Federal Efforts Related to Care and Treatment of Sexual Assault Survivors and Evidence Preservation

Both federal agencies represented on the working group—the U.S. Department of Justice and the U.S. Department of Health and Human Services—have projects underway and future plans aimed at enhancing care and treatment of sexual assault survivors and ensuring that forensic evidence is properly handled and preserved. This section provides an overview of current and upcoming projects.

### U.S. Department of Justice

#### *Federal Bureau of Investigation (FBI) | Victim Services Division (VSD)*

The mission of the Victim Services Division (VSD) of the FBI is to inform, support, and assist victims in navigating the aftermath of crime and the criminal justice process with dignity, empowerment, and resilience. The VSD is responsible for ensuring that victims of crimes investigated by the FBI are not only afforded the opportunity to receive the services and notification as required by federal law and the Attorney General Guidelines on Victim and Witness Assistance but also receive timely crisis intervention, support services, and help with accessing community-based assistance. The VSD manages the day-to-day operational aspects of FBI's program which is comprised of field office Victim Specialists, Child/Adolescent Forensic Interviewers and Child Victim Services Coordinators, Internet Crime Complaint Center Victim Assistance Specialists, Victim Services Coordinators and Operational Psychologists assigned to the Terrorism and Special Jurisdiction Unit and the interagency Hostage Recovery Fusion Cell, and the Victim Services Response Team for terrorism and mass violence events. Almost one-third of field-based victim services providers are assigned to Indian Country offices. In addition, the VSD is responsible for providing training and information that helps to equip FBI agents and other FBI personnel to work effectively with victims.

FBI Victim Specialists routinely work with sexual assault victims. They ensure that victims have the opportunity to receive a sexual assault exam (including HIV/STD testing, etc.) and that the cost is covered by the FBI or another entity. Victim Specialists may also transport a victim to the medical exam and will provide support afterwards to include linking the victim with rape crisis, crime victims' compensation, and other resources. The VSD may use emergency victim assistance funds to cover emergency counseling until other resources are identified, clothing and toiletries, crime scene cleaning, and reunification travel if the assault occurred in a location far from home.

HB 1425  
1-28-19  
#4

In FY 17, the VSD hosted and recorded internal training on the neurobiology of trauma associated with sexual assault and special considerations for investigators and prosecutors in working with victims of sexual assault.

The VSD has a long-standing working group focused on coordinating and improving the response to victims of sexual assault and other crimes occurring on cruise ships and has worked with the International Cruise Victims organization for more than a decade. VSD has provided training to cruise line care team members on sexual assault response and the role of the FBI in investigation and supporting victims. The VSD recently worked with the Criminal Investigative Division to develop and promote a campaign to raise public awareness about sexual assault on commercial aircraft.

The VSD Cold Case Working Group developed written guidance and conducted web-based training on working with victims and families. The guidance and training addresses sexual assault cold cases and special considerations for notifying and supporting victims in these cases.

The FBI has a strict policy requiring internal and external reporting of suspected child abuse and neglect by all employees, regardless of whether the suspected abuse was discovered during the course of performing their FBI duties or in their personal capacity. All employees are required to complete an online training course on recognizing and reporting child abuse and neglect.

The VSD is currently updating its brochures for adult and youth victims of sexual assault and abuse, to include information about rights afforded to victims by the Survivors' Bill of Rights Act. The brochures include information regarding medical forensic exams, sexual assault evidence kits and various resources available to victims.

The FBI VSD currently is working on a number of resources to assist Special Agents and Victim Specialists in working sexual assault cases, including "At a Glance" reference sheets, comprehensive written guidance, and at least one training course on the FBI's online Virtual Academy training platform available to all employees and task force personnel. These tools will include information on the Survivors' Bill of Rights and working unique sexual assault cases such as those in Indian country and assaults that are committed aboard cruise ships and aircraft.

### *Federal Bureau of Investigation (FBI) | Laboratory Division*

The Laboratory Division of the FBI is responsible for applying scientific capabilities and technical services to the collection, processing, and exploitation of evidence for the FBI and other duly constituted law enforcement and intelligence agencies in support of investigative and intelligence priorities. In most cases, the successful investigation and prosecution of crimes require the collection, preservation, and forensic analysis of evidence. The FBI has one of the largest and most comprehensive forensic laboratories

HB 1425  
1-28-19  
#4

in the world, and the FBI Laboratory is accredited by the ANSI-ASQ National Accreditation Board (ANAB).

Activities of the FBI Laboratory currently of special relevance to the Survivors' Bill of Rights Act are described below.

### *Federal Bureau of Investigation (FBI) | Laboratory Division | DNA Unit*

**The NIJ-FBI Sexual Assault Kit Partnership.** Since 2014, NIJ and the FBI Laboratory have partnered to help address the complex issues surrounding unsubmitted SAKs. This unprecedented partnership between agencies is designed to gather information about the nature of unsubmitted SAKs in an effort to inform practices and protocols surrounding SAKs and help reduce the number of unsubmitted SAKs across the nation. NIJ and the FBI expect the work is already being utilized by law enforcement and crime laboratories to improve policies and practices for collecting sexual assault evidence and protocols for submitting and testing kits. Under this program, state and local law enforcement agencies can send their SAKs to be analyzed for free by the FBI Laboratory in Quantico, Virginia. The program has processed over 3,000 SAKs resulting in more than 1,600 CODIS entries, and more than 650 investigative leads (CODIS hits).

**The Scientific Working Group on DNA Analysis Methods (SWGDM).** The FBI Laboratory administrates SWGDAM and several of its scientists participate in administrative and/or subject matter expert (SME) roles. Since 1988, SWGDAM has: 1) recommended revisions, as necessary, to the *Quality Assurance Standards for Forensic DNA Testing Laboratories* and the *Quality Assurance Standards for DNA Databasing Laboratories*; 2) served as a forum to discuss, share, and evaluate forensic biology methods, protocols, training, and research; and 3) recommended and conducted research to develop and/or validate forensic biology methods. The group holds semi-annual meetings in January and July and is composed of standing committees and topic-specific working groups that operate under formal bylaws to generate guidelines, white papers, and other work products to enhance forensic biology services. In July 2016, SWGDAM published its *Guidelines for the Processing of Sexual Assault Evidence kits in a Laboratory* which describes various laboratory processes with a primary focus on sexual assault evidence kits. The advantages and disadvantages of each process are provided in to recommend those practices that have been effective in obtaining probative evidence for the timely investigation and prosecution of sexual assault cases. Forensic practices in use in laboratories across the nation are included. This and other SWGDAM publications are available at Scientific Working Group on DNA Analysis Methods.<sup>45</sup>

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<sup>45</sup> <https://www.swgdam.org/>



HB 1425  
1-28-19  
#4

*DOJ | Executive Office for United States Attorneys (EOUSA) and the United States Attorneys' Offices (USAOs)*

The USAOs have primary responsibility for the prosecution of federal crime in their judicial districts, including responsibility for the prosecution of sexual assaults that occur on federal lands or where the offense crossed state lines (for example, where a minor was induced to cross state lines for a sexual assault). EOUSA provides programmatic support and expertise, including technical assistance and training for sexual assault prosecutors and victim assistance personnel.

Because many of the sexual assault cases handled by the USAOs originate in Indian country, EOUSA and the USAOs have worked to ensure that those working in districts covering Indian country have the training and support they need to provide appropriate services to sexual assault survivors and other violent crime victims. In FY18, the USAOs hired twelve additional victim assistance professionals dedicated to serving victims in Indian country. EOUSA recently held a Federal Indian Country Victim Assistance Summit, bringing together those in the USAOs, FBI, and the Bureau of Indian Affairs to connect with one another and receive training on victim issues unique to Indian country, including training on the Sexual Assault Survivors Bill of Rights. EOUSA is also creating an online SANE expert witness training.

The Child Exploitation and Obscenity Section (CEOS) leads the Criminal Division's campaign against the sexual exploitation of children by investigating and prosecuting the most challenging child sexual exploitation cases, shaping domestic and international policy and legislation, launching nationwide investigations against the worst offenders, and providing guidance and training to other prosecutors and agents. CEOS's Child Victim Witness Program Administrator provides specialized support to protect the rights of child sexual exploitation victims, and to facilitate the provision of assistance to child exploitation victims.

In addition, because of their special responsibility as the "local" prosecutor in the District of Columbia, the District of Columbia USAO handles a large number of sexual assault cases each year. All sexual assault cases are conducted by a specialized unit within the USAO, with experienced prosecutors and victim assistance personnel who are dedicated to sexual assault prosecutions and are experts in that field. A sexual assault victim advocate is assigned to work with the victim in every sexual assault case. The advocates, as well as the AUSAs, undergo significant training in areas specific to working with sexual assault victims, such as the neurobiology of trauma, and trauma-informed interviewing methods. The USAO's Sex Offense and Domestic Violence Section and Victim/Witness Assistance Unit are members of the District of Columbia's Sexual Assault Response Team (SART). Through the SART, a multi-disciplinary group of experts in the medical, forensic, victim advocacy, mental health, law enforcement, and legal fields, the USAO ensures that its practices and procedures comply with all federal and local sexual assault victims' rights laws, and that they are continually

HB 1425  
1-28-19  
#4

improved to reflect the best practices for victim-focused investigations and prosecutions. For example, in recent years, the USAO has enhanced its efforts to consult with sexual assault survivors regarding declinations of sexual assault cases. While other crimes presented to the USAO are reviewed by one senior prosecutor who decides whether charges should be filed in the case, sexual assault cases are only declined if they are reviewed independently by two senior prosecutors, and if both prosecutors determine that charges cannot be brought. Where that happens, the second prosecutor is responsible for setting up a meeting with the survivor to explain why charges are being declined. These meetings are generally held in person (though can be by phone at the survivor's request), and last on average more than two hours. The prosecutor follows up each meeting with a letter to the survivor.

EOUSA also manages funding for the USAOs to assist victims. This includes funding available to enhance security of witnesses whose fear may inhibit their participation in the criminal justice process; to help victims exercise their rights in the prosecution; and to ensure that victim losses are appropriately calculated for purposes of restitution. This last fund, called Technical Assistance for Restitution Analysis, was used to hire an expert to opine on the lost future income of a former military member who resigned following a sexual assault in a military hospital. The victim was ultimately awarded \$700,000 in restitution due to the expert's opinion.

DOJ's National Indian Country Training Initiative has partnered with NIJ to develop a video training program on the collection, analysis, and presentation of forensic evidence in court. This new tool will be particularly helpful in Indian country where tribal police officers and other first responders may not have much training on proper evidence collection techniques. Similarly, tribal prosecutors, who may be trying serious sexual assault cases, may not have extensive training on these issues. The forthcoming video training product will educate any member of the criminal justice system starting with the first responder on the tribal lands and follow the evidence all the way to the courtroom. Topics to be addressed will include the following:

- The importance of maintaining scene integrity so that biological evidence is not destroyed or contaminated, and how to do so;
- The need to collect and present evidence in a culturally sensitive manner;
- Proper collection techniques and packaging of evidence at crime scenes, emergency rooms and Indian Health Service (IHS) and tribal health care facilities of various types of biological evidence;<sup>46</sup>
- How to properly package evidence; to send to the forensic laboratory
- How to determine and identify what really needs testing to make a case in court. (A contributing factor to the crime lab backlog is police sending all collected

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<sup>46</sup> See *infra* at page 45 for a discussion of Indian Health Service (IHS)'s current and planned efforts with respect to the care and treatment of sexual assault survivors and the preservation of evidence

material to the lab and requesting that every possible type of analysis be performed.);

- The testing process and analysis of various kinds of biologic evidence;
- How to properly read and interpret a lab report; and
- How to present, defend and challenge forensic evidence collection and analysis in the court room; for example, proper questioning of the expert in court, confronting defense challenges, and the proper way to argue probabilities and exclusions in court.

In addition, the National Indian Country Training Initiative has ongoing course offerings that address sexual assault of adults, children, or both.

### *DOJ | Office of Justice Programs (OJP) | National Institute of Justice (NIJ)*

NIJ is the research, development, testing, and evaluation agency of the DOJ, dedicated to improving knowledge and understanding of crime and justice issues through science. The Institute provides objective and independent knowledge and tools to inform the decision-making of the criminal justice community to reduce crime and advance justice, particularly at the state, local, and tribal levels.

NIJ has three science offices. The Office of Investigative and Forensic Sciences (OIFS) improves the quality and practice of forensic science through innovative solutions that support research and development, testing and evaluation, technology, and information exchange. The Office of Research and Evaluation (ORE) develops, conducts, directs and supervises social and behavioral science research and evaluation activities across a wide variety of issues. The Office of Science and Technology (OST) manages technology research and development, development of technical standards, testing, and technology assistance to state and local law enforcement and corrections agencies.

Most of the social and behavioral research and evaluation studies dealing with sexual assault is managed in ORE under NIJ's Violence Against Women (VAW) research program. The goals of the program are to promote the safety of women and girls and to enhance the efficiency and effectiveness of criminal justice systems' responses. Through the program, NIJ seeks to improve knowledge and understanding in order to reduce violent crimes and enhance criminal justice engagement with victims by the following objectives: estimating the scope of the problem; identifying the causes and consequences; evaluating promising prevention and intervention programs; communicating research results rapidly; and supporting effective collaboration among a multidisciplinary set of researchers, practitioners, and policymakers in the conduct of research.

NIJ works closely with a number of state, local, and tribal criminal justice stakeholders to inform the Institute's research and evaluation. NIJ also coordinates and collaborates



with other science agencies and program offices within the Department of Justice and across the Federal Government (e.g., Department of Health and Human Services, Department of State, Department of the Interior, Department of Education) to ensure coordination of research and evaluation efforts.

NIJ has an extensive research and development portfolio addressing sexual violence. The research and evaluation portfolio includes evaluations on the effectiveness of sexual assault response teams (SARTs), sexual assault nurse examiners (SANEs), bystander intervention programs designed to prevent sexual assault, BJA's Sexual Assault Kit Initiative, and benefits and costs of a SAK testing statute. Other funded studies include analyses on: victims and perpetrators; reporting of sexual violence incidents; untested evidence in sexual assault cases; victim cooperation/ participation in the criminal justice system; enhancing investigation and prosecution in child sexual assault cases; defense attacks on sexual assault victims' credibility and identifying effective prosecution methods; the challenges facing sexual assault survivors with disabilities; health consequences of sexual victimization; sex trafficking; teen dating violence; and sexual assault on campuses (e.g., measuring frequency, factors that increase sexual assault risk, drug-facilitated rape, laws to make campuses safer, rape awareness education and prevention efforts). Among several studies funded in 2018 is an evaluation of forensic experiential trauma interview (FETI) training for sexual assault investigators.

NIJ maintains a compendium<sup>47</sup> that includes an abstract of each research study with details on how to find further publications. The compendium lists NIJ-supported research from 1993 to 2016. For more information on these studies as well as other activities and initiatives, go to NIJ's topical webpage at <https://nij.gov/topics/crime/rape-sexual-violence/Pages/welcome.aspx>

Projects and funding streams of particular relevance to the Survivors' Bill of Rights Act include:

### **Sexual Assault Kit Initiative (SAKI) Evaluation**

NIJ has funded a study of the Bureau of Justice Assistance's (BJA) Sexual Assault Kit Initiative (SAKI) that will provide information for a subsequent long-term outcome evaluation. The major project goals are to: 1) conduct an evaluability assessment of all Fiscal Year 2015 SAKI sites (n=20) to determine their readiness to participate in a process evaluation and an impact assessment, 2) conduct a process evaluation and impact assessment of SAKI sites to determine the extent to which SAKI reforms have resulted in intended (and/or unintended) system changes, 3) coordinate cross-site analysis of sexual assault case data to provide insights on case processing decisions and outcomes, and 4) develop a comprehensive and rigorous outcome evaluation plan.

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<sup>47</sup> <https://www.ncjrs.gov/pdffiles1/nij/223572/223572.pdf>

Findings are expected to result in short-term program evaluation findings and a comprehensive and rigorous long-term outcome evaluation plan for the SAKI. These products are expected to positively impact the implementation of SAKI reforms to improve sexual assault investigation practices, victim support services, and collaboration among agencies.

**NIJ-BJA Sexual Assault Kit Initiative (SAKI) - Training and Technical Assistance (TTA) Collaboration for Implementation of *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*.** This joint effort involves building into the SAKI TTA Toolkit resources for implementing the recommendations contained in National Best Practices.

**NIJ/OVC National Telemedicine Project: Using Telemedicine to assist Sexual Assault Nurse Examiners (SANEs) and Sexual Assault Response Teams (SARTs),** which is developing and enhancing access to medical forensic exams for adult and adolescent sexual assault victims using telemedicine technology in underserved communities. This project helps provide 24-hour, live access to expert SANEs who use audiovisual technology to walk a healthcare provider through a medical forensic examination. This project has several important benefits, including improved patient care and evidence collection, improved training for forensic nurse examiners, increased prosecutions, and increased reporting of sexual assault.

**NIJ/OWV Project to Update the Sexual Assault Forensic and Clinical Management Virtual Practicum** to reflect new knowledge and guidance. In 2004, NIJ funded Dartmouth University to develop the Sexual Assault Forensic and Clinical Management Virtual Practicum (Virtual Practicum). Issued in 2008, the Virtual Practicum was based on the Attorney General's 2004 National Protocol for Sexual Assault Medical Forensic Examinations, Adult/Adolescent (SAFE Protocol) and the 2006 National Training Standards for Sexual Assault Medical Forensic Examiners (SAFE Training Standards). The SAFE Protocol and accompanying training standards are the Department of Justice's guidance for a multidisciplinary, victim-centered response to sexual assault victims who seek medical forensic care. The Virtual Practicum employed cutting-edge technology of its day to provide 12 hours of interactive training on sexual assault medical forensic exams. The training included step-by-step instructions on conducting an exam from beginning (informed consent and patient history) to end (follow-up care). It also included related features such as a mock SART meeting, victim interviews, trial preparation for medical providers, and a virtual crime lab.

The Virtual Practicum was distributed by the International Association of Forensic Nurses (IAFN). IAFN reports that the Virtual Practicum had been in great demand until recently but had to stop distributing it because the technology is no longer supported. In addition, OVW updated the SAFE Protocol in 2013 to reflect new knowledge and guidance, as well as issued a Pediatric SAFE Protocol. OVW also updated the SAFE

Training Standards in 2018, and NIJ has published *National Best Practices*. Thus, the contents of the Virtual Practicum are outdated and require updates to ensure that the material is relevant to forensic healthcare today and based on evidence-based approaches to care for sexual assault patients. OVW also will award funding in 2018 to update the Virtual Practicum, both technologically and substantively, to reflect current best practices and recommendations.

**Development and pilot testing of a “train-the-trainer” curriculum based on the updated SAFE Training Standards.** (See OVW’s section for information on this project, which will be supported by NIJ.)

**NIJ’s Sexual Assault Forensic Evidence – Inventory, Tracking and Reporting (SAFE-ITR) Program.** SAFE-ITR, first offered in FY 2016, is a grant program to fund states and units of local government to implement an evidence management program to inventory, track, and report untested and unsubmitted SAKs. While all evidence related to sexual assaults is important, this program focuses specifically on the SAKs, which may be stored in many different places including crime laboratories, police department evidence storage units, hospitals, and clinics. Many law enforcement agencies do not have computerized systems to track the processing of a SAK, so SAFE-ITR-funded systems will ensure that all SAKs in that jurisdiction are accounted for, analyzed, and tracked from collection to court disposition. NIJ has made approximately \$5.2 million in awards through this program, and plans are underway for NIJ to host a website to provide centralized information on the inventory and tracking of SAKs.

**NIJ-National Institute of Standards and Technology (NIST) Evidence Management and Retention Working Group, Improving Evidence Management: Best Practices for Handling, Preservation, Retention, and Tracking.** The forensic science community has long sought high-level, scientific guidance on the proper preservation of evidence for the purpose of strengthening the nation’s criminal justice system. NIJ has partnered with NIST in order to establish recommendations that will improve the likelihood that forensic evidence will be properly preserved and retained. To obtain accurate and reliable results from forensic science analyses and measurements, it is imperative that each evidence item be properly maintained, and the chain of custody well documented, and the item can be located. Scientific research on the degradation of materials and state-of-the-art technologies in asset tracking can be very useful in improving forensic evidence management in law enforcement agencies. Implementing best practices in this area can help to ensure the availability of evidence for future analysis and potential release of those wrongfully incarcerated. Deliverables will include a state of the industry report, a 2-3 day evidence management symposium in FY 2019, a digital evidence preservation and retention report, and the development of evidence labeling and data management systems standards.

**The NIJ-FBI Sexual Assault Kit Partnership.** Since 2014, NIJ and the FBI Laboratory have partnered to help address the complex issues surrounding unsubmitted SAKs. This unprecedented partnership between agencies is designed to gather information about the nature of unsubmitted SAKs in an effort to inform practices and protocols surrounding SAKs and help reduce the number of unsubmitted SAKs across the nation. NIJ and the FBI expect the work that is already being used by law enforcement and crime laboratories to improve policies and practices for collecting sexual assault evidence and protocols for submitting and testing kits. Under this program, state and local law enforcement agencies can send their SAKs to be analyzed for free by the FBI Laboratory in Quantico, VA. The program has processed over 3000 SAKs resulting in more than 1,600 CODIS entries, and more than 650 investigative leads (CODIS hits). Information garnered from this program is included in *National Best Practices for Sexual Assault Kits*.

**Research and Development in Forensic Science for Criminal Justice Purposes.**

For nearly a decade, the Department of Justice Appropriations Act has annually included an appropriation of approximately \$4 million (per fiscal year) for the Sexual Assault Forensic Exam (SAFE) Program. Under the SAFE program, NIJ, the primary funding agency for forensic science research in the US, supports grants and activities to provide training, technical assistance, education, equipment, and/or information (including research) relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical and other personnel involved in treating victims of sexual assault. Grants and activities funded through the SAFE program have continued to result in diverse and successful projects. Efforts include national best practices, training, technical assistance, and valuable research focused on improving and expediting the processing of sexual assault evidence. For instance, as part of its *Research and Development in Forensic Science for Criminal Justice Purposes* program, NIJ's forensic biology/DNA portfolio supports several projects focused on improving the analysis of sexual assault evidence.

Long-term solutions to providing victims with justice for sexual assault cases requires innovation and new technologies that increase efficiency and productivity. Investments in research and development have the potential to reduce sexual assault kit processing time, inform investigators about the crimes that took place, and shift analysts' efforts to the examination of only the most probative samples to the investigation.

**NIJ's Forensic Technology Center of Excellence.** NIJ's Forensic Technology Center of Excellence (FTCoE) leads a comprehensive federal effort to organize and transfer knowledge and best practices of sexual assault investigations. These practices are delivered to sexual assault nurse examiners, sexual assault forensic examiners, and collaborative sexual assault response teams (SANE/SAFE/SART). This FTCoE effort focuses on systemic challenges that impede the investigation of criminal sexual assaults in the United States. <https://forensiccoe.org/sexual-assault/>. Future



HB 1425  
1-28-19  
#4

deliverables include and online glossary for medical, law enforcement, and legal professionals; and podcasts and webinars that deliver best practices information.

### **Historically Black Colleges and Universities Campus Climate Project (CCP) (2017-2020)**

Although sexual violence (SV) is a documented problem among college students and women of college age, less is known about SV at historically black colleges and universities (HBCUs). The HBCU CCP is a collaboration between the Rutgers Violence Against Women Research Consortium, NIJ, the Centers for Disease Control and Prevention, and the Office on Violence Against Women. The information gathered from this project will make critical contributions to the gap in prevalence estimates and campus climate factors of SV victimization and perpetration among students attending HBCUs. It will also access the campus climate information among HBCUs that could identify risk or protective factors for SV on these campuses. Furthermore, the implementation of a campus climate survey at HBCUs allows the universities to proactively assess the campus climate and formulate meaningful, effective ways to build upon aspects of the systems that are working, while also addressing any gaps. Most importantly, the methodology piloted in this study will provide a model for other HBCUs to use when working to assess their own campus climates around issues of SV. The study's primary aims are to modify the CCSVS developed and piloted by the Bureau of Justice Statistics for use with students attending HBCUs and implement the HBCU CCP survey at four HBCUs to improve our understanding of magnitude and nature of interpersonal violence victimization and help seeking experienced by HBCU students.

### ***DOJ | Office of Justice Programs (OJP) | Office for Victims of Crime (OVC)***

Established in 1988 through an amendment to the Victims of Crime Act (VOCA) of 1984, the mission of the Office for Victims of Crime (OVC) is to enhance the nation's capacity to assist crime victims and to provide leadership in changing attitudes, policies, and practices in ways that will promote justice and healing for all victims of crime. Under Congressional mandate, OVC administers the Crime Victims Fund<sup>48</sup> (the Fund), which is composed primarily of fines, special assessments, and bond forfeitures from convicted federal offenders, making it a self-sufficient source for victim compensation and assistance that does not rely on Americans' tax dollars. Each year, the Fund supports thousands of programs that provide direct services to crime victims who have suffered physical, sexual, emotional, and financial harm as a result of crime. OVC's programs throughout the United States are intended to raise awareness<sup>49</sup> about victims' issues, promote compliance with victims' rights laws,<sup>50</sup> and provide training and

<sup>48</sup> <https://www.ovc.gov/about/victimsfund.html>

<sup>49</sup> <https://www.ovc.gov/awareness/index.html>

<sup>50</sup> <https://www.ovc.gov/rights/legislation.html>

#B 1425  
1-28-19  
#4

technical assistance<sup>51</sup> and publications and products<sup>52</sup> to victim assistance professionals.

Through the Victim of Crime Act Victim Assistance Formula Program, OVC awards each eligible state and territory an annual grant to support eligible crime victim assistance programs. Among its many goals, the VOCA Victim Assistance Program provides a significant source of funding across the country to support a broad array of programs and services designed to meet the needs of sexual assault victims. Each year, VOCA State Administating Agencies (SAA's) must allocate a minimum of 10 percent of their VOCA grant award in the priority category of sexual assault. The other VOCA priority categories are spousal abuse, child abuse, and underserved victims of crime. In FY 2017, more than \$307 million was allocated to support sexual assault programs and services throughout the country across all organization types, including nonprofit organizations, government agencies, campus organizations, and federally recognized tribal governments, agencies, and organizations. In FY 2018, an additional \$314 million is being allocated for this purpose.

In August 2016, OVC published the VOCA Victims Assistance Formula Grant Program Final Rule. The rule codified and updated the existing VOCA Victim Assistance Program Guidelines to reflect changes in OVC policy, needs of the crime victim services field, and VOCA itself. The new rule provided greater clarity and more flexibility to state VOCA victim assistance administering agencies to support a continuum of services to crime victims in a number of areas, including the use of VOCA funds for forensic interviews and medical examinations.

Through the VOCA Victim Compensation Formula Program, OVC supplements state efforts to provide financial reimbursement to crime victims throughout the nation for costs resulting from crime, and to encourage victim cooperation and participation in the criminal justice system.

In FY 2018, OVC is awarding a record amount of funding from to support thousands of local victim assistance programs across the country and help compensate victims throughout the U.S. Most of the funds—more than \$3.3 billion—are being awarded to states under the VOCA Victim Assistance Formula Grant Program and will support local government and community-based victim services. State victim compensation programs are receiving nearly \$129 million to reimburse victims and survivors for medical fees, lost income, funeral expenses, and other costs incurred as a result of a crime. This is the fourth year a significant amount will be available to crime victim assistance programs (compared to pre-FY 2015 funding levels). The overall increased Crime Victims Fund allocation has provided an opportunity to address long-standing challenges to reach and serve all crime victims, address staffing concerns in the field,

<sup>51</sup> <https://www.ovc.gov/training/index.html>

<sup>52</sup> <https://www.ovc.gov/library/index.html>

HB 7425  
1-28-19  
#4

and allow states and territories to fund programs that otherwise would not receive funding.

OVC is dedicated to a constant improvement in the national response to crime victims through direct services, national scope demonstration initiatives, training and technical assistance, and evaluation. Projects of particular relevance to the Survivor's Bill of Rights Act include:

- **NIJ/OVC National Telemedicine Project.** See NIJ's section for information on this project.
- **Using Telemedicine Technology to Enhance Access to Sexual Assault Forensic Exams.** In FY 2016, OVC funded the Pennsylvania State University School of Nursing (PSU) to create the Pennsylvania Sexual Assault Forensic Examination and Training (SAFE-T) Center and established four pilot site hospitals throughout the state to receive telemedicine support that will provide high-quality sexual assault forensic services for adolescents and adults.
- **Building and Enhancing Partnerships to Support Incarcerated Survivors of Sexual Abuse.** In FY 2016, OVC launched this program to support the development and enhancement of partnerships between correctional agencies and community-based victim service providers with the goal of increasing access to outside support services for incarcerated survivors of sexual abuse.

In addition to the programs above, OVC continues to promote access to legal services and crime victims' rights enforcement for all victims of crime. OVC is responsible for implementing several pieces of federal legislation that are intended to advance victims' rights and services and improve the skills, knowledge, and abilities of crime victim advocates, service providers, and allied professionals who are responsible for working on behalf of victims. In addition, OVC is dedicated to helping organizations promote awareness of crime victims' rights and issues and to providing appropriate, trauma-informed services to victims. Since FY 2012, OVC has supported the development of legal networks that are providing crime victims with holistic, comprehensive legal services, including the enforcement of crime victims' rights. In FY 2017, OVC launched the Increasing Legal Access to Victims of Crime: Innovations in Access to Justice, a program providing funding to enhance legal services for crime victims and to foster technological innovation. In FY 2018, OVC is funding an Initiative to Enhance Crime Victims' Rights Enforcement and Victim Access to Legal Assistance Program to expand on federal, state, local, and tribal efforts to enforce crime victims' rights.

HB 1425  
1-28-19  
#4

*DOJ | Office of Justice Programs (OJP) | Bureau of Justice Assistance (BJA)*

BJA's National Sexual Assault Kit Initiative (SAKI) and the SAKI Training and Technical Assistance (TTA) programs support communities addressing challenges related to unsubmitted SAKs, while improving their overall response to sexual assault through enhanced investigation and prosecution strategies for these cases and providing survivors with support and services. The SAKI program currently supports 41 jurisdictions, 17 of which are state or multi-county jurisdictions. Lessons learned through SAKI and technical assistance made available through the initiative are useful beyond SAKI-funded sites, including other communities that are working to reduce volumes of unsubmitted kits and bring justice to the cases associated with SAKs. BJA will make its third round of SAKI awards in FY 2018.

The goal of SAKI is to take a coordinated community approach to bringing just resolution to cases, whenever possible, through a victim-centered approach, and to build jurisdictions' capacities to avoid the conditions that lead to high numbers of unsubmitted SAKs. This holistic program provides jurisdictions with resources to address their unsubmitted SAKs, including support to inventory, test, and track SAKs; create and report performance metrics; access training to better address the complex issues associated with these cases and engage in multidisciplinary policy development, implementation, and coordination; and improve practices related to investigation, prosecution, and victim engagement and support.

Through SAKI and with guidance from the SAKI TTA team, SAKI grantees have established policies and practices addressing the inventory and tracking of unsubmitted SAKs, created plans for the submission and testing of SAKs, and established victim-centered, evidence-based policies for the notification and maintained engagement of victim participation in the criminal justice system. The SAKI TTA project has created impactful, evidence-based resources that are maintained on the SAKI website and available to everyone. Two additional features, the SAKI Toolkit and the SAKI Virtual Academy, contain sophisticated highly detailed resources designed for action plans, implementation and sustainability of the practices and policies recommended by SAKI. SAKI promotes practices and policies grounded in trauma-informed and victim-centric principles and seek just resolution to sexual assault cases.

BJA anticipates additional funding for SAKI in FY 2019 to continue funding comprehensive approaches to unsubmitted SAKs, support for small law enforcement agencies with smaller volumes of unsubmitted SAKs, expansion of DNA databases, collection of lawfully owed and arrestee DNA, and investigation and prosecution of cold case sexual assaults, including support for entering cold case sexual assault data into the FBI's Violent Criminal Apprehension Program (ViCAP). The SAKI TTA team will also create more resources that support the recommendations put forth in the *National Best*



HB 1425  
1-28-19  
#4

*Practices.* These resources will be housed in a portal of the SAKI Toolkit, and will be used in conjunction with current SAKI resources.

### *DOJ | Office on Violence Against Women*

The Office on Violence Against Women (OVW) provides federal leadership in developing the nation's capacity to combat sexual assault, domestic/dating violence, and stalking. Its 19 grant programs are designed to support coordinated community responses to these crimes, serve victims, and hold offenders accountable. The largest program, the STOP Violence Against Women Formula Program, provides formula funding to states and territories, who in turn subaward at least 25 percent of the funds for prosecution, 25 percent for law enforcement, 30 percent for victim services and 5 percent to courts, and ensure that a minimum of 20 percent of the funds are allocated for projects that meaningfully address sexual assault. Salaries of at least 30 full-time equivalent Sexual Assault Nurse Examiners (SANEs) are paid each year with STOP funds. Additionally, three of OVW's competitive grant programs—Improving Criminal Justice Responses, Rural Grant Program, and the Grants to Indian Tribal Governments Program—can fund sexual assault investigation and prosecution, as well as medical forensic care. Through these and other programs, OVW grantees train thousands of nurses each year on how to provide competent and compassionate care for sexual assault patients. Finally, three of OVW's grant programs<sup>53</sup> are dedicated exclusively to providing sexual assault survivors with advocacy, counseling, and other services designed to support their recovery.

OVW also has a special initiative underway to enhance sexual assault prosecution. The Sexual Assault Justice Initiative (SAJI) launched in 2015 to develop and pilot test a model for sexual assault prosecution that looks beyond conviction rates to measure success in these cases. Seven jurisdictions received grant funding to implement the model, participate in technical assistance to help them align their approach with evidence-based prosecution practices, and take part in an evaluation to study the process and impact of the model. A report on the SAJI will be available in 2020.

OVW anticipates funding several projects in 2018 and 2019 that will help communities provide survivors with medical forensic care and promote best practices for evidence preservation. A solicitation was issued in FY 2018 for a Sexual Assault Medical Forensic Examiner Training Initiative. With funding provided by NIJ, OVW anticipates awarding a grant to develop a virtual practicum that allows students in healthcare fields to participate in interactive training sessions on all aspects of the sexual assault medical forensic examination, from interviewing the survivor through courtroom testimony. The virtual practicum will reflect current knowledge and practice and will align with the *National Protocol for Sexual Assault Medical Forensic Exams* (National Protocol) and

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<sup>53</sup> Sexual Assault Services Formula Grant Program, Sexual Assault Services Culturally Specific Program, and Tribal Sexual Assault Services Program

HB 1425  
1-28-19  
#4

the Department's recently published *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*.

OVW will also issue an award in 2018 to develop the updated Training Standards into a train-the-trainer curriculum. The curriculum will include content that aligns with the Training Standards, as well as instructions and tools to facilitate effective training delivery.

Finally, OVW anticipates funding implementation research on the National Protocol through its FY 2018 Research and Evaluation Initiative. The purpose of that project will be to study how, and the extent to which, the National Protocol is adopted and integrated in particular settings and communities, including the role of the National Protocol in shaping policy and practice.

## **U.S. Department of Health and Human Services**

The mission of the U.S. Department of Health and Human Services (HHS) is to enhance the health and well-being of all Americans, by providing for effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services. HHS is the U.S. Government's principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves. HHS accomplishes its mission through programs and initiatives that cover a wide spectrum of activities, serving and protecting Americans at every stage of life, from conception. HHS is responsible for almost a quarter of all Federal outlays and administers more grant dollars than all other Federal agencies combined.

Eleven operating divisions, including eight agencies in the U.S. Public Health Service and three human services agencies, administer HHS's programs. While HHS is a domestic agency working to protect and promote the health and well-being of the American people, the interconnectedness of our world requires that HHS engage globally to fulfill its mission. In addition, staff divisions provide leadership, direction, and policy guidance to the Department.

HHS is committed to providing health and human service leadership to sexual assault prevention (primary, secondary, and tertiary), and to addressing the physical, mental, and emotional threats to health arising from sexual assault. Operating divisions and agencies across HHS support medical care and treatment (including trauma-informed and support services) that protect and support the health and well-being of survivors, as well as foster interdepartmental initiatives that advance the health of all Americans.

HB 1425  
1-28-19  
#4

*HHS | Administration for Children and Families (ACF), Family & Youth Services Bureau, Family Violence Prevention and Services Act (FVPSA) Program*

The Family Violence Prevention and Services Division of the Family and Youth Services Bureau administers the Family Violence Prevention and Services Act, or FVSPA, the primary federal funding stream dedicated to the provision of immediate shelter and supportive services for victims of family, domestic, and dating violence and their dependents. Although Congress uses the term “family violence” in the legislation, the focus of the FVPSA program is on domestic violence, dating violence, and sexual assault as it occurs within the context of intimate partner relationships, including pressured, coerced, or forced sex.

The FVPSA specifies how appropriated funds will be allocated, including three formula grants. Of the total annual appropriation, 70 percent is allocated to States and Territories, 10 percent to State Domestic Violence Coalitions, and 10 percent to federally recognized Native American Tribes (including Alaska Native Villages and Tribal organizations). FVPSA formula grants to states and territories fund more than 1500 local public, private, nonprofit and faith-based organizations and programs demonstrating effectiveness in the field of domestic violence services and prevention. State Administrators, who oversee the funding of subawards to local services providers, must have or acquire knowledge and skill sets relating to a firm understanding of intimate partner violence and best practices in serving individuals affected by domestic and sexual violence. This specifically includes the interrelationship of state and federal funding streams that support domestic violence, dating violence, sexual assault, and stalking prevention and intervention efforts. Generally, the non-FVPSA funds that State Administrators also manage include state funds and VOCA, VAWA, and other federal funding sources such as TANF, Sexual Assault Services Program, and Rape Prevention and Education. Therefore, it is essential that the FVPSA program works in tandem with the federal agencies that administer the Violence Against Women Act and the Victims of Crime Act.

In several states, the Coalitions may be “dual coalitions” addressing both domestic and sexual violence. Each Coalition provides comprehensive training and technical assistance to local service providers on a multitude of social, legal, and economic issues that affect victims’ safety and well-being. Coalitions partner with government, private industry, non-profit and faith-based communities, and other stakeholders to effectively coordinate and improve the safety net of services available to victims and their dependents. FVPSA’s Annual State Administrators and State DV Coalitions Grantee Meeting (SASC) is a joint undertaking of both annual meetings. SASC is a training, technical assistance and peer mentoring activity focusing on FVPSA administrative, programmatic and regulative issues as well as the promotion of evidence informed and promising practices to address family violence, domestic violence, dating

- HB 1425  
1-28-19  
#4

violence, and related issues such as sexual assault, and stalking. State Coalitions are required to coordinate and collaborate with the State FVPSA Administrators, especially with state needs assessments and state planning; the joint meeting is the most efficient and economical way to foster this collaboration and shared learning. A similar Peer-to-Peer Meeting is held annually for Tribes funded through FVPSA.

Future efforts include holding separate regional meetings, rather than one large annual State Administrators and State DV Coalitions Grantee Meeting (SASC), for the purpose of bringing together FVPSA-funded State Administrators, State Coalition leaders, and tribes to conduct joint state needs assessments and state planning. Participants in regional meetings will also receive more focused training and technical assistance related to provision of culturally relevant, trauma-informed, victim-centered services and supports to enhance their provision of domestic violence, dating violence, sexual assault, and stalking prevention and intervention efforts. These regional meetings will be held through FY19.

The FVPSA program is in the process of updating its State Administrators manual. This guide provides guidance and instruction on the role of the FVPSA State Administrator as collaborators, leaders, learners, policy shapers, and most importantly partners within their state working to foster progress and effectively leverage resources for victims of family violence, domestic violence, dating violence and their dependents. Completion of this updated guide is anticipated for January 2019. Guidance and resources related to addressing sexual violence will be included.

Through the Domestic Violence Housing TA Consortium (DVHTAC), the FVPSA program will continue its collaboration and partnerships with HUD, OVW, and OVC to better research and understand how to meet the housing needs of survivors of domestic and sexual violence who are experiencing unstable housing or homelessness as a result of victimization. FVPSA has also committed to continuing funding to the National Resource Center on Domestic Violence (NRCDV) as the lead convener and training and technical assistance provider for the DVHTAC. The NRCDV consistently partners with the National Sexual Violence Resource Center as its counterpart on policy and practice issues related to sexual violence.

Additionally, FVPSA will continue its partnership with the Health Resources and Services Administration (HRSA) to expand Project Catalyst, a statewide leadership model to provide technical assistance and training on universal education and response to victims of intimate partner violence (domestic and sexual violence) and human trafficking in HRSA-funded health clinics. This initiative is currently being expanded from four states to include three more state leadership teams and development of a national implementation plan. Collaboration between FVPSA and HRSA has resulted in expanded capacity of HRSA staff and grantees to address the health impact and consequences of intimate partner violence and reproductive coercion. More than 350



HRSA staff and grantees have received awareness resources, training materials and practitioner tools on topics such as health and intimate partner violence, addressing domestic violence in home visitation programs, reproductive coercion, adolescent health and teen dating violence.

### *HHS | Health Resources and Services Administration (HRSA)*

The Health Resources and Services Administration (HRSA) is the primary federal agency for improving health care to people who are geographically isolated, economically or medically vulnerable. HRSA programs help those in need of high quality primary health care, people living with HIV/AIDS, pregnant women, and mothers. HRSA also supports the training of health professionals, the distribution of providers to areas where they are needed most and improvements in health care delivery.

HRSA's Strategy to Address Intimate Partner Violence<sup>54</sup> (IPV) is a three-year (2017-2020) framework for addressing IPV through both partnerships that strengthen existing agency-specific programs and new initiatives. The vision statement for the Strategy is "A world free from IPV, where engaged community and healthcare systems ensure access to high-quality health services and coordinated care for all." The Strategy includes four (4) priorities that align with HRSA's goals, including access to care, training the health workforce, building partnerships, and addressing gaps in knowledge; 10 strategic objectives; and 27 collaborative activities across all of HRSA's Bureaus and Offices.

HRSA's FY 2018 Advanced Nursing Education- Sexual Assault Nurse Examiners (ANE-SANE) program<sup>55</sup> provides advanced nurse education to increase the number of Registered Nurses (RNs), Advanced Practice Registered Nurses (APRNs) and Forensic Nurses who are trained and certified as sexual assault nurse examiners (SANEs) in communities on a local, regional and/or state level. Grantees for this three-year award will recruit eligible nurses, coordinate didactic and clinical training with identified partners, monitor and track experiential learning hours and certification completion, and create communities of practice that can retain SANEs in the health workforce. The goal of this program is to train providers to conduct sexual assault forensic examinations that provide better physical and mental health care for survivors, better evidence collection, and higher prosecution rates.

### *HHS | Centers for Disease Control and Prevention (CDC), National Center for Injury Prevention and Control (NCIPC), Division of Violence Prevention*

#### **Rape Prevention and Education (RPE) Program**

CDC's role in sexual violence prevention is unique because no other federal agency is working to prevent sexual violence perpetration and victimization before it begins. The

<sup>54</sup> <https://www.hrsa.gov/sites/default/files/hrsa/about/organization/bureaus/owh/HRSA-strategy-address-intimate-partner-violence-infographic.pdf>

<sup>55</sup> <https://bhw.hrsa.gov/fundingopportunities/?id=3b246079-5fd6-4b83-9f27-0a79918276c6>

H B 1 4 2 5

1-28-19

#4

RPE program provides funding to state health departments in all 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of Northern Mariana Islands to prevent sexual violence before it occurs. RPE recipients work collaboratively with diverse stakeholders, including state sexual violence coalitions, educational institutions, community organizations and other state agency partners to guide implementation of their state sexual violence prevention efforts. RPE recipients are currently engaged in a range of activities, including:

- Delivering school-based primary prevention programs that educate youth on healthy relationships;
- Training students from middle school to college to intervene when they see someone engaging in unhealthy behaviors;
- Working with communities to implement social norms approaches to promote safe, stable, and nurturing relationships and environments; and
- Strengthening the ability of states and communities to plan, implement, and evaluate their sexual violence prevention efforts.

In August 2018, CDC issued a Notice of Funding Opportunity for a new, five-year Rape Prevention and Education cooperative agreement, which will begin February 1, 2019. This new cooperative agreement supports RPE programs in state and territorial health department to enhance sexual violence prevention efforts through the implementation and evaluation of prevention strategies based on the best available evidence identified in CDC's *STOP SV: A Technical Package to Prevent Sexual Violence*.

### **Evaluating Practice-Based Sexual Violence Primary Prevention Approaches from CDC's RPE Programs**

Many prevention approaches are implemented in the practice field to address sexual and intimate partner violence without being evaluated to establish effectiveness. With this in mind, DVP funded five rigorous evaluations of prevention approaches implemented by RPE programs in 2016. The approaches evaluated include a strengths-based curriculum for middle school boys, a comprehensive youth-led initiative to build civic engagement and leadership, an intervention focused on building connectedness to reduce suicide and sexual violence, a program for boys addressing healthy masculinity, gender, and consent, and a community-level youth empowerment intervention. While the primary outcome of interest for this funding initiative is sexual violence perpetration, many of the funded projects also focus on cross-cutting outcomes such as teen dating violence and suicide.

### **Historically Black Colleges and Universities' (HBCU's) Sexual Violence Climate Survey Project**

Through CDC's partnership with NIJ and the Department of Justice's Office on Violence Against Women, the purpose of the HBCU project is to conduct a web-based sexual

violence (SV) survey of undergraduate and graduate women and men among HBCUs. Racial/ethnic minorities experience high rates of sexual violence. Most studies of sexual violence on college and university campuses, however, have been conducted at predominantly white institutions, leaving gaps in our knowledge of the experience of women of color. This project will build upon previous studies, and further inform our understanding of the magnitude of the problem of SV on HBCU campuses. It will also assess the campus climate information among HBCUs that could identify risk or protective factors for SV on these campuses.

### **National Intimate Partner and Sexual Violence Survey (NISVS)**

NISVS is an ongoing survey launched in 2010 that collects the most current and comprehensive national- and state-level data on intimate partner violence, sexual violence and stalking victimization in the United States. Several reports have been released since the launch of NISVS that can be found at the following link:

<https://www.cdc.gov/violenceprevention/nisvs/index.html>.

### **STOP SV: A Technical Package to Prevent Sexual Violence**

The STOP SV technical package (<https://www.cdc.gov/violenceprevention/pdf/sv-prevention-technical-package.pdf>) represents a select group of strategies based on the best available evidence to help communities and states sharpen their focus on prevention activities with the greatest potential to reduce sexual violence (SV) and its consequences. These strategies focus on promoting social norms that protect against violence; teaching skills to prevent SV; providing opportunities, both economic and social, to empower and support girls and women; creating protective environments; and supporting victims/survivors to lessen harms, including prevention approaches focused on victim-centered services and treatment for victims of SV. The strategies represented in the technical package include those with a focus on preventing SV from happening in the first place, as well as approaches to lessen the immediate and long-term harms of SV.

### **Recent Publications from the CDC**

Basile, K.C., Breiding, M.J., Smith, S.G. (2016). Disability and Risk of Recent Sexual Violence in the United States. *American Journal of Public Health*, 106 (5), 928-933.

Basile, K.C., Rostad, W., Leemis, R., Espelage, D.E., & Davis, J.P. Protective Factors for Sexual Violence: Understanding How Trajectories Relate to Perpetration in High School. (2018). *Prevention Science*.

HB 1425  
1-28-19  
#4

Breiding MJ, Basile KC, Klevens J, Smith SG. Economic insecurity and intimate partner and sexual violence victimization.<sup>56</sup> *American Journal of Preventive Medicine* 2017; 53(4): 457-464.

Clayton, H.B., Lowry, R., Basile, K.C., Demissie, Z., & Bohm, M.K. (2017). Association between non-medical use of prescription drugs and physical and sexual dating violence victimization among US high school students, 2015. *Pediatrics*; 140(6): e20172289.

Espelage, D.E., Basile, K.C. Leemis, R., Hipp, T., & Davis, J. (2018). Longitudinal Examination of the Bullying-Sexual Violence Pathway across Early to Late Adolescence: Implicating Homophobic Name-Calling. *Journal of Youth and Adolescence*, 47, 9, 1880–1893 (online, <https://doi.org/10.1007/s10964-018-0827-4>).

Espelage, D.E., Davis, J., Basile, K.C., Rostad, W., & Leemis, R. Alcohol, Prescription Drug Misuse, Sexual Violence, and Dating Violence Among High School Youth. (2018). *Journal of Adolescent Health*, 1-7.<sup>57</sup> (Online: <https://doi.org/10.1016/j.jadohealth.2018.05.024>).

Olssen EO, Vivolo-Kantor A, Kann L. Physical and sexual teen dating violence victimization and sexual identity among US High school students, 2015.<sup>58</sup> *Journal of Interpersonal Violence* 2017.

Peterson C, DeGue S, Florence C, Lokey CN. Lifetime economic burden of rape among U.S. adults.<sup>59</sup> *American Journal of Preventive Medicine* 2017; 52(6):691-701.

Reidy DE, Early MS, Holland KM. Boys are victims too? Sexual dating violence and injury among high-risk youth.<sup>60</sup> *Preventive Medicine* 2017; 101: 28–33.

Sexual Violence in Youth: Findings from the 2012 National Intimate Partner Violence Survey<sup>61</sup>

Sexual Violence on Campus: Strategies for Prevention<sup>62</sup>

<sup>56</sup> <https://linkinghub.elsevier.com/retrieve/pii/S0749379717302118>

<sup>57</sup> <https://doi.org/10.1016/j.jadohealth.2018.05.024>

<sup>58</sup> <http://journals.sagepub.com/doi/full/10.1177/0886260517708757>

<sup>59</sup> [https://www.ajpmonline.org/article/S0749-3797\(16\)30615-8/fulltext](https://www.ajpmonline.org/article/S0749-3797(16)30615-8/fulltext)

<sup>60</sup> <https://www.sciencedirect.com/science/article/pii/S0091743517301810>

<sup>61</sup> <https://www.cdc.gov/violenceprevention/pdf/2012FindingsonSVinYouth.pdf>

<sup>62</sup> <https://www.cdc.gov/violenceprevention/pdf/campusv-prevention.pdf>



HB 1425  
1-28-19  
#4

Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements<sup>63</sup>

*HHS | Office of the Assistant Secretary for Health (OASH), Office of Adolescent Health (OAH)*

The Office of Adolescent (OAH) publishes information on its website and tweets about dating violence and sexual assault prevention (16.2k followers). Information on the website about healthy dating relationships and dating violence was updated in May, 2018. See it here:

- [What Healthy Dating and Romantic Relationships Look Like<sup>64</sup>](#)
- [Teenage Dating and Romantic Relationship Risks<sup>65</sup>](#)
- [Additional Resources for Supporting Healthy Dating Relationships for Preventing and Stopping Dating Violence<sup>66</sup>](#)

OAH administers the Pregnancy Assistance Fund (PAF) Program, which is a \$25 million per year competitive grant program that aims to improve the health, educational, social, and economic outcomes of expectant and parenting teens, women, fathers, and their families. Since 2010, OAH has provided funding to 32 states, including the District of Columbia, and five tribal organizations. Currently, 22 states and one tribal organization are funded through the PAF Program from funding that began July 1, 2018 and will last for two years through June 30, 2020 (FY18 Cohort). PAF Program grantees use funds to:

- Establish, maintain, or operate expectant and parenting student services in high schools, community service centers, and/or institutions of higher education
- Improve services for pregnant women who are victims of domestic violence.
- Increase public awareness and education concerning the services available to expectant and parenting teens, women, fathers, and their families

While all PAF projects are encouraged to focus on creating healthy relationships/preventing domestic violence/assault/IPV, and providing intervention services, four PAF grantees in the FY 2018 cohort focus on this work, including:

<sup>63</sup> [https://www.cdc.gov/violenceprevention/pdf/sv\\_surveillance\\_definitionsI-2009-a.pdf](https://www.cdc.gov/violenceprevention/pdf/sv_surveillance_definitionsI-2009-a.pdf)

<sup>64</sup> <https://www.hhs.gov/ash/oah/adolescent-development/healthy-relationships/dating/what-relationships-look-like/index.html>

<sup>65</sup> <https://www.hhs.gov/ash/oah/adolescent-development/healthy-relationships/dating/teenage-dating/index.html>

<sup>66</sup> <https://www.hhs.gov/ash/oah/adolescent-development/healthy-relationships/dating/resources/index.html>

H B 1425  
1-28-19  
#4

- Washington State Department of Health<sup>67</sup>
- Rhode Island Department of Health<sup>68</sup>
- United Indian Health Services, Inc.<sup>69</sup>
- Montana Department of Public Health and Human Services<sup>70</sup>

In addition to current grantees, previous PAF grant projects have focused on sexual assault/DV/IPV prevention and intervention. Some of their success stories can be found here:

- <https://www.hhs.gov/ash/oah/sites/default/files/paf-succ-strat-3-or-508-compliant.pdf>
- [https://www.hhs.gov/ash/oah/sites/default/files/ash/oah/oah-initiatives/paf\\_program/successful-strategies/assets/virginia\\_success.pdf](https://www.hhs.gov/ash/oah/sites/default/files/ash/oah/oah-initiatives/paf_program/successful-strategies/assets/virginia_success.pdf)
- [https://www.hhs.gov/ash/oah/sites/default/files/ash/oah/oah-initiatives/paf\\_program/successful-strategies/assets/washingtonstate\\_success.pdf](https://www.hhs.gov/ash/oah/sites/default/files/ash/oah/oah-initiatives/paf_program/successful-strategies/assets/washingtonstate_success.pdf)

OAH plans to participate in Domestic Violence Awareness Month Activities, in coordination with the Office of Women's Health (OWH) and the Family Violence Prevention & Services Act Program in ACF.

### *HHS | Office of the Assistant Secretary (OASH), Office of the Surgeon General (OSG), Division of Commissioned Corps Personnel and Readiness (DCCPR)*

Similar to the civilian population, United States Public Health Service Commissioned Corps (Corps) officers experience incidents of domestic violence, sexual assault, substance use, and other behavioral health issues. The Corps Care Program within the Division of Commissioned Corps Personnel and Readiness (DCCPR), in conjunction with the Medical Affairs Branch within DCCPR, is designed to support officers by providing them with guidance to available resources in their communities. DCCPR, in collaboration with TRICARE beneficiary medical providers, inform officers of their available resources, including referral (TRICARE) to appropriate treatment facilities to help in their recovery efforts. Although the Corps does not provide direct clinical care to

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<sup>67</sup> <https://www.hhs.gov/ash/oah/grant-programs/pregnancy-assistance-fund/current-grantees/2018-washington-state-department-of-health/index.html>

<sup>68</sup> <https://www.hhs.gov/ash/oah/grant-programs/pregnancy-assistance-fund/current-grantees/2018-rhode-island-department-of-health/index.html>

<sup>69</sup> <https://www.hhs.gov/ash/oah/grant-programs/pregnancy-assistance-fund/current-grantees/2018-united-indian-health-services-inc/index.html>

<sup>70</sup> <https://www.hhs.gov/ash/oah/grant-programs/pregnancy-assistance-fund/current-grantees/2018-montana-department-of-public-health-and-human-services/index.html>

HB 1425  
1-28-19  
#4

its officers, the Corps Care Program is designed to inform officers of resources available for acute treatment and to support their recovery.

In addition, DCCPR recently published (August 2017) the Commissioned Corps Instruction (CCI) 672.03 on Domestic/Family and Workplace Violence providing further guidance to Corps officers. Since the Corps does not provide direct clinical care to its officers and does not perform Sexual Assault Forensic Examinations, the Corps does not have current policies addressing the preservation of forensic evidence.

The Corps Care Program, in collaboration with the Department of Health and Human Services Equal Employment Opportunity and Compliance Department are tentatively working on establishing educational materials involving the awareness and prevention of sexual assault.

*HHS | Office of the Assistant Secretary (OASH), Office on Women's Health (OWH)*

As part of OWH's commitment to preventing violence against women, the HHS Office on Women's Health funded the College Sexual Assault Policy and Prevention (CSAPP) Initiative in July of 2016 through grant awards totaling \$2 million over three years. The CSAPP Initiative is a cooperative agreement that supports nine grantee organizations that are tasked with fostering a collaborative and evidence-based approach to addressing campus sexual assault through prevention programming and improved campus policies. OWH also facilitates collaboration among grantees to share best practices. The primary goals of the initiative are:

- To disseminate sexual assault policy and prevention information to organizations in a position to influence and implement policies and practices at post-secondary institutions;
- To provide technical assistance to post-secondary institutions to set policies and practices in place that prevent sexual assaults from occurring
- To assess the success of policy establishment and the sustainability of the prevention strategies for the partnering organizations and post-secondary institutions

The CSAPP Initiative grantees have partnered with a current total of 80 post-secondary institutions including public and private four-year universities, technical schools, community colleges, faith-based institutions, single-sex institutions, and HBCUs, along with 34 organizations with expertise in primary, secondary, and tertiary sexual violence prevention and trauma-informed approaches.

OWH has future plans to launch the Preventing Violence Against Women in Priority Communities through Expanded Services: OWH will fund cooperative agreements with community-serving organizations to develop programs addressing violence against women (including sexual assault) in priority communities through expanded prevention and response activities. These programs will serve affected and at-risk communities through expanded prevention and response activities identifying and addressing harmful gender norms. OWH previously funded the Intimate Partner Violence (IPV) Provider Network which integrated interpersonal violence assessments and interventions into basic clinical care, and encouraged collaboration between multiple sectors including healthcare providers, public health programs, and IPV programs. Preliminary results of the IPV Provider Network highlight the critical need to link women with services from multiple sectors. Given this need, expanded services provided through this new cooperative agreement will span multiple sectors and may include legal assistance, law enforcement, mental health services, substance abuse treatments, and housing.

*HHS | Office of the Assistant Secretary (OASH), Office of HIV/AIDS and Infectious Disease Policy (OHAIDP)*

The Office of HIV/AIDS and Infectious Disease Policy leads the ongoing implementation and monitoring of the National HIV/AIDS Strategy<sup>71</sup> (NHAS). The NHAS was first released in 2010 and in 2015 it was updated to reflect the achievements and the latest scientific advances in HIV prevention, care, and treatment. In addition, the objectives and recommendations of the Federal Interagency Working Group on the Intersection of HIV/AIDS, Violence against Women and Girls, and Gender-Related Health Disparities were fully integrated into the updated Strategy as recommended actions.

These recommended actions include: 1) support and strengthen integrated and patient centered HIV and related screening (STIs, substance use, mental health, IPV, viral hepatitis infections) and linkage to basic services (housing, education, employment); 2) improve outcomes for women in HIV care by addressing violence and trauma, and factors that increase risk of violence for women and girls living with HIV; 2) address policies to promote access to housing and other basic needs and other supportive services for people living with HIV; 4) expand public outreach, education, and prevention efforts on HIV and intersecting issues, such as IPV; and 5) support research to better understand the scope of the intersection of HIV and violence against women and girls, and develop effective interventions.

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<sup>71</sup> <https://files.hiv.gov/s3fs-public/nhas-update.pdf>

HB1425  
1-28-19  
#4

Specific federal action items related to each of these recommended actions, as well as progress updates on the federal action items, may be found in the NHAS Federal Action Plan,<sup>72</sup> the 2016 NHAS Progress Report,<sup>73</sup> and the 2017 NHAS Progress Report.<sup>74</sup>

OHAIDP is currently developing a proposal for updating the NHAS to begin during the summer/fall of 2018. The update will address scientific and clinical advances in prevention, care (including trauma-informed care) and treatment of HIV; new challenges that have emerged (most notably the opioid crisis); and Administration priorities.

### *HHS | National Institutes of Health (NIH), National Institute on Alcohol Abuse and Alcoholism (NIAAA)*

NIAAA is supporting two grants concerning the treatment of sexual assault survivors as it relates to their continuation/discontinuation of drinking and related problems:

- *Development and Pilot Trial of an Intervention to Reduce Disclosure Recipients Negative Social Reactions and Victims Psychological Distress and Problem Drinking* (1 R34 AA024849-01A1)

This study aims to evaluate the effectiveness of an intervention to reduce negative social reactions in disclosure recipients as well as psychological symptoms and problem drinking in victims of intimate partner violence and sexual assault.

- *Engaging Social Support to Prevent High-Risk Drinking and Posttraumatic Stress After Sexual Assault: Developing and Testing a Web-Based Intervention* (1 K99 AA026317-01A). [Approved; award in progress].

The goal of this project is to prevent the onset of high-risk drinking and posttraumatic stress disorder in sexual assault survivors by developing a web-based early intervention aimed at increasing contact with social supporters and mitigating the harm of negative social reactions.

NIAAA is supporting the following three grants related to the etiology and prevention of alcohol-related sexual assault:

- *College Health Center-Based Alcohol and Sexual Violence Intervention* (5R01AA023260-04)

This longitudinal study is testing a brief harm reduction counseling intervention to reduce risk for alcohol-related sexual violence among male and female youth ages 18-24 receiving care from college student health services.

<sup>72</sup> <https://files.hiv.gov/s3fs-public/nhas-2020-action-plan.pdf>

<sup>73</sup> <https://files.hiv.gov/s3fs-public/nhas-2016-progress-report.pdf>

<sup>74</sup> [https://files.hiv.gov/s3fs-public/NHAS\\_Progress\\_Report\\_2017.pdf](https://files.hiv.gov/s3fs-public/NHAS_Progress_Report_2017.pdf)



- *Brief Intervention to Reduce College Sexual Victimization Risk* (5R34AA024854-02)

This research seeks to expand upon an existing efficacious approach to reducing college drinking as a way of preventing sexual victimization.

- *Sex Differences in Intoxicated Sexual Interest Judgements and Risk Perceptions* (1F32AA025830-01A1)

This study seeks to characterize intoxicated men's misperceptions of women's sexual interest and intoxicated women's misperceptions of sexual assault risk to inform public policy and enable targeting of at-risk individuals.

In addition, two publications are forthcoming (one has just been published) regarding: 1) prevention of alcohol-related partner violence (intimate partner and dating violence), and 2) sexual assault. RC Freeman, NIAAA, is the Guest Editor of both volumes, published in the journal *Violence Against Women*. This collection of papers grew out of presentations made by these NIAAA grantees at a 2016 NIAAA-supported workshop in New Orleans.

- *Violence Against Women* (Special Issue: Advances in Understanding Alcohol-Related Interpersonal Violence; Freeman, R. Guest Editor) 24(10): 1115–1131, 2018.
- *Violence Against Women* (Special Issue: Recent Developments in Understanding and Preventing Alcohol-Related Sexual Assault; Freeman, R. Guest Editor). In press.

NIAAA is planning a workshop and has recently released an FOA relevant to the care and treatment of sexual assault survivors.

- *Recent Advances in Understanding and Preventing Alcohol-Related Sexual Assault: an NIAAA Workshop*. The workshop has been scheduled for September 27, 2018 at NIH. Fifteen NIAAA grantees will present their work related to understanding and preventing alcohol-related sexual assault.
- PA-18-863, "Alcohol and Other Drug Interactions: Unintentional Injuries and Overdoses: Epidemiology and Prevention". NIAAA recently released the funding opportunity announcement (FOA) which calls for, among other things, research into the co-use of alcohol and other drugs in the commission of other- and self-directed aggression and violent behavior. The National Institute on Drug Abuse is a participant in this FOA.

*HHS | National Institutes of Health (NIH), The Eunice Kennedy Shriver  
National Institute of Child Health and Human Development (NICHD)*

NICHD is currently supporting the following seven grants involving research related to care and treatment of sexual assault survivors, the prevention of sexual assault, and/or the preservation of forensic evidence related to such assaults.

- *Preventing IPV and Reproductive Coercion Among Underserved Adolescents (K23HD084756-02)*

Reproductive coercion (RC) involves behavior intended to maintain power and control in a relationship related to reproductive health by someone who is, was, or wished to be involved in an intimate or dating relationship with an adult or adolescent. RC has been associated with numerous negative effects on the physical, sexual, and mental health of young women and girls, with RC prevalence the highest among adolescents. Findings from this research will be critical to the adaptation, implementation, and evaluation of theoretically driven, empirically informed behavioral interventions that address RC among adolescents in a Latin-American country (Mexico) that can be further applied to other settings.

- *Cumulative Victimization and Women's Health Risks: Development of an Intervention (R00HD082350-03)*

This project will investigate relationships between environmental, cultural, physiological, psychological factors, cumulative violence exposure, reproductive and sexual health, and HIV risk behaviors. The findings will be the foundation for the development of a culturally tailored intervention that will concurrently address health and safety issues among Black African immigrant women with cumulative violence experiences. The intervention will assist practitioners in providing culturally competent integrated services to Black African immigrant women, an underserved group of abused women at risk for HIV.

- *Evaluating the long-term effects of Green Dot on teen dating violence prevention (5R01HD075783-05)*

Because teen dating and sexual violence rates remain high, tests of promising primary prevention interventions with sufficient lengths of follow-up to detect changes in violence are needed. The investigators propose a cohort study of high school seniors (n=7,500) followed up for 42 months, who participated in a high school based randomized intervention trial of an active bystander prevention program. This prospective cohort builds upon a large population-based and promising primary prevention intervention designed to reduce dating and sexual violence among high school students and provides an important test of the long-term efficacy of this program into young adulthood.

HB 1425  
1-28-19  
#4

- *Impact of Culturally Specific Danger Assessment on Safety, Mental Health and Empowerment* (R01HD081179-03)  
Intimate partner violence/homicides are a significant public health threat, disproportionately affecting immigrant, refugee, and indigenous women. This study will provide empirical support for the utility of the culturally tailored danger assessment tools in promoting abused women's safety, empowerment, and mental health. Research findings will be informative for healthcare and domestic violence practitioners in providing culturally competent services to immigrant, refugee, and indigenous women.
- *Interactive Digital Intervention to Prevent Violence among Young Adults* (R43HD093482-01)  
Despite high rates of sexual assault (SA) among college students, there are no college SA prevention programs that evidence reduction in rates of SA in a rigorous research design. This proposal brings together a multidisciplinary team of experts in business development, marketing, SA prevention science, game design, and serious games for health to develop a digital SA prevention application that is grounded in theories of behavior change and addresses a comprehensive set of risk and protective factors for SA. Due to the proliferation of digital devices, and the engaging nature of serious games for health, the development of this SA prevention application has high commercial viability, transportability, and potential for widespread public health impact.
- *Intervention to Promote Pro-Social Bystander Behaviors* (R21HD092807-01A1)  
Sexual assault on college campuses is a significant public health problem. To comply with the Violence Against Women Reauthorization Act of 2013, colleges and universities have invested untold resources to implement sexual assault prevention programs that focus heavily on encouraging bystanders to intervene in order to diffuse potentially risky situations. The current project will validate a novel virtual reality-based measure of bystander behavior, which could prove useful to evaluate the efficacy of bystander interventions as well as help identify the causes, mechanisms, and consequences of bystander behaviors.
- *Intimate Partner Violence in Sexual Minority Female Adolescents and Young Adults* (5R01HD086170-03)  
Young female sexual minorities experience exceptionally high rates of intimate partner violence (IPV) and may be particularly vulnerable to subsequent physical and mental health problems. The aims of this study are to describe IPV in female sexual minorities across adolescence and young adulthood, as well as to identify factors that raise risk for or protect against IPV, affect IPV victims' ability to receive appropriate help, and exacerbate or mitigate the negative health consequences of IPV. Data obtained from this project will inform the



HB 1425  
1-28-19  
#4

development of culturally sensitive interventions to reduce the rates of IV and to better support IPV victims in this vulnerable population.

*HHS | National Institutes of Health (NIH), The National Institute of Mental Health (NIMH)*

NIMH supports and conducts research on mental illnesses and the underlying basic science of brain and behavior; it also supports the training of scientists to carry out basic and clinical mental health research and communicates with scientists, patients, providers and the public about the science of mental illnesses. In doing so, NIMH sponsored researchers can examine and investigate *mental illness as it relates to prevention of sexual assault, and care and treatment for sexual assault survivors*. NIMH sponsored the following two research projects related to *mental health care for sexual assault survivors*.

- *Physicians' Perceived Roles, as Well as Barriers, Toward Caring for Women Sex Assault Survivors*. Amin et al. Women Health Issues 2017 Jan-Feb; 27(1); 43-49. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5177529/>

Sexual assault (SA) affects about 40 percent of women in the United States and has many mental and physical health sequelae. Physicians often do not address SA with patients, although SA survivors describe a desire to talk to physicians to obtain additional help. Little information exists on how providers perceive their roles regarding caring for women SA survivors and what barriers they face in providing this care. Researchers performed a qualitative study using semi structured one-on-one interviews with faculty physicians from five specialties; obstetrics and gynecology, internal medicine, family medicine, emergency medicine, and psychiatry. Interviews were transcribed verbatim and coded using a constant comparative approach to establish a final coding scheme. The researchers found that, although physicians describe key roles in caring for SA survivors, several barriers hinder their ability to fulfill these roles. The research findings indicate that training interventions are needed to reduce the barriers that would ultimately improve clinical care for SA survivors. (R25 MH054318.)

- *Sex Disparities in Adverse Childhood Experiences and HIV/STIs: Mediation of Psychopathology and Sexual Behaviors*. AIDS Behav 2017 June; 21(6) 1550-1566. Brown et al. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5896316/>  
HIV and other sexually transmitted infections (STIs) are important public health challenges in the USA. Adverse childhood experiences (ACEs), including abuse (emotional, physical, or sexual), witnessing violence among household members, may have an effect on sexual behaviors, which increase the risk of HIV/STIs. In this study, researchers examined the sex differences in the role of posttraumatic stress disorder (PTSD), major depression (MD), substance use disorders (SUDs), early sexual debut, and intimate partner violence (IPV) perpetration as mediators in the association between ACEs and HIV/STIs. Data were obtained

HB 1425  
1-28-19  
#4

from Wave 2 (2004-2005) of the National Epidemiologic Survey on Alcohol and Relations Conditions. The researchers found sex differences and similarities existed in the mediational roles of psychopathology and sexual behaviors. The findings indicate that HIV/STI prevention and intervention programs should use a life course approach by addressing adverse childhood events among men and women and consider sex differences in the roles of psychopathology and sexual behaviors. (K01MH093642)

*HHS | Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services*

SAMHSA promotes a trauma informed care approach to treatment by providing survivors with information about how trauma that surfaced as a result of the sexual abuse can affect their well-being, adapting services to meet their needs, fostering an environment where the survivor feels free to discuss their trauma or not, and ensures survivors are able to be linked to resources when needed. In 2014, SAMHSA developed a Concept of Trauma and Guidance for Trauma-Informed Approach:

<https://store.samhsa.gov/shin/content/SMA14-4884/SMA14-4884.pdf>.

In addition to the work referenced above, SAMHSA has developed other publications that address the intersection of sexual assault and behavioral health, particularly in the college age population, including:

- Talking with Your College-Bound Young Adult About Alcohol.<sup>75</sup>  
This guide and video gives parents information they need to talk with their college-bound young adults about the consequences of underage drinking, including the connection of alcohol use and sexual assault.
- Tips for College Students: After a Disaster or Other Trauma.<sup>76</sup>  
This fact sheet provides students with information about seeking help after a variety of traumatic experiences, including violent acts.

*HHS | Indian Health Service (IHS), Division of Behavioral Health*

The Indian Health Service (IHS), an agency within the Department of Health and Human Services, is responsible for providing federal health services to American Indians and Alaska Natives (AI/AN). The IHS is the principal federal health care provider and health advocate for Indian people, and its goal is to raise their health status to the highest possible level. The IHS provides a comprehensive health service delivery

<sup>75</sup> <https://store.samhsa.gov/product/Talking-With-Your-College-Bound-Young-Adult-About-Alcohol/SMA15-4897>

<sup>76</sup> <https://store.samhsa.gov/product/Tips-for-College-Students-After-a-Disaster-or-Other-Trauma/SMA13-4777>

system for American Indians and Alaska Natives, which includes care and treatment of sexual assault survivors. The IHS supports survivors of sexual assault and the preservation of forensic evidence through agency wide policy, administration of Domestic Violence Prevention Program (DVPP) grants, and provision of a training program for medical forensic examiners and related professionals working in Indian country.

The IHS agency-wide policy, Part 3, Chapter 29, "Sexual Assault" of the Indian Health Manual (IHM), was introduced in March of 2011, with the most recent update occurring in February of 2018. Chapter 29 describes the requirements for care of patients following sexual assault at IHS hospitals, health centers, and health stations, including the collection and preservation of medical forensic evidence. The chapter establishes professional training standards for medical forensic examiners, guidelines for forensic examination referral services, patient reporting options, evidence collection and physical assessment guidelines, prophylactic treatment of sexually transmitted diseases and pregnancy prevention, strangulation screening and treatment, and agency participation in coordinated community response efforts.

Collection of medical forensic evidence is also pertinent to the care of Intimate Partner Violence survivors. IHM Part 3, Chapter 31, "Intimate Partner Violence," describes similar patient care requirements and professional training standards to be observed when caring for patients who have experienced this type of violence. The guidance for care of this special patient population was issued in October of 2016.

The IHS funds 83 DVPP grant and federal awards annually to tribes, urban Indian organizations, and IHS federal facilities in order to provide additional support of domestic sexual violence prevention, treatment, and aftercare services to the AI/AN population using culturally appropriate, evidence-based, and practice-based models of care. Annual funding for DVPP projects is approximately \$11,175,838, and has two purpose areas: 1) Domestic and Sexual Violence Prevention, Advocacy, and Coordinated Responses; and 2) Provision of Forensic Health Care Services.

The IHS has established the Tribal Forensic Healthcare website, [www.tribalforensichealthcare.org](http://www.tribalforensichealthcare.org), through a contract with the International Association of Forensic Nurses, to provide high-quality culturally appropriate professional training to IHS staff, and is also open to any medical forensic professionals working with the AI/AN population free of charge. Online and in-person certification courses, such as adult/adolescent sexual assault examiner, pediatric sexual assault examiner, and intimate partner violence examiner are offered throughout the year to qualified medical and nursing professionals. Hands-on skills evaluation courses in both adult/adolescent sexual assault and pediatric sexual abuse examination have also been established to enhance didactic training for emerging examiners, as well as provide a refresher skills course for experienced professionals. To date, IHS has trained 1449 forensic examiners

HB 1425  
1-28-19  
#4

who are working with AI/AN populations. Of that total, 651 trained in adolescent and adult sexual assault examination, 433 trained in pediatric sexual abuse examination, and 415 in intimate partner violence examination. Quarterly live webinar sessions are created and archived for later viewing access to the over 4000 subscriber account holders on a variety of pertinent forensic examination topics, such as: human trafficking in Indian country, strangulation assessment, providing court testimony, pediatric examination variants, forensic photography, etc.

In the future, a revision to existing guidance regarding the care of pediatric patients who have experienced maltreatment, including sexual abuse, will be expanded and appear as a stand-alone agency-wide policy within the Indian Health Manual in 2018. Part 3, Chapter 36, "Child Maltreatment" is in the final stages of agency approval.

In FY 2019, the IHS will be offering an increased number of forensic medical examination and clinical skills courses than in previous years: 4 Adult/Adolescent SAE Clinical Skills Labs (Colorado Springs, CO & Anchorage, AK), 4 Adult/Adolescent SAE web-based courses, 3 Intimate Partner Violence Examiner web-based courses, a general domestic violence awareness staff web-based training course, 20 individual slots for pediatric sexual assault examiner clinical skills labs (Nashville, TN & Corpus Christi, TX), and 4 Pediatric SAE web-based training courses. Webinar topics for FY 2019 have not been finalized, however four webinars related to forensic health care topics will be offered for Nursing CEU and medical CME credits.

## Appendix – Glossary of Terms

Listed below are definitions for terms used in this report.

**Best practices** | “Best practices” typically are understood to be procedures that research and experience have shown produce the best results and are considered appropriate for widespread implementation and/or replication. However, because some aspects of the care and treatment of sexual assault survivors and preservation of forensic evidence are not widely or rigorously researched and have not garnered formal consensus among experts, “best practices” for the Working Group’s purposes was defined more loosely. Therefore, best practices include methods and tools that extensive research has validated (e.g., DNA analysis), as well as strategies based on the best available research and/or recommendations (e.g., current Department of Justice recommendation that SAKs be retained at least for the statute of limitations or a maximum of 20 years).

*Operating definition used by the Survivors’ Bill of Rights Working Group*

**Chain of custody** | A chain of custody identifies and tracks evidence from the time it was collected—including the method by which it was obtained—through final disposition for each individual who had possession and responsibility.

*Source: The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers<sup>77</sup>*

**CODIS** | The Combined DNA Indexing System (CODIS) is the FBI’s program of support for criminal justice DNA databases as well as the software used to run these databases. The National DNA Index System (NDIS) is a part of CODIS—the national level—containing DNA profiles contributed by federal, state, and local forensic laboratories. CODIS contains offender DNA profiles, meaning those collected from known individuals; and forensic profiles, meaning those developed from biological evidence collected from a victim, suspect, or crime scene.

*Source: FBI’s Frequently Asked Questions on CODIS and NDIS<sup>78</sup>*

**DNA** | Deoxyribonucleic acid (DNA) is a chemical substance found in nearly every cell of a person’s body. This genetic material is unique to an individual, except in the case of identical twins.

**Sexual assault medical forensic exam** | A sexual assault medical forensic exam is conducted by a specially trained Sexual Assault Nurse Examiner (SANE) or other medical professional. The exam includes gathering a complete medical history, coordinating the treatment of injuries, documenting and collecting evidence, and referring the victim to other medical or nonmedical support.

*Source: A National Protocol for Sexual Assault Medical Forensic Examinations. Adult/Adolescents<sup>79</sup>*

<sup>77</sup> <http://www.evawintl.org/library/DocumentLibraryHandler.ashx?id=653>

<sup>78</sup> <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet>

<sup>79</sup> <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>



HB 1425  
1-28-19  
#4

**Sexual Assault Nurse Examiner** | SANEs are registered nurses who have completed specialized education and clinical preparation in the medical forensic care of the patient who has suffered sexual assault or abuse.

Source: International Association of Forensic Nurses (IAFN)<sup>80</sup>

**Sexual assault kit (SAK)** | A SAK is evidence collected from a patient by a medical professional. The type of evidence collected depends on what occurred during the assault. The contents of a SAK vary by jurisdiction, but generally include swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers.

Source: Sexual Assault Kits: Using Science to Find Solutions<sup>81</sup>

- **Unreported SAK** | A SAK collected from a patient who has consented to a medical forensic exam but has not reported a crime to law enforcement or agreed to participate in the criminal justice process.

Source: Best Practices for Sexual Assault Kits<sup>82</sup>

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<sup>80</sup> <https://www.forensicnurses.org/page/AboutSANE>

<sup>81</sup> <https://nij.gov/unsubmitted-kits/Pages/default.aspx>

<sup>82</sup> <https://www.ncjrs.gov/pdffiles1/nij/250384.pdf>

#1  
HB 1425  
1-30-19

House Bill 1425  
House Judiciary  
Testimony of Travis W. Finck  
Deputy Director N. D. Comm. On Legal Counsel for Indigents  
January 30, 2019

Chairman Koppelman, members of the House Judiciary, my name is Travis Finck, I am the Deputy Director of the Commission on Legal Counsel for Indigents, and on behalf of the commission, I wish to provide informational, neutral testimony regarding the HB 1425.

HB 1425, Section 3 eliminates the statute of limitations for offenses in 12.1-20-03 through 12.1-20-08 or 12.1-20-11. This testimony is to notify the committee of potential implications when reading this proposed change in conjunction with other parts of the century code, mainly as it pertains to juveniles and juvenile offenders. If a juvenile were to commit a crime listed in one of the statutes mentioned, there would be no time table to the commencement of prosecution which would defeat the purpose of Juvenile Court. NDCC 27-20-34(5) provides "No child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, may be prosecuted for an offense previously committed unless the case has been transferred as provided in this section." However, NDCC 27-20-24(8) provides "A person at least twenty years of age who committed an offense while a child and was not adjudicated for the offense in juvenile court may be prosecuted in district court as an adult, unless the state intentionally delayed the prosecution to avoid juvenile court jurisdiction. The district court has original and exclusive jurisdiction for the prosecution under this subsection." The two statutes seemingly contradict each other in regard to a lifetime statute of limitations in the prosecution of juvenile alleged to have committed a sex offense against another juvenile. The North Dakota Supreme Court of North Dakota clarified in State v. Woodrow, 2011 ND 192, determining an offender who commits a delinquent act while a juvenile, can in fact be prosecuted as an adult in District Court after their 20<sup>th</sup> birthday, as the Juvenile Court would be divested of jurisdiction.



HB/425  
1/30/2019  
#1

In practice, Juvenile Court is meant to be a rehabilitative court and offenders who commit acts as a juvenile are treated differently throughout the code in comparison to their adult counterparts. NDCC 12.1-32-15(1)(f) lists those offenses which classify a perpetrator as a "sexual offender". Within the definition, you will find most, if not all, of the offense for which HB 1425 seeks a lifetime statute of limitations. NDCC 12.1-32-15(2) provides an individual who commits a sexual offense must register as a sex offender. However, 12.1-32-15(2)(c) provides a court may deviate from requiring a juvenile adjudicated delinquent from registration if the court finds the juvenile had not been previously convicted and the offender did not exhibit mental abnormality or predatory conduct. The same deviation is not available to an adult offender.

NDCC 12.1-20-01, provides the age limitations for sex offenses under 12.1-20, and they are implicated in this legislation. If an offender commits a delinquent act, such as having sex with another juvenile who is not above the age of 15 (12.1-20-03(1)(d), and the victim does not report until such time as the child offender would exceed 20 years of age, the offender would no longer be able to avail themselves to the juvenile court.

Mr. Chairman, thank you for the opportunity for me to present this testimony.

Respectfully submitted:



Travis W. Finck, Deputy Director  
N.D. Commission on Legal Counsel  
(701) 845-8632, tfinck@nd.gov

January 30, 2019

#1  
HB 1425  
2/12/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1425

Page 1, line 1, remove "and a new"

Page 1, line 2, remove "subsection to section 12.1-34-07"

Page 1, line 3, remove "and acute forensic medical examinations"

Page 1, line 9, after the first "the" insert "child sexual abuse"

Page 1, line 9, after "victim" insert "over the age of eighteen"

Page 1, line 10, replace the first "a" with "the"

Page 1, remove lines 17 through 23

Page 2, remove lines 1 and 2

Renumber accordingly

19.1036.01001  
Title.

Prepared by the Legislative Council staff for  
Senator Hogan  
January 30, 2019

H1  
KB 1425  
2-13-19  
P. 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1425

- Page 1, line 1, remove "and a new"
- Page 1, line 2, remove "subsection to section 12.1-34-07"
- Page 1, line 3, remove "and acute forensic medical examinations"
- Page 1, line 9, after the first "the" insert "child sexual abuse"
- Page 1, line 9, after "victim" insert "over the age of eighteen"
- Page 1, line 10, replace the first "a" with "the"
- Page 1, remove lines 17 through 23
- Page 2, remove lines 1 and 2
- Renumber accordingly

**TESTIMONY**  
**Senate Judiciary Committee**  
**House Bill 1425**  
**March 11, 2019**  
**Senator Kathy Hogan**

Chairman Larson and members of the Senate Judiciary Committee. My name is Kathy Hogan and I represent District 21 - the heart of Fargo.

For the last 8 years, we have been looking at the statutes related to childhood sexual abuse. Eight years ago, many people did not understand the serious reality of childhood sexual abuse. We have made major changes over the last 8 years but there are still a few areas that I hope this committee will consider.

The first issue is the statute of limitation on criminal child sexual abuse. The tragic situation faced by USA Gymnastic where over 300 children were sexually abused Dr. Larry Nasser over a 15-year period helped to tell the story. Almost half of young women could not participate in the criminal prosecution because of the Michigan statute of limitation. This is a situation when at least 15 other people were aware of the abuse but did not intervene.

Based on several high-profile situations, the method of identifying the pattern of abuse typically comes from a series of related allegations being gathered and reviewed often over many years.

Section 1 of this bill will allow for the law enforcement reports of allegation of childhood sexual abuse and it requires that all reports be maintained to establish a pattern for evidence. Often times reports are not received at the same time of an incident, by maintaining records, a pattern may develop over time which could significantly help in building a case.

Section 2 of the bill simply extends the statute of limitation.

Let me briefly describe the situation which brought this issue to my attention. Going door to door in 2010 a constituent told me the story of his friend, Joe who had been sexually abused by a professional when he was 10 years old. Joe first

disclosed his sexual abuse when he was in his late 40's and then went to law enforcement who told him it was too late to investigate. Several years later at a high school gathering, he was visiting with a friend who had just gotten out of substance abuse treatment. Joe's friend disclosed he had been a victim of child sexual abuse which had been a factor in his addiction. In conversation, they discovered that they had both been abuse by the same professional. They again went to law enforcement and they were told that they could do nothing because the statute of limitations had expired.

Over the next 4 years, these two friends identified two other victims. One summer, they found the receptionist who worked with this professional and talked to her about their experience. She was in her late 80s and she fell apart in tears. She shared with the two men that she was aware and had kept a list of the young men she thought had been abused by her boss. With all this evidence, there was nothing that could be done.

If that situation happened after this bill was passed, law enforcement could pursue an investigation and the states attorney could independently evaluate that evidence to see if prosecution was appropriate. Combining reports are often the trigger for real justice because most victims do not know that there are other victims. A prosecutor is in control of all of the evidence before charges are filled.

Thank you, Chairman Larson, I am more than willing to answer any questions.

# 2  
HB 1425  
3/11/19

Engrossed House Bill 1425  
Senate Judiciary  
Testimony of Travis W. Finck  
Deputy Director N. D. Comm. On Legal Counsel for Indigents  
March 11, 2019

Madam Chair Larson, members of the Senate Judiciary, my name is Travis Finck, I am the Deputy Director of the Commission on Legal Counsel for Indigents, and on behalf of the commission, I wish to provide informational, neutral testimony regarding the HB 1425

HB 1425, Section 3, as amended, extends the statute of limitations for offenses in 12.1-20-03 through 12.1-20-08 or 12.1-20-11. This testimony is to notify the committee of potential implications when reading this proposed change in conjunction with other parts of the century code, principally as it pertains to juveniles and juvenile offenders. If a juvenile were to commit a crime listed in one of the statutes mentioned, the time table for the commencement of prosecution could defeat the purpose of Juvenile Court. NDCC 27-20-34(5) provides "No child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, may be prosecuted for an offense previously committed unless the case has been transferred as provided in this section." However, NDCC 27-20-24(8) provides "A person at least twenty years of age who committed an offense while a child and was not adjudicated for the offense in juvenile court may be prosecuted in district court as an adult, unless the state intentionally delayed the prosecution to avoid juvenile court jurisdiction. The district court has original and exclusive jurisdiction for the prosecution under this subsection." The two statutes seemingly contradict each other in regard the statute of limitations in the prosecution of juvenile alleged to have committed a sex offense against another juvenile. The North Dakota Supreme Court of North Dakota clarified in State v. Woodrow, 2011 ND 192, determining an offender who commits a delinquent act while a juvenile, can in fact be prosecuted as an adult in District Court after their 20<sup>th</sup> birthday, as the Juvenile Court would be divested of jurisdiction.

In practice, Juvenile Court is meant to be a rehabilitative court and offenders who commit acts as a juvenile are treated differently throughout the code in comparison to their adult counterparts. NDCC 12.1-32-15(1)(f) lists those offenses which classify a perpetrator as a "sexual offender" requiring registration. Within the definition, you will find most, if not all, of the offenses for which HB 1425 seeks an extended statute of limitations. NDCC 12.1-32-15(2) provides an individual who commits a sexual offense must register as a sex offender. However, 12.1-32-15(2)(c) provides a court may deviate from requiring a juvenile to register when adjudicated delinquent for a felony sex offense under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03 or for a misdemeanor if the court finds the juvenile had not been previously convicted and the offender did not exhibit mental abnormality or predatory conduct. The same deviation is not available to an adult offender.

For reference, the following crimes would be implicated by HB 1425:

- 12.1-20-03: Gross Sexual Imposition (sexual act)
  - a) force or threat b) substantial impairment c) victim unaware d) under 15 e) disease
- (2) (Sexual Contact)
  - a) under 15 b) force or threat c) victim unaware
- 12.1-20-03.1: continual Sexual Abuse of a Child
- 12.1-20-04: Sexual Imposition (Sexual act or contact)
- 12.1-20-05: Corruption or Solicitation of a Minor (Requires Adult to Solicit)
- 12.1-20-05.1: Luring Minor by Computer
- 12.1-20-06: sexual Abuse of a Ward
- 12.1-20-06.1: Sexual Exploitation by therapist
- 12.1-20-07: Sexual Assault
- 12.1-20-08: Fornication ( A minor engaging in the Act is a misdemeanor)
- 12.1-20-11: Incest

NDCC 12.1-20-01, provides the age limitations for sex offenses under 12.1-20, and they are implicated in this legislation. If an offender commits a delinquent act, such as having sex with another juvenile who is not above the age of 15 (12.1-20-03(1)(d), and the victim does not report until such time as the child offender would exceed 20 years of age, the offender would no longer be able to avail themselves to the juvenile court or the registration provisions associated with it.



#2  
HB 1425  
3/11/19

Madam Chair, members of the Committee, thank you for the opportunity for me to present this testimony.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Travis W. Finck', written over a horizontal line.

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