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Justice for All? An In-Depth Look at Sexual Assault Kit Testing in the Carolinas

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JUSTICE FOR ALL?: SAK TESTING IN THE CAROLINAS

JUSTICE FOR ALL?

AN IN-DEPTH LOOK AT SEXUAL ASSAULT KIT TESTING IN THE CAROLINAS

By

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Abstract

Within the last few decades, technological advancements and an improved understanding of biological materials have led to an increase in evidence that can be submitted for forensic testing in criminal justice investigations. In a sexual assault investigation, a sexual assault kit (SAK) is often collected and contains the evidence found on the victim's or suspect's person. While the true total is unknown, it is estimated that several hundred thousand untested SAKs remain in the custody of law enforcement and forensic crime laboratories across the United States. Whether these SAKs were neglected due to law enforcement bias, the prioritization of other types of evidence, or the limited testing capacity of crime laboratories, each kit represents a victim of sexual assault who potentially underwent the invasive collection process for nothing. Testing SAKs can not only provide investigative leads in individual cases but can also identify serial rapists by connecting multiple crimes together. Although the federal government has established minimal guidelines for SAK testing, it is largely up to state and local jurisdictions to implement protocol regarding testing newly collected and backlogged SAKs. Reformation efforts are largely location-specific, as revealed by an analysis of SAK testing in the Carolinas. North Carolina is well on its way to instating comprehensive SAK reform—having almost completed a statewide inventory, implemented a tracking system, mandated SAK testing, and efficiently allocated funding. South Carolina is only a few steps behind having recently passed a bill requiring a statewide audit and tracking system.

Keywords: Sexual Assault Kit, Sexual Assault Kit Backlog, Evidence Backlog, Reform, North Carolina, South Carolina

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Glossary

- *Anonymous/Unreported SAK*: a sexual assault kit that has been collected but has not been sent for forensic testing because the survivor has not yet opted to report to law enforcement
- *The Combined DNA Index System (CODIS)*: an amalgamation of DNA databases, overseen by the federal government, from cities across the United States and a tool for exonerating the innocent, identifying offenders, linking crime scenes, and establishing individual patterns of crime (Davis & Wells, 2019)
 - *CODIS Hit*: an uploaded DNA profile that matches an existing sample within the system
- *Collection Agency*: the medical or forensic facility where a sexual assault kit is collected from a survivor by a professional examiner
- *Custodian of Evidence*: the medical, legal, or forensic facility where a sexual assault kit is stored after collection; the court-appointed person who is put in charge of possessing the evidence for a certain amount of time (Post-Conviction DNA Testing and Preservation of Evidence Act of 2008)
- *Evidence*: biological (i.e., bodily fluids and tissues, hair, or fingerprints) and physical materials related to a crime (Preservation of Biological Evidence Act of 2007)
- *Deoxyribose Nucleic Acid (DNA)*: the molecule responsible for carrying genetic material in every living organism
 - *DNA Profile*: forensically extracting specific section of DNA from biological evidence used to reveal the gender or be compared with a *DNA sample* to confirm or deny the source of the specimen; the desired result of *DNA testing* and is what is entered into CODIS

- *DNA Sample*: a standard obtained from an individual, generally through a buccal (inner cheek) swab, to be compared against an established DNA profile
- *DNA Testing/Analysis*: the comparison or examination of one or more DNA profiles with the intention of deciphering the gender or identity of the source of the biological evidence
- *Law Enforcement*: local, state, or federal agency, as established by law, which prevents crime, detects crime, and enforces laws (Post-Conviction DNA Testing and Preservation of Evidence Act of 2008)
- *Non-Stranger Sexual Assault*: the offender of the assault had a relationship with the survivor, regardless of the nature of the relationship (i.e., romantic, acquaintance, etc.)
- *Reported SAK*: a sexual assault kit that has been collected and sent for forensic testing because the survivor has opted to report to law enforcement
- *Serology Testing*: the application of forensic tests to locate and identify bodily fluids
- *Sexual Assault**: a term used to describe a range of criminal sexual acts including, but not limited to, unwanted penetration, touching, rubbing, or kissing (Cook, Cortina, & Koss, 2018)
- *Sexual Assault Nurse/Forensic Examiner (SANE or SAFE)*: a medical professional who has completed specialized education and clinical preparation for the medical forensic care of a patient who has experienced sexual assault (International Association of Forensic Nurses, n.d.)
- *Sexual Assault Kit (SAK)*: a storage unit containing the evidence collected by a medical professional during sexual assault examination

* I will be using this as an umbrella term for all physical criminal sexual acts

- *Stranger Sexual Assault*: the perpetrator of the assault was unknown to the survivor (Campbell, R., Feeney, H., Pierce, S.J., Sharma, D.B., & Fehler-Cabral, G., 2016)
- *Survivor*: a living victim of a criminal sexual act
- *Testing Facility*: the forensic laboratory that conducts forensic analysis, most notably DNA testing, on a sexual assault kit
- *Unfounded SAK*: a sexual assault kit that has been collected, but not sent for forensic testing because law enforcement has determined that no crime has been committed
- *Victim-Centered, Trauma Informed Approach*: “the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner... to minimize re-traumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their traffickers brought to justice” (OVCTTAC, n.d.)

Justice for All?: An In-Depth Look at Sexual Assault Kit Testing in the Carolinas

On September 29, 2010, 9.48 million viewers tuned into *Law & Order: Special Victims Unit* (Yan, 2010). The episode, “Behave,” details Detective Olivia Benson’s (Mariska Hargitay) investigation of the sexual assault of a young woman, Vicki McManus (Jennifer Love-Hewitt), who reports that this is the 4th attack by the same unidentified stalker in the last 15 years. Forensic testing of Vicki’s sexual assault kit (SAK) quickly leads to the identification of the offender, William Harris (James LeGros); however, the district attorney refuses to prosecute him due to a lack of sufficient evidence. Benson has a hunch that Harris is a serial rapist and attempts to contact law enforcement agencies across the United States in jurisdictions with crimes that fit Harris’s modus operandi. She tries to encourage the agencies to test the corresponding SAKs, but quickly realizes that many kits were improperly stored, lost, or backlogged behind thousands of others. Benson voices her frustrations to her partner, “I wonder how many men could have been stopped if those rape kits had been tested... It’s like we’re telling them [survivors] that they don’t matter, and we’re telling the perps that they can get away with it” (Greene & Shaver, 2010). Luckily, one kit yields enough evidence to indict Harris, and, while the fictional story of Vicki is resolved, the audience is left thinking about the larger, unresolved problem that is the U.S. sexual assault kit backlog (Greene & Shaver, 2010).

Certain aspects of the episode are decidedly unrealistic (such as an NYPD detective able to dedicate all her time to one case, an investigation proceeding without victim consent or cooperation, instantaneous results from forensic testing, and a stranger who stalks one woman across state lines for over a decade); however, the 2010 episode sheds light on circumstances that are still relevant in 2020—namely the experience of a survivor of sexual assault and the hindrance of investigations caused by the national SAK backlog. Although every *Law & Order:*

SVU episode involves “sexually based offenses,” season 12 episode 3, is the first to refer to the backlog and show the SAK collection process. Vicki relays to Detective Benson the disturbing details of her attacks as she places her clothes in a paper bag before being scanned with a UV light, photographed extensively, swabbed, given a pelvic exam, and otherwise thoroughly investigated (Greene & Shaver, 2010). The scene emotionally impacts the audience by highlighting the duration of SAK collection through strategic scene cuts between each step, and Jennifer Love-Hewitt’s authentic portrayal of a survivor is also effective in conveying just how uncomfortable and undesirable the process is to undergo. In addition to familiarizing the public with the experience of a survivor, the episode promotes awareness for the need to eradicate the backlog. It makes it clear that, without Benson’s special attention, the critical evidence found in an SAK would have remained untested, and Vicki would have never seen justice because of the backlog.

No one would want to undergo a 4-6 hour incredibly invasive exam, but survivors of sexual assault choose to have SAKs collected to be potentially used as evidence to strengthen the prosecution of his or her assailant. SAK collection is important in both non-stranger and stranger perpetrated crimes because the process potentially preserves vital biological evidence to prosecute rapists and conveys to survivors and offenders that sexual assault is taken seriously by law enforcement. A SAK will be forensically analyzed to obtain offender DNA profiles for the Combined DNA Index System, or CODIS, to be compared against other profiles belonging to all other eligible felons or obtained from a different crime scene. A “CODIS hit,” or DNA-match, can not only identify the offender of a specific crime, but it can also generate new leads in cold cases, detect serial rapists, or be otherwise used to apprehend criminals. On the other hand, if a

kit is backlogged, law enforcement not only misses out on the potential evidentiary value, but also sends the message to survivors that having a SAK collected is a waste of time (Tofte, 2012).

A “backlogged” SAK has not yet been forensically analyzed and resides at a custodial agency. Primarily, kits become backlogged due to limited testing capabilities of understaffed and underfunded crime laboratories and the prioritization of evidence testing (Tofte, 2012). The advent of more sensitive and accurate forensic technology have allowed more samples to be submitted for analysis, and, as a result, many crime laboratories have accumulated a long queue of submitted evidence and are forced to prioritize testing on an as-needed basis. In addition, misinformation and biases about the usefulness of SAKs in the prosecution of sexual assault often dissuades law enforcement from submitting kits for testing at all. As a result, the U.S. criminal justice system is struggling to keep up with testing demands for newly collected and, the more numerous, backlogged SAKs.

Mariska Hargitay’s crusade against injustice extends beyond her portrayal of a fictional SVU detective. In 2004, 5 years after starting her role as Detective Olivia Benson, Hargitay created the Joyful Heart Foundation in response not only to lessons learned during filming about sexual assault, domestic violence, and child abuse, but also to the thousands of fans who shared their personal stories with her. Joyful Heart’s mission statement is, “to transform society’s response to sexual assault, domestic violence, and child abuse, support survivor’s healing, and end this violence forever” (www.joyfulheartfoundation.org). The foundation’s advocacy and educational programs include specialized retreats for survivors, providing tools for “healing professionals” (i.e., therapists, social workers, and lawyers experiencing vicarious trauma), and efforts to improve the treatment of underserved populations. In addition, the foundation created End the Backlog, an initiative whose name speaks for itself. Since 2010, End the Backlog has

worked directly with local government officials, law enforcement personnel, community service providers, advocates, and survivors to bring awareness to and advocate for the testing of backlogged SAKs in cities across America.

Purpose

I first became aware backlog of sexual assault kits (SAK's) in the United States while bingeing the series *Law and Order: SVU*, specifically the episode "Behave," during my Junior year of college. In all honesty, I do not think that the reality of the situation really hit me until I began volunteering with Sexual Trauma Services of the Midlands (STSM) of South Carolina. In South Carolina, all survivors who go to the hospital are given the opportunity to have an advocate stay with them during the clinical interview and SAK collection process; therefore, one aspect of my role as a volunteer advocate was to go to the emergency department to provide survivors with necessary information and emotional support. Based on my advocacy training and own personal experience, the period between admittance to the hospital and release is not a pleasant one. A survivor must wear a thin hospital gown or the clothes that they were wearing during the attack while sitting in a hospital bed as a slew various people with clipboards, computers, and/or medical supplies continually enter and exit the room. Hospital staff, criminal justice personnel, and community advocates each must conduct their own procedures and can accidentally inundate the survivor with information. Once the Sexual Assault Nurse Examiner (SANE) arrives and completes her interview and explains the process, the SAK collection can finally begin. Sexual assault violates the victim, both physically and emotionally, and no survivor wants to spend 4 hours at a minimum in the cold, sterile hospital focusing on the traumatic experience unless it leads to the arrest of their assailant.

A problem cannot be solved unless people know there is a problem. Learning about the SAK backlog on TV resonated with me and made me aware of the issue but meeting survivors in the hospital and manning the crisis hotline inspired me to action. My thesis aims to create more awareness about the U.S. sexual assault kit backlog by outlining comprehensive SAK reform on federal and state levels. First, I follow the path of an SAK through the criminal justice system—from collection to destruction. Next, I define and explain the origins of the national SAK backlog. Then, I detail solutions in accordance with the U.S. National Institute of Justice's guidelines, federal legislation, and the results of previous studies. I further elaborate on the most important steps to reform as reported by End the Backlog: forming a multidisciplinary team, performing an audit, creating a plan for prioritization, implementing a tracking system, and taking a victim-centered, trauma-informed approach to contacting survivors. Finally, as I am a student of the University of South Carolina and a North Carolina native, my thesis specifically targets the Carolinas and assesses whether these criminal justice systems meet recommendations, compares the states to each other, and concludes with my own recommendations for both states.

Methodology

I initially intended to focus solely on the South Carolina SAK backlog and planned on speaking to personnel from relevant agencies and departments. I was interested in finding out what these individuals thought could be the causes and solutions to the backlog. My goal was to interview members of the law enforcement departments, crime labs, prosecutors, and advocates in the most highly populated counties, but due to unforeseen circumstances (i.e., Coronavirus) and a late change in focus from SC to the Carolinas as a whole, I decided to spend more time analyzing documents published by the government and the involved agencies and interviews by local news sources. Before the switch, however, I did speak to Rachel Grant, the DNA technical

leader at the Richland County Sheriff's Department, Tommy Crosby, the public information officer at the State Law Enforcement Division crime lab, and advocates from Sexual Trauma Services of the Midlands. Through my interviews, I quickly realized that unless the state government provides explicit guidance and requirements for SAK reform, SAKs are handled differently depending on the opinion of individual leaders of local agencies. As a result, I chose to redirect my thesis towards federal and state legislation, recommendations, and protocol.

After running into several dead ends using library databases, such as JSTOR, I realized that I was more interested in finding out what information was available to the public, especially focusing on government documents. Although the database articles provided a general understanding of the SAK backlog, I quickly learned that reform efforts must be highly specific to the local and state jurisdictions to be effective. The Carolinas are largely rural, and many of these academic documents focused on the efforts made in major U.S. cities (i.e., Detroit and Los Angeles). As a result, in addition to the End the Backlog website, I utilized articles from local news sites as well as bill summaries and other government publications to learn about the SAK backlog in the Carolinas.

In 2017, the United States Department of Justice's National Institute of Justice (U.S. DOJ NIJ) formed an elite research team and amalgamated results from reform efforts in jurisdictions around the country and published a detailed report including guides for forming a multidisciplinary team, performing an SAK audit, testing backlogged inventory, and survivor notification entitled *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*. The document was my guiding source for the life of a sexual assault kit and the United States SAK backlog sections because the suggestions are meant to be applicable nationwide with minimal alterations.

I found that familiarizing myself with the details of the SAK backlog via the End the Backlog website was incredibly useful in progressing my research. End the Backlog's mission is three-fold: identifying the extent of and best practices for eliminating the backlog, keeping the public informed, and promoting survivor-centered, trauma-informed legislation. The End the Backlog website is integral to carrying out its mission as it provides the public with accurate data about the backlog reform on both federal and state levels, offers information and access to resources for survivors, reports media coverage regarding the backlog, and recommends ways for the public to get involved (End the Backlog, n.d.-a). The website provides a "backlog snapshot" for each state that clearly states the approximate number of untested kits and indicates what criteria has been met in achieving comprehensive SAK reform; however, information for each state is limited to what has been made public by the individual crime labs and law enforcement agencies in that state. As a result, many of the figures presented are gross underestimates, because many agencies either do not know or do not report accurate kit totals (End the Backlog, n.d.-d). To date, End the Backlog has helped American jurisdictions inventory over 225,000 untested SAKs; however, it is estimated that there are still several hundred thousand more that have yet to be counted throughout the country (Joyful Heart Foundation, n.d.).

For my analysis of the Carolinas, I compared the states' legislature and procedures as of May 2020, to End the Backlog's outline of comprehensive statewide reform as listed in the legislative handbook *Comprehensive Rape Kit Reform: A Legislative Handbook* (2019) and illustrated in Appendix A. The initiative's criteria are as follows:

1. Completion of a Statewide Annual Inventory
2. Mandating Testing for All Backlogged Kits
3. Mandating Testing for All Incoming Kits

4. Implementation of a Statewide Tracking System
5. Granting Survivors the Right to be Informed
6. Appropriate State Funding for Reform

Crime labs must be legally bound to publish an annual inventory online in line with federal guidelines, which includes the total number of untested kits, their locations, and, if applicable, categorizing the list by kit type (i.e., reported, unreported, or unfounded). If legislation is not currently in place, a plan with strict deadlines should be devised to test all backlogged kits. Additionally, states must implement mandatory testing for all new SAKs submitted to crime labs. An appropriate tracking system will log the progression of an SAK by indicating date of collection, submission status (i.e., submitted to law enforcement and then to the lab), testing status, and testing results. The tracking system must allow survivors, law enforcement officers, and attorneys to check the status of a kit using an individualized bar code or tracking number via a secure online portal. Lastly, funding must be made available to state labs for the purpose of testing backlogged evidence and, if necessary, expanding the labs' testing capacity through building modification and hiring additional technical analysts and other required staff (End the Backlog, n.d.-b).

Based on the six criteria, End the Backlog presents an interactive map of the United States that indicates the status of reform in every state; however, based on my research it seems to be slightly out of date. According to the map, reform efforts in states like Texas, Michigan, and New York qualify as "comprehensive," because they meet all 6 criteria points. Most states, including North Carolina, California, and Florida, are labeled to have "limited statewide reform," meaning they have met at least one criterion. The category "statewide reform proposed" only describes Wisconsin. Areas that have "no statewide reform" include states that have taken no

action to reduce their backlog or are in the process of completing their first mandated inventory (End the Backlog, n.d.-b). It should be noted that some states, like South Carolina, are said to have “no statewide reform” when they should be considered to have “statewide reform proposed.” This inaccuracy may be explained by recent legislative developments that have occurred during the Coronavirus pandemic and, thus, have not yet been updated on the website (www.endthebacklog.org).

Findings

Clearing a backlog, let alone a significant backlog, is inarguably a daunting task; however, chiefly through legal reform, certain states have been able to greatly diminish or completely eradicate their backlog of SAK. Both North (NC) and South Carolina (SC) are still relatively early in this process; however, NC is further along than its southern counterpart. NC has successfully completed its SAK inventory, implemented a statewide tracking system, begun testing backlogged kits, mandated all new SAKs be submitted for testing, and allocated funding to the proper areas. Since I began this research endeavor, SC has made significant strides to reach comprehensive reform. The May, 2020 ratification of an SAK tracking system will not only require SC jurisdictions to count and report the number of unsubmitted kits in their custody, but also means that survivors will soon be able to know the definitive status of their kits. Although SC must still require mandated testing for incoming SAKs, allocate funding to the proper channels, and release protocol regarding backlog testing to meet all the criteria, being able to understand the scope of the issue is the first step in rectifying the backlog. Neither state has explicit guidelines for victim notification, but each’s tracking system requires the states to face this issue head on as previously stagnant cases are brought to life by backlog testing.

The Life of a Sexual Assault Kit

According to the Rape, Abuse & Incest National Network (RAINN) website, an American is sexually assaulted every 73 seconds (n.d.). “Sexual assault” does not have a formal, legal definition in the United States criminal justice system; however, it is commonly used as an umbrella term for any unwanted sexual act. As with any crime, law enforcement will gather evidence from the scene of the crime during the investigation to establish details. Additionally, in certain instances of sexual assault—as detailed in Appendix B—the victim’s body itself is considered a crime scene which necessitates the collection of a sexual assault kit (SAK). SAKs contain the evidence found on the victim’s person collected by a medical or forensic professional. The examination is conducted with the intention of obtaining viable evidence for forensic testing to be used in a criminal trial against the offender. Technological advancements and a greater understanding of the collection, preservation, and testing of DNA evidence have made SAK testing even more crucial to sexual assault investigations.

The U.S. boasts the most effective forensic practices in the world to crime solving; however, arrest data from 2012-2016 indicates that only 46 of 1,000 sexual assaults will lead to an arrest (Tofte, 2012; RAINN, n.d.). In fact, an estimated 99.5% of sexual offenders will never be incarcerated for their crime. The discrepancy between the criminal justice system’s capability to apprehend sexual offenders and actual arrest rates can largely be attributed to the large portion of backlogged SAKs that have never been forensically examined. In response to this SAK backlog, the U.S. Department of Justice’s National Institute of Justice, or the NIJ, released a publication in 2017 entitled *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*. Although specifics may differ by jurisdiction, the national guidelines detailed the best, evidence-based practices with regards to every step in the life of an SAK.

Manufacturing

In the 2017 report, the National Institute of Justice (NIJ) emphasizes the importance of the standardization of SAKs to reduce variability in laboratory practices and, therefore, streamline analysis. For example, all SAKs should be manufactured to be a similar size and shape and attached to an anonymous, unique identifier to maximize efficiency of storing, tracking, and retrieving kits. Also, each kit should contain a standardized list of materials, as agreed upon by the organizations responsible for collecting, testing, and using SAKs in criminal proceedings. A different NIJ publication, a web poster entitled *Sexual Assault Kits: Using Science to Find Solutions*, states that unused SAKs should at least contain swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers (2019). Additionally, the 2017 NIJ report recommends that the “minimal national standards” for an unused SAK should include identification for type of kit collected (victim or suspect), standardized medical-forensic documents, and identical wording and labeling for sample envelopes (p. 14, 2017). Common procedures performed alongside SAK collection, such as toxicology tests or the use of photography, should also be standardized in a way that they can easily be included in or associated with the sexual assault kit itself. Standardizing the manufacturing of SAKs will help simplify kit processing, thus making testing more efficient.

Collection & Transport

The NIJ’s 2017 guidelines recommend that SAK collection should occur as quickly as possible, but evidence can be potentially collected up to nine days after the assault. The time window for proper evidence collection varies based on the details of the crime. For example, a victim of an oral assault must undergo collection within 24 hours, while an SAK for a vaginal assault can be collected up to five days after penetration. It is important to note that the health and safety of a survivor is always more important than the collection of evidence, so before

beginning the collection process, medical professionals must address any serious injuries or health complaints (NIJ, 2017). The NIJ's report also maintains that, until a kit can be collected, survivors are encouraged to stay in the same clothes he or she were assaulted in—or to place them in a paper bag if necessary—avoid washing their bodies, “drip dry” if they must use the bathroom, and abstain from eating or drinking while waiting for the medical professional to begin the exam (2017). Regardless if the victim did any of the proceeding actions, the NIJ asserts that, depending on the details of the assault, SAK collection may still yield vital evidence.

When a survivor arrives at the hospital for medical treatment, it has often only been days or even hours since the traumatic event. Law enforcement, hospital staff, advocates, and other relevant personnel should be aware of that fact and work to empower the survivor. An important way to empower a survivor is to provide enough information to allow them to make an informed decision regarding the collection of an SAK. The survivor must first decide—a decision that can be changed at any point—whether to press charges against the assailant now, potentially in the future, or never as this answer dictates the steps that follow. Although the collection of an SAK is not required for an investigation, it is strongly recommended by law enforcement for those seeking legal action now or potentially in the future. Survivors who consent to SAK collection can then opt out of any portion of the collection process. If the survivor indicates they want to report to law enforcement at the time of collection, then the SAK is linked to their case number; however, if the survivor is not yet sure, an anonymous SAK may be collected. An anonymous kit is collected in the standard way, but instead of being sent for forensic testing, it is stored in a custodial agency for a pre-determined amount of time or until the survivor makes a definitive decision. U.S. law protects survivors who wish to remain anonymous by prohibiting agencies from revealing their identity at the cost of withholding federal funding (NIJ, 2017). Regardless of

the type of kit collected—if one was collected at all—federal guidelines mandate that under the Violence Against Women Act (VAWA), survivors should not be held financially responsible for the collection of an SAK or accompanying medical care (1994).

After being violated by their attacker, survivors who consent to have an SAK collected are then subject to a highly invasive examination. The NIJ recommends that a Sexual Assault Nurse/Forensic Examiner (SANE or SAFE) or otherwise forensically trained medical professional performs the examination (2017). As of 2017, over 600 American jurisdictions have implemented SANE/SAFE programs and, as a result, have seen improved outcomes in overall health care experience for survivors, quality of forensic evidence, and arrest and conviction rates of offenders (p.15, 2017). SANE/SAFEs undergo extensive training in accordance with the NIJ's 2017 guidelines and are educated on how to conduct a victim-centered, trauma-informed, and comprehensive interview with the survivor prior to SAK collection in addition to the collection process itself. Although law enforcement must conduct their own interview, the SANE's notes are important not only to guide evidence collection, but also to ensure accurate and concise SAK testing. For example, in the case of an oral assault, swabs will be taken from the survivor's mouth, but not her vagina. Another example is if a SANE learns from the forensic interview that the offender licked, kissed, or otherwise touched a specific body part, they will take special precautions to not only swab that area, but also to indicate to laboratory technicians that that specific swab should be tested for DNA evidence. Rural areas that cannot easily utilize SANE/SAFE programs are encouraged to utilize telemedical technology to provide clinician-to-clinician assistance to ensure the proper collection of evidence.

Once the forensic medical exam can begin, survivors must endure an often multi-hour, incredibly uncomfortable process of being closely examined by a medical or forensic

professional as samples are collected from the unorthodox crime scene—the survivor’s body (End the Backlog, n.d.-c.). The 2017 NIJ report details how samples should be collected in general (i.e., the use of personal protective equipment such as gloves and the utilization of single-use tools) and offers techniques for each area of the body in order to maximize evidence collection and minimize evidence contamination. For example, if more than one swab is required for a sample, the two swabs should be used in tandem to minimize sample dilution. Additionally, if the survivor agrees, they will be photographed to document any injury as the images may help legally confirm the criminal charges against the offender (Campbell & Feeney et al., Pierce, Sharma, & Fehler-Cabral, 2016). The NIJ also advises that a buccal (cheek) swab should be taken from the victim for the forensic technician to develop their DNA profile to be used as a standard in testing (2017). Lastly, the survivor should be offered emergency contraception and STI testing/prophylaxis after the exam, but availability may depend on the location of the collection facility (Tofte, 2012).

It is standard practice to obtain a reference sample in the form of a buccal swab from a suspect to be compared with samples in a survivor’s SAK. Additionally, the NIJ 2017 report states that if a suspect is identified within the time frame indicated for evidence collection, then an SAK may also be collected from that individual; however, the extent of the examination is largely based on jurisdiction. Ironically, because men are often the offenders, suspect forensic examinations are almost always less invasive than those that survivors undergo and often only consist of swabs of the scrotum and penis. The NIJ makes it abundantly clear that examiners should take extra precautions to avoid cross-contamination between the survivor’s and suspect’s samples, especially if the medical forensic examiner is the same for both parties (2017). In

general, the NIJ suggests that the individual jurisdictions institute a formal protocol for suspect-related procedures.

The NIJ guidelines outline how an SAK should be handled after collection, temporary storage at the collecting agency, evidence destruction, and every step in between (2017). At the earliest convenience, but within 7 days, law enforcement personnel are expected to transfer the SAK from the collection agency to the custodial agency in accordance with the laws for maintaining chain of custody. The 2017 NIJ report provides detailed instructions for maintaining the integrity of biological evidence, but, in general, samples should be air-dried then stored in a climate-controlled environment (i.e., not too hot, cold, or humid) in a way that protects the samples from UV light, cross-contamination, or other damage (Wentzlof, Kerka, Albert, Sprague, & Maddox., 2018). Notably, the NIJ does not specify a period in which the kits should be submitted for testing, which means it is up to the discretion of individual law enforcement agencies.

Forensic Testing

When possible, DNA testing is performed on biological evidence collected by the examiner either directly via swab during the medical-forensic exam or indirectly via physical evidence associated with the assault (i.e., underwear or bedding). The most common test used by crime laboratories to obtain a DNA profile for CODIS is known as short tandem repeats (STR) testing. Essentially, every person can be identified by the 0.1% of his or her DNA that has a unique pattern of STRs, or small fragments of genetic code, via a digital display of peaks and valleys that correspond with the STR distribution known as a DNA profile (Connery, 2013). If a DNA profile is recovered, then it is entered into the FBI-run Combined DNA Index System (CODIS), the national database of DNA profiles. CODIS consists of an offender index and a

forensic index. The offender index consists of DNA profiles of known criminals who have committed a qualifying offense (i.e., violent felonies, including sexual assault); whereas, the forensic index contains unknown DNA profiles obtained from crime scenes of qualifying offenses (Campbell, Pierce, Sharma, Feeney, & Fehler-Cabral, 2016).

Entering a DNA sample into CODIS is an incredibly useful tool in the prosecution of sexual assault. Often, SAK testing is associated with solving an individual crime through the identification of a perpetrator in the offender index; however, a submission that leads to a CODIS hit can have outcomes other than offender identification or suspect exoneration. Even if a profile does not match a specific person in the offender index, a hit in the forensic index represents a link between one crime and another. The match may then establish a pattern of offending that could be used to help track down the perpetrator and/or solve linked cases that were previously at a standstill. Additionally, CODIS entry helps safeguard against serial offenders, because when the court knows the true scope of an individual's criminal behavior, it can assign a more serious and appropriate conviction or sentence (Tofte, 2012). It is important to realize that CODIS can only reach its full utility potential when every jurisdiction can test all biological evidence and submit corresponding DNA profiles into the system.

An SAK should still be forensically analyzed in the absence of a viable DNA profile because testing the remaining evidence may place an individual at the scene of the crime, bring credence to the survivor's allegations, and/or shed doubt on a suspect's story. Although non-DNA evidence cannot identify an offender in and of itself, hairs, fibers, and other foreign objects collected from the victim may match those collected from a suspect, proving that they had had physical contact with the victim. In fact, along with fingerprints from the scene of the crime, hair analysis is the most common form of physical evidence used in sexual assault investigations. In

some cases, the unique chemical composition of condom lubricants and spermicide can be definitively matched to unused condoms owned by a suspect. Additionally, if the findings of laboratory technicians are congruent with the survivor's description of events, then it helps in corroborating their testimony. For example, if a survivor claims the offender licked their neck and serology testing confirms the presence of saliva in this area, then it is more likely that the survivor's entire account was accurate.

In "he said, she said" cases of sexual assault, DNA evidence has no impact on an investigation. If a suspect admits to having sexual relations, but claims the nature of the incident was consensual, then the presence of offender DNA in an SAK does not definitively prove assault; however, photographs of injuries or the presence of ripped clothing may corroborate the non-consensual nature of the interaction. Another example is when blood is collected in an SAK is serologically tested to prove whether the victim bled because of menstruation or of trauma. Additionally, toxicology testing of the victim's blood may show that the victim was not able to consent due to mind-altering substances—regardless of whether the victim knowingly or unknowingly ingested these substances.

A 2018 article from the National Institute of Justice Journal, entitled *Sexual Assault Cases: Exploring the Importance of Non-DNA Forensic Evidence*, makes it abundantly clear that investigations should be guided by the totality of evidence as opposed to just one area. While DNA evidence and non-DNA evidence alike have the power to direct investigations, television shows and movies have led audiences to believe instances of sexual assault are only legitimized by DNA evidence—a phenomenon known as the "CSI-Effect." According to a 2018 NIJ Journal article, 72% of jurors in sexual assault cases expect to be presented with DNA evidence and are 33 times more likely to convict a defendant with this evidence (Waltke et al., 2018).

Realistically, 67% of total requests for forensic testing involved non-DNA evidence. Although DNA testing may prove essential to an investigation, forensic testing of SAKs expands beyond DNA testing. The insistence on DNA evidence for a conviction is harmful for survivors as it is not always present or probative. In fact, it is estimated that less than half of SAKs with biological evidence result in a CODIS-eligible profile (Waltke et al., 2018). Nowadays, many offenders are aware of forensic science techniques and take extra precautions by, for example, wearing a condom or forcing a survivor to shower before leaving the scene to destroy residual DNA evidence.

Perhaps most importantly, testing SAKs has the power to change a survivor's, and the public's, attitudes towards sexual assault in general, law enforcement, and the prosecution of sex crimes. When an SAK is stored for an unreasonable amount of time, it sends a message that bringing justice to survivors is not a priority and allows rapists to feel that they will not be held accountable for their actions. Victim involvement and credibility are indicators of whether a case will result in a conviction or not (Tofte, 2012). Reporting an instance of sexual assault is the first step of a long, painful process for survivors that is often drawn out by long turnaround times for DNA testing and law enforcement officers who prioritize cases that are either "more important" or easier to close. As a result, many people end up dropping charges against their offenders or not cooperating with law enforcement to spare themselves the traumatic process. If a survivor knows that there is concrete evidence (i.e., a CODIS hit) or an otherwise strong case against their attacker and feels as if law enforcement is taking them seriously, they are more likely to stay involved in the case until a conviction is made (Davis & Wells, 2019).

The United States Sexual Assault Kit Backlog

As technology becomes increasingly sensitive, the amount of evidence that is eligible for forensic testing grows. As a result, many jurisdictions across the United States are experiencing a backlog of untested samples from both active and cold cases. The term “backlogged” refers to evidence that is eligible for forensic testing but has not yet been submitted to a crime laboratory and, therefore, resides at a custodial agency. Evidence becomes backlogged for two principle reasons: the crime lab does not have the capacity to analyze all incoming evidence within a timely manner or law enforcement never submitted it for testing. Although some states have already taken the necessary steps to eradicate the evidence backlog without strict federal guidelines, many are just starting the undertaking or have not acknowledged it at all.

Unfortunately, untested sexual assault kits (SAKs) make up a startling majority of all backlogged evidence. According to the End the Backlog website, as of June 2020, the U.S. has a backlog of approximately 99,957 SAKs—a figure made even more disturbing by the fact that majority of states can only provide an underestimate as their audits have not yet been completed and 11 states and Washington D.C. have not yet reported their totals (End the Backlog, n.d.-d.). Most backlogged SAKs reside in law enforcement agencies and have never been submitted for testing because they predate affordable DNA testing, were prioritized under other types of evidence, or were otherwise subject to personal or public ignorance or indifference (Tofte, 2012). Justice delayed means justice denied because every untested SAK has the potential to bring closure to a survivor and/or the power to exonerate a wrongfully accused person (Tofte, 2012).

Causes

Prioritization of Evidence

Often, SAKs are not shelved for any malicious reason, but rather have been forgotten, lost, or otherwise deemed less important than other evidence (Tofte, 2012). According to a 2009

National Institute of Justice (NIJ) law enforcement survey, SAKs are the least likely of all evidence to be subject to DNA analysis, and evidence related to property crimes are the most likely to be submitted. In addition to the case detectives, prosecutors are also involved in the prioritization process as they ultimately decide which cases are brought to trial. The success of a prosecutor is measured by the amount of cases they win, so they are more likely to promote the testing of kits related to winnable cases. For example, prosecutors may not prioritize SAKs related to non-stranger sexual assaults because they are more difficult to prove in a court of law.

Detective Discretion

According to a national survey of law enforcement agencies, the most commonly cited reason for not submitting a kit to the crime lab was that the officer surmised that DNA evidence would not be useful in solving the crime (Lovrich et al., 2004; Strom & Hickman, 2010). For example, law enforcement officers are less likely to submit SAKs related to a non-stranger assault because they believe that DNA testing would be redundant when the perpetrator has already been identified; however, this assumption bypasses the other benefits of submitting a profile into CODIS and is especially problematic because non-stranger rapists are actually more likely to be repeat offenders—a fact only brought to light after backlog testing. It is important for jurisdictions to issue special training regarding the best practices in prioritizing SAKs to law enforcement officers and prosecutors who make the decision about evidence submission.

Limited Capacity of Crime Labs

Crime laboratories across the United States are being forced to outsource SAK testing to private companies because they are unable to test incoming evidence in a reasonable amount of time. Many labs are underfunded and/or understaffed and, as a result, disproportionately more evidence is submitted to labs than is tested by labs. Often, SAKs are deemed too expensive to

test and other samples are prioritized instead. In fact, SAK testing is considered the most expensive form of DNA testing—approximately \$1,000-1,500 per kit—because it is a complex process that requires highly trained individuals (Davis & Wells, 2019). For majority of kits, analysts are faced with the task of differentiating two or more profiles (i.e., the survivors, the perpetrators, and/or consensual partners) for each sample (Tofte, 2012). It is important to not only expand the capabilities of the lab itself, but also to hire enough technicians to keep up with the growing demand for testing.

Solutions

Audit

The first step to solving any problem is determining the scope of the issue; therefore, all SAK backlog reform starts with an audit to determine how many kits are currently residing in a custodial agency. First, all custodial agencies that may have backlogged SAKs, including all collecting, testing, and law enforcement agencies, must be contacted (NIJ, 201). Many states have legislation or unofficial protocols that require all custodial agencies to count and report the total number of untested kits via a state issued survey. In fact, under the SAFER Act of 2017, federal grant programs can withhold funding from any agency that has not or has no plan to make an inventory of SAKs (Sacco, 2015). In best practice, the final inventory will not only include the number of untested kits, but also the type (i.e., reported, unreported, or unfounded), a timeline of whereabouts, and submission status of each SAK.

Multidisciplinary Team

The best practice for successfully testing an SAK backlog begins with the formation of multidisciplinary team (MDT) operating under an “action-research” model. Instead of fully implementing a hypothesized solution in the beginning stages, the action-research method is a phased approach. Each stage of the process is followed by a reflection on the results and user

reviews to determine what efforts should be continued, modified, or stopped in the subsequent phase (U.S. DOJ NIJ, 2017). The collaboration results in a feedback loop that allows for more efficient and dynamic problem solving. The NIJ's 2017 guidelines for SAK reform suggest that an effective MDT consists of personnel from law enforcement, crime labs, collection agencies, legal services, and victim advocacy centers. The team collaborates to not only detail the scope and nature of a jurisdiction's SAK backlog, but also analyzes the causes and recommends guidelines for participating agencies to follow.

First and foremost, to avoid detrimental errors, the MDT must undergo victim-centered, trauma-informed training regarding interacting with survivors of sexual assault, proper preservation of biological evidence, maintaining the chain of custody, relevant computer programs, and the possibility of experiencing vicarious trauma (U.S. DOJ NIJ, 2017). The teams are also warned against the likelihood of public scrutiny; however, they are reminded that the discovery of a large number of untested SAKs is better than an unspecified backlog, because an audit demonstrates that there are efforts being made to right an injustice. Next, an MDT should define relevant terms and formulate their goals (i.e., a complete audit, implementation of mandated testing, etc.). Every member of the team should have a mutual understanding of specific definitions to avoid any misunderstandings or confusion. For example, the team may define a "backlogged kit" as a collected kit that has not yet been submitted and deem a "submitted kit" as one that has been submitted for testing but not yet tested (U.S. DOJ NIJ, 2017). Additionally, the National Institute of Justice urges jurisdictions to elect a team leader, or project coordinator, to facilitate progress independent of internal and external pressures and promote team unity by implementing team building activities. Mutual respect is key to a successful collaboration, so members should familiarize themselves with the roles and specialties

of the others and, therefore, understand that each person has something unique and beneficial to bring to the team (U.S. DOJ NIJ, 2017).

The NIJ promotes a “forklift” approach in which the team randomly selects a predetermined number of backlogged kits per phase to assess the testing priority for each kit. The number of phases and kits per phase will depend on the total number of untested SAKs, the working capacity of the team, and other jurisdiction-specific factors. For example, the MDT of Wayne County, MI recommends an initial selection of 10 kits for the team to familiarize themselves with the process before moving onto larger phases if necessary. The forklift approach helps avoid backtracking or duplicate efforts through the implementation of a “touch it once” protocol—meaning that once a kit has been selected for review, a final decision will be made to either submit, destroy, or continue to store it; however, a decision may be delayed for the sake of locating necessary information not included with the SAK (U.S. DOJ NIJ, 2017).

The prioritization of SAKs is specific to each jurisdiction, but an MDT should consider the value of each kit based on the characteristics of the biological evidence itself, as well as details regarding the crime, offender, and survivor, while avoiding singling in on just one of these areas. To do so, the team must first review all documentation (i.e., reports from the collection agency and law enforcement) to assess these details. Based on those findings, the team must then evaluate the evidence’s potential to convict or exonerate an individual because of successful DNA testing—namely producing a CODIS eligible profile—or other forensic testing (Davis & Wells, 2019). According to study conducted by Wentzlof et al., the age of a SAK should not be a limiting factor because, “forensic samples should not degrade/inhibit the ability to make a hit” unless the integrity of the sample was compromised by improper storage or cross-contamination (2018).

While potential evidentiary value is an important factor, a case's association with certain types of crime scenes, offenders, and survivors can lead a team to prioritize it over others. Cases involving a particularly violent offender and/or an elderly or ailing victim, are generally favored over others (Davis & Wells, 2019). Additionally, SAKs of crimes beyond the statute of limitations with viable DNA evidence should still be tested and entered into CODIS because there is potential to help grow the database. What is more is that, under federal law, prosecutors can present, "evidence of other crimes, wrongs, or acts, if they have bearing regarding motive, opportunity, intent, preparation, planning, and knowledge in a current pending case" (Campbell & Pierce, et al., 2016, p. 8). For efficiency purposes, kits beyond the statute of limitations should be considered secondary to prosecutable cases (Campbell & Pierce, et al., 2016). The last factor a team often considers is whether a survivor cooperated with law enforcement and if a court will find her credible or not; however, these elements should not be the most important factor determining prioritization. Unfortunately, for the sake of the whole, SAKs connected to "unreliable" survivors are less likely to be prioritized because it will be harder to get a conviction in those instances. For example, defense attorneys can more easily argue the sexual activity was consensual if a survivor is a known drug user, sex worker, or is not actively involved in legal proceedings (Davis & Wells, 2019).

Tracking System

State or local agencies should develop an electronic tracking system for documenting the location and status of a SAK for every step of the process according to the U.S. NIJ's federal recommendations (2017). Tracking systems are an important way to keep all essential parties involved in and informed of the processing of a kit. For one, a tracking system helps ensure the chain of custody is maintained throughout the life of an SAK by documenting the date, time,

location, and individual responsible for each of the five steps (collection, transport, submission, storage, and release) via a unique code assigned to each kit. Additionally, the system gives users access to the specifics of a SAK including a description of the evidence contained in the SAK and analysis results. Ideally, the system would have the ability to notify users of any upcoming or missed due dates based on the jurisdiction's agreed upon timeline. Lastly, access to an overview of a SAK via an online tracking system can empower a survivor by keeping them informed and, therefore, giving them the option to be as involved in the process as they would like.

The NIJ recognizes that while implementing a tracking system can be a pricy undertaking, startup costs are much greater than annual maintenance fees; therefore, as more areas implement SAK reform, jurisdictions will no longer be tasked with creating an entirely new system, but rather modify existing programs from other cities or states. The cost to start and to maintain an SAK tracking system varies on a state by state case. For example, while North Carolina reports an annual investment of \$100,000 to maintain its system, Connecticut operates on a \$10,000 annual budget (Moore, 2020). In addition, although not necessary, an audit can be performed in conjunction with the computerization of records for the creation or updating of a tracking system to streamline the process and save time. If so, the multidisciplinary team will likely want to include technical support personnel to assist with the technical elements of the project as useful tracking system will be accessible online (U.S. DOJ NIJ, 2017).

Victim Notification

There is no doubt that eliminating the backlog of untested SAKs is incredibly beneficial for both individuals and society at large; however, regardless of whether the assault was days, months, years, or decades ago, contacting survivors about their sexual assault has the ability to

reopen a wound or have other traumatic effects. To make an informed decision regarding the “who” and “how” of victim notification, several steps should be taken before contacting survivors at all. First, an MDT should mutually agree upon notification protocol, paying special attention to the suggestions of victim advocate representatives (Davis & Wells, 2019). Even in the case of inculpatory DNA evidence, it is irresponsible for law enforcement to assume every survivor wants to be contacted and involved in their previously cold case. They must remember that for every survivor who is given hope by new activity on their case, there are many others who will be negatively affected by unexpected updates. There are survivors who assumed their kits simply did not yield evidence and will have to cope with the fact that it was, in fact, never tested. There are others who are reminded of the disturbing details of the event they have been trying to forget. As a result, notification protocols must be victim-centered and trauma-informed to avoid subsequent re-traumatization of survivors (Davis & Wells, 2019).

Funding.

The Bureau of Justice Assistance National Sexual Assault Kit Initiative (BJA SAKI) has provided millions of dollars in funding to aid in ending the backlog. Since its launch in 2015, the initiative has provided grants totaling more than \$80 million, and \$43 million was awarded in FY2018 alone (Davis & Wells, 2019). Although undertaking a SAK backlog initiative is expensive, considering one sexual assault costs the state approximately \$100,000-\$200,000 (including material costs for the SAK collection, medical and psychological treatment, legal proceedings, and forensic testing and intangible expenses like pain and suffering the part of primary and secondary survivors and societal fear of victimization) it is well worth it. Davis & Wells demonstrate in their 2019 cost-benefit analysis that funding efforts, “provide a very worthwhile return on investment, especially in light of the serial nature of many rapists” and

CODIS facilitated arrests offset the cost of prosecuting a new crime that would have been committed by a now incarcerated offender (p. 47). In a different financial analysis, Wang & Wein use data from New York City and Detroit to estimate that, on average, spending \$1,641 to test one SAK averts costs for one future sexual assault amounting to \$133,434 (2018). The argument that testing backlogged SAKs is too expensive is unfounded.

Sexual Assault Kit Reform in the Carolinas

North and South Carolina are collectively referred to as “the Carolinas,” as they share a name, sports teams, and, at one point, the same territory. Regardless of the definitive link between the areas, the two states are not uniform as each has their own constitutions, political leaders, and populations. South Carolina (SC) has about half of the population of North Carolina (NC), so it is surprising to find that, in 2017, more sexual assaults were reported in SC—2,604—than in NC—2,039. Accounting for population size, the rate at which sexual assaults occur more than doubles from 20.7 per 100,000 in NC to 52 in SC (SLED, 2017; NC SBI, 2018). Put simply, a person is twice as likely to be sexually assaulted in SC than in NC. From this data alone, it could be argued that sexual assault reform should be more pertinent to SC of the two as it is an issue that disproportionally effects its population; however, in the three years since the collection of this data, NC has made markedly more progress in the installation of comprehensive reform.

The Carolina Public Press, a nonprofit, non-partisan NC news organization, conducted the Seeking Conviction investigative series which analyzed conviction rates for sexual assault using data from 2010-2014. The results of the study showed that, on average, 1 in 4 defendants charged with felony, non-age based sexual assault was convicted of that or a reduced and related charge within 4.5 years of their initial arrest. The Uniform Crime Reporting Data states that, in 2018 alone, 2,336 forcible sexual assaults were reported to law enforcement in North Carolina; however, for the last decade of data (from 2009 to 2018) the average number of sexual assaults per year was 1,996. Knowing that it is estimated that 77% of sexual assaults go unreported and using the Carolina Public Press’s data, on average, approximately 6,500 rapists per year will not be convicted of their crimes in North Carolina alone within 5 years of the attack (RAINN, n.d.). The Seeking Conviction series also revealed that conviction rates vary greatly depending on the

jurisdiction, and 34 of the state's 100 counties had fewer than 4 sexual assault defendants in the 4.5-year period and 11 had a 0% conviction rate. This means that the likelihood that offenders in certain counties will have a higher chance of facing legal repercussions than others. This implies justice is not distributed equally across the state.

According to a statement from the 14th circuit solicitor of SC, Duffie Stone, approximately 32% of defendants charged with sexual assault were convicted of that or a lesser non-sexual charge (Heffernan, 2017). Although a 32% rate may sound more promising than NC's 25% rate, the Carolina Press Study did not count convictions of lower chargers, meaning that both states likely have similarly low rates. Evidence suggests that in both SC and NC, the likelihood of justice strongly depends on which county the attack occurred in and reveals the need for statewide protocols and reform. To quote Ilse Knecht, the Director of Policy and Advocacy at the Joyful Heart Foundation, "It should not depend on your zip code whether or not your rape kit gets tested and how quickly that happens" (Moore, 2019). As is true with the majority of America, a backlog of untested sexual assault kits (SAKs) are, in part, to blame for the abysmal rate of conviction for sexual offenders in the Carolinas.

Backlogged kits are found in the custody of law enforcement and crime laboratories. In SC, most jurisdictions must either submit forensic evidence to the state crime lab, an authorized privately funded lab, or, in some areas, to the local crime lab. Until the early 2000's, the South Carolina Law Enforcement Division (SLED) crime lab was the only non-private facility that received forensic analysis submissions. As a result, many of the smaller departments' laboratories have a nonexistent or relatively small backlog of kits, while the SLED lab houses most of the backlog. On the other hand, in addition to private labs, NC has 3 state labs to which all evidence is submitted. As a result, while both states must assess individual law enforcement

agencies' inventory of unsubmitted SAKs, the SAK backlog in NC's labs is more centralized and easier to account for than in SC.

When compared to SC, NC has completed more of the criteria issued by End the Backlog for SAK testing, as seen in Appendix A. Appendix C also illustrates NC's superior progress as it has adopted more of the National Institute of Justice's 2017 recommendations than SC.

Additionally, Appendix D, a timeline of milestones in the reform efforts in each state, reveals that NC has had much more activity than SC overall.

Inventory

Sexual assault kit (SAK) testing reform in the Carolinas began in a few major cities before expanding to encompass the entire state. As with many other states, sexual assault kit (SAK) reform in North Carolina (NC) began with public outcry and pressure from organizations such as the Accountability Project. According to the End the Backlog snapshot, the Accountability Project's work in NC began in 2014 in the queen city, Charlotte, and uncovered 1,019 backlogged SAKs. Then, in 2015, Durham, NC responded to the project's request and revealed a backlog of 2,686 kits—an underestimate because the Durham Police Department reported that their inventory had not yet been completed. Also, in 2015, the Accountability Project contacted the city of Charleston, South Carolina (SC) and uncovered only 88 untested kits. The relatively small backlog is due to Charleston Police Department's 76% submission rate of all SAKs received between 2006 and 2015.

In 2017, NC SL 2017-57 was ratified which required all NC law enforcement agencies to submit their SAK inventory by January 1, 2018. This law required agencies to not only report the total number of untested kits, but also the portion of kits that are anonymous, linked to resolved cases, the number of kits not submitted because the suspect confessed, and those not submitted because the charges were considered unfounded. It is important to note that not all agencies

complied with the mandated inventory. In fact, 8% of the state's law enforcement agencies had not completed an audit by the due date, and the NC State Crime Lab (NCSCL) 2018 report notes that other states had difficulty achieving 100% participation. The NCSCL reported 15,160 untested kits at the end of 2017. According to the NCSCL's 2018 report, that year there were 7,947 untested kits in the NC SAK tracking system. Knowing that, in the 2018 fiscal year alone, 5,620 backlogged kits were inventoried, it can be surmised that a portion of the reported total in 2017 was either submitted for testing or was linked to a solved or unfounded case.

SC tried to follow NC's lead in February of 2018 through the proposal of SC H. 4837, but the legislation failed to pass. The bill would have required all law enforcement agencies to count the number of untested SAKs in their custody and report that number to South Carolina Law Enforcement Division (SLED) who, in turn, would release a quarterly report detailing its number of submissions. Despite the proposal's failure to pass, SLED took the initiative of revealing the number of backlogged kits itself by issuing a survey to each of SC's 296 law enforcement agencies to self-report their totals. Because responses were not mandatory, as of May of 2019 only 108 agencies responded and the total of untested SAKs was approximately 1,780. In February of 2020, the SLED crime lab reported 1,258 SAKs in line for testing; however, it is unclear whether this estimate includes the May 2019 total or not (Coello & Smith, 2020). The End the Backlog state snapshot estimates the SC backlog as 1,800 kits, but only cites data up to 2019. Regardless of these figures, the current number of untested SAKs in SC is still unknown.

The first major legislation to pass regarding the SAK backlog in SC was spurred along by one individual, Evelyn Mitchell, who partnered with a community organization, the Julie Valentine Center. Mitchell is a survivor of sexual assault who's own SAK was destroyed in

Kentucky before her case went to trial. Now a resident of SC and 40 years later, Mitchell told her story to lawmakers and was integral to getting SC House Bill 3309 passed in May of 2020 (Emerson, 2020). In addition to the creation of a statewide SAK tracking system, the bill, now known as Act no. 134, requires SLED to publish a semiannual report detailing the total number of kits in the system and how many kits—in total and in the semi-annual period—have been uploaded to the system, submitted for testing, been tested, or destroyed in the state and broken down by jurisdiction. Additionally, the SLED report will include the average length of time for SAKs to be submitted for testing and the average for how long a submitted kit takes to be tested. Lastly, the account will include the total number of kits for which testing has not been completed within 6 months and within 1 year of being added to the system. The first report of its kind is due July 31, 2022 and will be due on January 31 and July 31 of each year thereafter.

Tracking System

On June 25, 2018, Governor Roy Cooper signed NC House Bill 945, now known as SL 2018-70 or the Rape Evidence Collection Kit Tracking Act, into legislation requiring the institution of an electronic statewide SAK tracking system and the use of tracking system-compatible sexual assault evidence collection kits (2018). The North Carolina State Crime Lab (NCSCL) was given the task of creating a tracking system in accordance with the new bill and created the NC Sexual Assault Evidence Collection Kit Tracking and Inventory Management System (STIMS), while the Department of Public Safety was expected to create protocol for STIMS participants. Instead of reinventing the wheel, the NCSL altered Idaho's existing tracking system to fit the needs of North Carolinians—saving the state nearly \$2 million in startup costs. The tracking system went live on October 1, 2018 and operates on a \$100,000 per year budget. Eighty-five percent of this total is the salary of one full-time employee who not only manages the system itself, but also is responsible for answering users' questions and provides training for

agencies involved in STIMS. The remaining \$15,000 is spent on system security and server maintenance (Moore, 2020). STIMS is accessible to survivors and approved legal and medical personnel via computer or smart phone. As shown in Appendix E, the user enters the previously provided code attached to a specific SAK to view the status and timeline of the kit. A completed kit would provide the date and agency involved for the creation, collection, submission, testing, and delivery of results to law enforcement, but a survivor must contact law enforcement to know the outcome of analysis.

The 2020 SC tracking bill legislation, or Act No. 134, acknowledges the value of SAK testing and requires all related SC law enforcement, medical, and forensic agencies to take part in a statewide, web-based SAK tracking system created by SLED. All SAKs, whether submitted for forensic testing or not, must be uploaded into the system, and the location and status of each kit must be updated by the involved agencies and available to the survivor. According to the statute, “SLED shall submit a report on the status and plan for launching the system... to the House and Senate Judiciary committees and the governor by January 1, 2021” (2020). As an SAK audit was not legally required before this legislation passed, the bill allows SLED to take a phased approach to implementation, but all relevant agencies have until June 1, 2022 to fully participate in the system.

Backlogged Kits

In the Carolinas, before the ratification of statewide legislation, it was largely up to individual jurisdictions to manage their SAK backlog. The 2018 NC State Crime Lab (NCSCCL) report was released after the inventory mandate, but before the tracking system legislation was passed. The report details the ways that NCSCCL has been increasing testing capacity through 6 main approaches: hiring more forensic technicians, expanding existing labs, the implementation of *Lean Six Sigma*, using a Direct-to-DNA approach, outsourcing backlogged kits, and keeping

law enforcement agencies informed about opportunities for federal funding. It is unclear how many new technicians were hired, but the report specifies that the NC Western Regional Laboratory is being updated to include DNA services. *Lean Six Sigma* is a method of process improvement in which the process is constantly being reevaluated to ensure it working at the highest capacity. The Direct-to-DNA approach is a forensic method in which serology testing is no longer completed before DNA testing as to reduce the time spent on less effective practices in kits where DNA evidence is present. The report also indicates that there are two private labs to which kits older than one year should be submitted to so that the NCSCL can focus solely on newly collected SAKs; however, the NCSCL notes that if all of the 15,000 backlogged SAKs were submitted to private labs, it would cost the state approximately \$10.6 million.

The 2018 NCSCL report also makes 3 recommendations to the General Assembly which should be carried out by a multidisciplinary team: test all backlogged kits, create protocol for testing new kits, and the institution of a statewide tracking system. These three recommendations are reflected in the 2018 Rape Evidence Collection Kit Tracking Act. The Act mandated the establishment of a NC Department of Public Safety (NCDPS) “working group” of representatives from victim advocacy groups, law enforcement, defense attorney, prosecutors, and the NCSCL (NC SL 2018-70). The group was expected to collaborate to develop and distribute an effective plan to eliminate the SAK backlog. Amongst whatever else deemed necessary, the team needed to detail protocols regarding testing as many inventoried kits as possible, mandating testing for all future reported kits, proper storage of biological evidence, prioritization, and punishment for improper evidence tampering. In addition to reinforcing the NCSCL’s recommendations, the Act requires the NC Department of Public Safety (DPS) to publish its own guidelines as created by the working group.

The NC DPS recommends that all previously unsubmitted SAKs should be reviewed by the jurisdiction's multidisciplinary team (MDT) as soon as possible to assess whether it should be outsourced for testing. In many areas, with additional training, preexisting Sexual Assault Response Teams (SARTs) can act as this MDT. The 2018 report suggests that it is best to take a phased approach to testing, specifically a "modified fork-lift" approach; however, the nature of the approach should be determined based on the individual needs of a jurisdiction. The NC Department of Public Safety strongly recommended that all jurisdictions should have started this process no later than May 1, 2019. The review process not only determines which kits should be submitted, but also the order of submission. The NC DPS specifies that the following factors should be considered by the MDT:

- Investigative and evidentiary value for the individual case;
- Potential value for admission as Rule 404(b) evidence to help prove prior bad acts of the same defendant across cases;
- CODIS potential to link profiles and identify possible serial offenders;
- Age and health of victim;
- Potential for victim participation in the investigation and prosecution; and
- Potential for exculpatory value for a criminal suspect, defendant, or convicted person (p.8, 2018).

The DPS only indicates three reasons an SAK should not be submitted for testing—the kit is anonymous, the charges are unfounded, or the kit is associated with a resolved case where the convicted person does not request DNA testing—but recognizes that jurisdictions may determine additional reasons that kit should not be submitted. The NC DPS also strongly recommends that all jurisdiction should implement a CODIS hit follow-up timeline and designate a single point of

contact for communication with CODIS administrators at the NCSCL to make sexual assault investigations as efficient as possible. The 2019 Survivor Act legally requires jurisdictions to follow the 2018 NC DPS recommendations. Additionally, the Survivor Act ensures that the NC Coalition Against Sexual Assault (NCCASA), the NC Victims Assistance Network, and conference of District Attorneys to develop a training program regarding victim interaction, kit collection, and SAK storage, tracking, and testing for the law enforcement and the multidisciplinary team.

In March of 2020, the SC SLED crime lab reported to the Post and Courier that for every 100 SAKs processed in a year, 129 additional kits are submitted and not able to be processed which reveals one of the main reasons an SAK backlog exists across the state (Coello & Smith, 2020). Although a backlog exists, there have been no formal, SC-specific guidelines for eradicating it. As of June 2020, SC jurisdictions are responsible for testing (or not testing) backlogged kits without formal guidance; however, a statement regarding responses to the SLED inventory survey from Major Todd Hughey, the SLED crime lab director, regarding individual jurisdictions beginning the process before it is required, “We’re seeing an increase in submissions monthly and yearly. So we know that the survey had its intended purpose of spurring interest and accountability.” According to Rachel Grant, the DNA Technical Leader at the Richland County Sheriff’s Department, the RCSD—in accordance with the U.S. National Institute of Justice’s guidelines—created their own multidisciplinary team to audit their SAK backlog and review each kit. Beginning in July of 2019, the team was able to test their 444 kits backlog over the course of 6 months through a prioritization process based in an in-depth review of the documents associated with each kit. Grant highlighted that the RCSD’s motivation was not only a reaction to the national outcry for SAK reform, but also in anticipation of ratification of

the SAK tracking system bill. Additionally, an unnamed spokesperson for the Greenville Police Department—the SC jurisdiction with the largest backlog—describes a process like the RCPD’s. They explain how each kit is subject to review by law enforcement and prosecutors before it can be destroyed and emphasized the fact that the GPD mandates testing for all new SAKs. These examples lend credence to the idea that once jurisdictions begin to be held accountable for their SAK backlog, then they will begin to act; however, definitive statewide legislation could ensure that *each* jurisdiction participates in SAK reform.

To safeguard against the destruction of unsubmitted SAKs, in NC, if after reasonable efforts an SAK cannot be produced, either due to prior destruction, contamination, or misplacement, a hearing may be required to determine whether a miscarriage of justice has occurred. Furthermore, if an individual is found to have intentionally and maliciously incinerated, hidden, contaminated, or otherwise compromised pertinent evidence, then he or she will be charged with either a Class H or I felony (see Appendix F), based on the seriousness of case (§ 15A-268, 2007). Upon an instance of a missing SAK in SC, under the Act No. 413 §17-28, the court-appointed custodian must attempt to find it with help from law enforcement before producing all associated records, notes, and other documentation as a substitute (2008). Like North Carolina, the intentional, malicious, and unapproved destruction or hiding of evidence is punishable by law; however, this crime is only a misdemeanor and a first offense punished by \$1000 fine and any subsequent charge results in a \$5000 fine and/or up to 1 year of prison time (see Appendix G).

New Kits

The 2018 NC State Crime Lab (NCSCL) report indicates that all new SAKs are created by a Department of Public Safety (DPS) contracted vendor in accordance with the lab’s specifications based in the best forensic practices and in consultation with the medical-forensic

examiners. Additionally, all SAKs must be collected by a Sexual Assault Nurse Examiner (SANE) trained in accordance with NCGS § 90-171.38. The 2018 DPS working group specifies that all newly collected SAKs should be in the custody of law enforcement within 7 days of collection, submitted for testing (or to the Department of Public Safety if anonymous) within 45, and forensically analyzed as soon as the laboratory is able. The 2019 Survivor Act solidified this timeline into law and requires the collection agency to contact law enforcement within 24 hours of collection. The decision to not test a kit should only be made by a prosecutor as guided by the investigative agency and should follow the same recommendations by the DPS as backlogged SAKs.

The SC Attorney General released a report in 2015 entitled *Sexual Assault Protocol for the Investigation, Prosecution, and Judgement of Sexual Assault*. The report takes a victim-centered, trauma informed approach to SAK collection and testing as well as detailing proper investigative techniques. Aside from this document, SC currently does not have any other publicly accessible guidelines for SAK testing nor for eliminating an SAK backlog. Additionally, there is no legislation requiring jurisdictions to follow the Attorney General's protocol. SC does not require mandated testing of new SAKs and SAK submission is still largely based on detective discretion.

The largest crime lab in South Carolina, the South Carolina Law Enforcement Division (SLED), submits new kits for testing based on detective discretion. In a similar way to how multidisciplinary teams discern priority for testing backlogged kits, according to the public information officer, Tommy Crosby, law enforcement personnel consider several factors to determine what order kits will be sent for testing. SLED's multidisciplinary team is less structured than that the Richland County Sheriff's Department, and generally includes the law

enforcement officers assigned to the case and the solicitor (aka the district attorney). SLED is clear in the fact that every victim of sexual assault is important to them, but limited resources require officers to make decisions based on which matters are most pressing (regardless of whether a kit is new or backlogged). Kits associated with stranger-perpetrated sexual assault or victims who are juveniles or endangered adults are more likely to be prioritized because the offenders of these crimes pose a larger threat to public safety.

Victim Rights

Although both Carolinas now have (or will soon have) a SAK tracking system in place that is accessible to survivors, it is not clear whether survivors will be notified when their kit is uploaded into the system; therefore, only survivors who have been informed about the system are given the right to be informed. The 2018 NC Survivor Act specifically states that law enforcement and the SAK testing working group should have specialized training regarding contacting victims but does not specify when this contact should occur. Until the tracking system is fully instated in SC, the only way for survivors to stay informed is by directly contacting the investigators or prosecutors assigned to their case. It appears that both states are working towards assessing the scope of the issue and taking definitive steps to eradicate the backlog in a victim-centered approach before directly involving the victims themselves.

Funding

Appendix D reveals the discrepancy between North and South Carolina's reformation efforts as the NC timeline consists of many more points of interest than SC. A large portion of activity in NC is the awarding federal grants and the proper allocation of state funds. Starting in 2015, the Bureau of Justice Assistance began providing large grants to multiple cities across NC. In addition to the several million dollars provided by the BJA, the state of NC also received \$2 million dollars from the U.S. Department of Justice Sexual Assault Kit Initiative and several

hundred thousand from the Manhattan District Attorney's office to continue testing efforts. As cities made marked progress in documenting and diminishing their backlogs—or create plans to do so—funding agencies provided more money to meet the specific demands of the area. For example, according to the End the Backlog NC snapshot, the City of Greenville Police Department was given approximate \$200,000 to test the 312 documented untested kits, and the city of Charlotte was awarded nearly \$500,000 to “collect lawfully owed DNA from convicted offenders.” Additionally, the 2019 Survivor Act ensure that SAK testing is properly funded through the 2021 by allocating \$3 million of the state's budget to testing in the 2019-2020 fiscal year and again in the 2020-2021 fiscal year.

Funding is less abundant in SC; however, if the state follows a similar trend to NC, then grants will be awarded as jurisdictions finish their audit and begin the testing process. Money has been allocated to expand the South Carolina Law Enforcement Division crime lab and to finance the salaries of more forensic technicians (Holland, 2018). In a similar way, the SC Greenville Police Department crime lab has also announced plans to hire two new DNA analysts to increase testing efficiency (Moore, 2019).

Discussion

Every backlogged kit represents a victim who the criminal justice system has failed, because sexual assault kit testing (SAK) may be the difference between an offender getting away with their crime or being punished. Federal and state legislations across the United States have started to take the necessary steps to ensure the integrity of an SAK, such as requiring a trained professional to conduct the collection process, releasing guidelines about kit storage, and having strict protocol regarding the chain of custody. Unfortunately, in many jurisdictions, government mandates only involve proper collection and storage methods which are only the first steps in the life of an SAK. Testing even one SAK may solve the related investigation, bring life to a cold case, or identify a serial offender. It is vital that SAKs must not only be collected and stored properly, but also tested promptly as to give law enforcement insight into the case as early as possible in the investigation.

No one wants to undergo SAK collection. It is an incredibly invasive and uncomfortable process that inherently follows an instance of trauma. If survivors knew at the hospital that their SAK would not be used—either for years or never at all—to catch their offender, then they would be less likely to consent to have one collected. Insufficient funding in the face of a forensic technology boom, the bias and misconceptions of law enforcement officers, and the general attitude towards sexual assault cases have resulted in hundreds of thousands of sexual assault kits (SAKs) being shelved without a complete investigation. Although not every SAK will contain valuable evidence, the actors in the criminal justice system must assume that every kit contains probative value. For kits with viable DNA-evidence, DNA profiles have the power to not only solve one specific case, but also could potentially identify a serial offender. Evidence contained in an SAK may also corroborate a survivor or witness's statements, discount

statements made by a suspect, definitively show that a victim could not have consented, or exonerate the wrongfully accused.

Within the last decade, both North and South Carolinian leaders have acknowledged the issue by passing legislation that helps alleviate the SAK backlog. Reformation efforts in both states seemed to begin with outside pressure from organizations like End the Backlog's Accountability Project, and, when the true scope of the problem was revealed, continued in order to not only seek justice for victims of sexual assault, but also to mend the deficiencies in the capacities of forensic testing facilities. NC has almost completed its statewide audit of backlogged kits through the implementation of a tracking system and has properly allocated funding for testing both newly collected and backlogged SAKs. Since SC officials mandated the creation of a SAK tracking system, it is likely that it will catch up to its northern counterpart's reform efforts within the next few years. In addition to laws, agencies in both the Carolinas have released detailed protocol regarding the processing and testing of SAKs; however, these recommendations should be codified into law to ensure the integrity of SAKs statewide.

While I have explained the causes and potential solutions to the SAK backlog both on a federal level and for both NC and SC, further research should be done by interviewing more personnel of the various agencies involved in the issue, as was my original intention. The benefit of speaking to these individuals is having a first-hand perspective on the issue and a greater understanding of the causes and solutions to the problem. Additionally, these individuals could provide further insight into jurisdiction/department specific information, such as efforts made, challenges faced, and plans for change. Responses from different jurisdictions and departments of those jurisdictions could be compared to assess whether there is a uniform understanding of

the scope, causes, and solutions to the SAK backlog. This comparison would potentially reveal which parts of the system are halting the testing process.

Furthermore, the research shows how the jurisdiction in which a sexual assault occurs highly impacts the likelihood of an offender being caught. While my research focused more on the federal and state levels of reform, the next step should be focusing on individual jurisdictions reactions to the legislation and the issue at large. Special attention should be paid to underserved communities—such as the lower class, racial minorities, and disabled individuals—to analyze why these populations are less likely to report to law enforcement and what other factors create the disparity of justice. Additionally, further research should be conducted to determine why certain counties are falling behind in SAK testing reform compared to the rest of the state. For example, why did approximately 40 NC counties not respond to the inventory survey by the specified due date, according to the 2017 NC Crime Lab Report? While not every NC and SC county can be studied, counties could be grouped by population, average income, and crime rates to fully understand this issue.

Conclusion

As highlighted by the Pledge of Allegiance, the United States prides itself on being a country where there is “liberty and justice for all;” however, the sexual assault kit (SAK) backlog exposes the fact that the nation fails to deliver on this promise. Many people inside and outside of the justice system are unaware of the severity of the issue and, therefore, make no effort to enact SAK testing reform. Although it may reflect poorly on the local, state, and federal government, political officials owe it to inform their constituents and to promote efforts to identify, assess, and properly utilize backlogged and incoming SAKs. The public has the right to be informed about the backlog as they have the power to enact change through voting, lobbying, and education. Blaming one specific department would be foolish as it is clearly a systemic issue caused by the influx of evidence eligible for testing and made worse by biases surrounding sexual assault. It is vitally important that those who comprise the criminal justice system (i.e., detectives, lawyers, advocates, etc.) to work together to make SAK testing more efficient. If the U.S. acknowledges and appropriately handles the SAK backlog, then rates of sexual assault across the nation would drop, conviction rates would increase, and the country would be one step closer to truly providing justice for all.

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Appendix A

End the Backlog Reform Criterion	North Carolina	South Carolina
Completion of a Statewide Annual Inventory	Yes	In progress
Implementation of a Statewide Tracking System	Yes	In progress
Mandating Testing for All Backlogged Kits	Yes	No
Mandating Testing for All Incoming Kits	In progress	In progress
Granting Survivors the Right to be Informed	Yes	In progress
Appropriate State Funding for Reform	Yes	In progress

Appendix B

United States
<i>Legal Term Definitions (18 U.S.C. § 2246, 2020)</i>
Official Detention: In the custody of a federal officer or employee
Prison: A correctional, detention, or penal facility
Sexual Act: Any one or more of the following <ol style="list-style-type: none">1. Contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight2. Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus3. The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person4. The intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person
Sexual Contact: The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person
State: Under the jurisdiction of the United States

Crime Classifications & Punishment

Sentencing Guidelines based on Federal Offense Classifications (18 U.S.C §§ 3559, 3561, 3571, 2020)

The sentence range is a guideline. Any distinction made in the statute (i.e. a different maximum penalty) can override these ranges. A defendant sentenced to imprisonment will not receive probation, but if sentenced to either imprisonment, probation, or neither may accrue a fine.

Class A Felony:

- *Imprisonment:* Life or a death sentence
- *Probation:* Not an option
- *Fine:* Up to \$250,000

Class B Felony:

- *Imprisonment:* 25 years or more
- *Probation:* Not an option
- *Fine:* Up to \$250,000

Class C Felony:

- *Imprisonment:* More than 10 years, but less than 25 years
- *Probation:* More than 1 year, but less than 5 years
- *Fine:* Up to \$250,000

Class D Felony:

- *Imprisonment:* More than 5 years, but less than 10 years
- *Probation:* More than 1 year, but less than 5 years
- *Fine:* Up to \$250,000

Class E:

- *Imprisonment:* More than 1 years, but less than 5 years
- *Probation:* Less than 5 years
- *Fine:* Up to \$250,000

Class A Misdemeanor: Imprisonment for more than 6 months, but less than 1 year

- *Imprisonment:* More than 6 months, but less than 1 year
- *Probation:* Up to 5 years
- *Fine:* Resulting in death: up to \$250,000; Not resulting in death: up to \$100,000

Class B Misdemeanor:

- *Imprisonment:* More than 30 days, but less than 6 months
- *Probation:* Up to 5 years
- *Fine:* Resulting in death: up to \$250,000; Not resulting in death: up to \$5,000

Class C Misdemeanor: Imprisonment for more than 5 days, but less than 30

- *Imprisonment:* More than 30 days, but less than 6 months
- *Probation:* Up to 5 years
- *Fine:* Resulting in death: up to \$250,000; Not resulting in death: up to \$5,000

Infraction:

- *Imprisonment:* 0-5 days
- *Probation:* Up to 1 year
- *Fine:* Up to \$5,000

Federal Sentencing Guidelines

Offenses Resulting in Death (18 U.S.C. § 2245)

A person who, in the course of engaging in sexual abuse of any nature, murders an individual, shall be punished by death or imprisoned for any term of years or for life

Seven Factors for Consideration at Sentencing (18 U.S.C § 3559, 2020)

- The nature and circumstances of the offense and the history and characteristics of the defendant
- The need for the sentence imposed to reflect the four primary purposes of sentencing, i.e., retribution, deterrence, incapacitation, and rehabilitation
- The kinds of sentences available (e.g., whether probation is prohibited or a mandatory minimum term of imprisonment is required by statute)
- The sentencing range established through application of the sentencing guidelines and the types of sentences available under the guidelines
- Any relevant “policy statements” promulgated by the Commission
- The need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct
- The need to provide restitution to any victims of the offense

Using a Sentencing Table (Congressional Research Service, 2015)

The following federal guidelines are not mandatory, but a judge must explain his or her reasoning if the sentence does not fall within the guideline range.

The guidelines provide federal offense levels for most federal crimes where 1 corresponds to the least serious crimes and 43 is the most serious.

A crime has a base offense level but may be altered by specific offense characteristics and/or adjustments. Specific offense characteristics, what occurred *during* the crime, vary by offense and can either increase or decrease the base offense level based on mitigating or aggravating circumstances. Adjustments, circumstances *after* the commission of a crime, may also increase or decrease the offense level based on aggravating or mitigating factors.

Every defendant is given 1 of 6 possible criminal history categories. The intersection of the final offense level and criminal history category determines guideline range. These cells are also grouped into zones based on sentencing range. Zones are labeled A (least serious zone) through D (most serious zone)

Example Sentencing Guidelines:

Sexual Abuse of an Adult* - Zone D

Offense Level	Criminal History Category					
	I	II	III	IV	V	VI
30	97-121 months	108-135 months	121-151 months	135-168 months	151-188 months	168-210 months

Aggravated Sexual Abuse of an Adult- Zone D

Offense Level	I	II	III	IV	V	VI
38	235-293 months	262-327 months	292-365 months	324-405 months	360 months to life	360 months to life

* An adult who understands the nature of the conduct and is physically capable of declining or communicating unwillingness

Mandatory Restitution for All Victims of Sexual Abuse (18 U.S.C § 2248, 2020)

This section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court. For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for:

- Medical services relating to physical, psychiatric, or psychological care
- Physical and occupational therapy or rehabilitation
- Necessary transportation, temporary housing, and childcare expenses
- Lost income
- Attorneys' fees, plus any costs incurred in obtaining a civil protection order
- Any other losses suffered by the victim as a proximate result of the offense

The issuance of a restitution order under this section is mandatory. A court may not decline to issue an order under this section because of:

- The economic circumstances of the defendant
- The fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

<p align="center"><i>Sex Crime Legislation (2020)</i> <i>Crimes for which an SAK is collected (if possible)</i></p>	
<u>Crime Details</u>	<u>Definition</u>
<p><i>Name:</i> Aggravated Sexual Abuse</p> <p><i>Statutory Citation:</i> 18 U.S.C § 2241</p> <p><i>Special Sentencing:</i> Imprisonment for any terms of years or life, or both and fined</p>	<p><u>By Force or Threat</u> A person knowingly causes another person to engage in a sexual act or attempts to do so:</p> <ul style="list-style-type: none"> • By using force against that other person <p align="center">OR</p> <ul style="list-style-type: none"> • By threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; <p><u>By Other Means</u> A person engages or attempts to engage in a sexual act with another person by:</p> <ul style="list-style-type: none"> • Rendering another person unconscious <p align="center">OR</p> <ul style="list-style-type: none"> • Administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct
<p><i>Name:</i> Aggravated Sexual Abuse of a Child</p> <p><i>Statutory Citation:</i> 18 U.S.C § 2241</p> <p><i>Special Sentencing:</i></p> <ul style="list-style-type: none"> • Imprisonment for at least 30 years and fined • If the defendant has been convicted of another federal sexual abuse crime, then they must receive the death penalty or life imprisonment and fined 	<p>A person who crosses a State law with the intent to engage in a sexual act with a person who has not attained the age of 12 years</p> <p align="center">OR</p> <p>A person who engages or attempts to engage in aggravated sexual abused with a person who:</p> <ul style="list-style-type: none"> • Has not attained the age of 12 years • Has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging) <p><u>State of Mind Proof Requirement</u> The Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years</p>

<p><i>Name:</i> Sexual Abuse</p> <p><i>Statutory Citation:</i> 18 U.S.C § 2242</p> <p><i>Special Sentencing:</i> Imprisonment for any term of years or for life and fined</p>	<p>A person who knowingly:</p> <ul style="list-style-type: none"> • Causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping) <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Engages in a sexual act with another person if that other person is: <ul style="list-style-type: none"> ○ Incapable of appraising the nature of the conduct ○ Physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act
<p><i>Name:</i> Sexual Abuse of a Minor</p> <p><i>Statutory Citation:</i> 18 U.S.C § 2243</p> <p><i>Special Sentencing:</i> Imprisonment for up to 15 years and/or fined</p> <p><i>Permitted Defenses:</i></p> <ul style="list-style-type: none"> • The defendant must that the defendant reasonably believed that the other person had attained the age of 16 years • The persons engaging in the sexual act were at that time married to each other 	<p>A person who knowingly engages or attempts to engage in a sexual act with another person who:</p> <ul style="list-style-type: none"> • Has attained the age of 12 years but has not attained the age of 16 years • Is at least four years younger than the person so engaging <p>The Government need not prove that the defendant knew:</p> <ul style="list-style-type: none"> • The age of the other person engaging in the sexual act • The requisite age difference existed between the persons so engaging
<p><i>Name:</i> Sexual Abuse of a Ward</p> <p><i>Statutory Citation:</i> 18 U.S.C § 2243</p> <p><i>Special Sentencing:</i> Imprisonment for up to 15 years and/or fined</p> <p><i>Permitted Defenses:</i> The persons engaging in the sexual act were at that time married to each other</p>	<p>A person who knowingly engages or attempts to engage in a sexual act with another person who is:</p> <ul style="list-style-type: none"> • In official detention • Under the custodial, supervisory, or disciplinary authority of the person so engaging <p>The Government need not prove that the defendant knew:</p> <ul style="list-style-type: none"> • The age of the other person engaging in the sexual act <p>The requisite age difference existed between the persons so engaging</p>

<p><i>Name:</i> Abusive Sexual Contact</p> <p><i>Statutory Citation:</i> 18 U.S.C § 2244</p> <p><i>Special Sentencing:</i> Imprisonment for up to 2 years and/or fined</p>	<p>A person who knowingly engages or attempts to engage in sexual contact with another person without that other person's permission</p>
<p><i>Name:</i> Sexual Conduct in Circumstances of Punishable Sexual Acts</p> <p><i>Statutory Citation:</i> 18 U.S.C § 2244</p> <p><i>Special Sentencing:</i> In the circumstances of:</p> <ul style="list-style-type: none"> • Aggravated Sexual Abuse: imprisonment for up to 10 years and/or fined • Sexual Abuse: imprisonment for up to 3 years and/or fined • Sexual Abuse of a Minor/Ward: imprisonment for up to 2 years and/or fined • Aggravated Sexual Abuse of a Child: imprisonment for any term of years of life and fined 	<p>A person who knowingly engages or attempts to engage in sexual contact with another person where, if the sexual contact been a sexual act, the individual would be responsible for a different crime of sexual abuse.</p>
<p><i>Name:</i> Abusive Sexual Contact with Young Children in Circumstances of Punishable Sexual Acts</p> <p><i>Statutory Citation:</i> 18 U.S.C § 2244</p> <p><i>Special Sentencing:</i> The double the maximum term of imprisonment for Abusive Sexual Conduct of an Adult Under the Circumstances of Punishable Sexual Acts</p>	<p>A person who knowingly engages or attempts to engage in sexual contact with an individual under the age of 12, with the exception of Aggravate Sexual Abuse of a Child.</p>

Appendix C

Multidisciplinary Approach	NIJ 2017 Recommendation	North Carolina	South Carolina
	A collaborative multidisciplinary approach should be implemented for sexual assault cases.	Yes H.B. 945	Recommended Attorney General (AG) Protocol
	Sexual assault responders should use a victim-centered and trauma-informed approach when engaging with victims of sexual assault.	Yes Survivor Act	Recommended AG Protocol
	Agencies should collaborate and involve victim advocates early in the process to create a more victim-centered approach to the criminal justice process.	Yes H.B. 945	Recommended AG Protocol
	The multidisciplinary approach should seek out and include voices from underserved or vulnerable populations in the community's response to sexual assault cases.	Recommended NC DOJ	Recommended AG Protocol

The Medical-Forensic Exam and Sexual Assault Evidence Collection	NIJ 2017 Recommendation	North Carolina	South Carolina
	Establish minimum standards for a national sexual assault kit; until that time, states and territories should create a standardized SAK for sexual assault cases that addresses the minimum criteria in the National Adults/Adolescents Protocol.	No	No
	The medical-forensic exam should be performed by a health care professional specially trained in the collection of evidence relating to sexual assault cases such as a sexual assault nurse examiner or other appropriately trained medical professional.	Yes NCGS § 90-171.38	Yes AG Protocol
	Guided by victim history, sexual assault samples should be collected from any victim seeking care as soon as possible and up to 5 days or longer post-assault. Regardless of the time frame, reimbursement should be provided for the medical-forensic exam.	Yes H.B. 1342	Partially Smaller time window
	Examiners should concentrate the collection of evidentiary samples using no more than two swabs per collection are so as not to dilute the biological sample.	Recommended North Carolina State Crime Lab (NCSCL) Report	Recommended AG Protocol
	Sample collection should be an option for all sexual assault victims who present for a medical-forensic exam, including those who choose not to report or report anonymously.	Yes	Yes
	Suspect sample collection should ideally be completed by a medical-forensic examiners or appropriately trained individual.	Recommended NCSCL Report	Recommended AG Protocol
	Due to increased sensitivity in DNA technologies, masks and gloves should be used by all medical-forensic care providers and others in the collection and packaging of evidence.	Yes NCSCL Report	Yes AG Protocol
	Policies for medical-forensic record retention should be created in accordance with statues of limitations and other criminal justice needs rather than with traditional parameters for medical record keeping, storage, retention, and destruction.	N/A	N/A

Transparency and Accountability of Law Enforcement for SAKs	NIJ 2017 Recommendation	North Carolina	South Carolina
	Law enforcement agencies and laboratories should partner to use one evidence tracking system.	Yes H.B. 945	Yes Act No. 134
	The federal government should develop an Electronic Evidence Exchange Standard for the data standards associated with physical forensic evidence.	N/A	N/A
	SAKs should be received by the local law enforcement agency from the hospital or clinic as soon as possible, ideally, no later than 3 business days from the collection of the kit, or as specified by statute.	Yes Survivor Act	No
	Law enforcement agencies should submit the SAK to the laboratory for analysis as soon as possible, ideally, no later than 7 business days from the collection of the SAK, or as specified by statute.	Yes Survivor Act	No
	Law enforcement or laboratories should be responsible for the long-term storage of all SAKs, unless applicable law provides otherwise.	Yes Survivor Act	No
	A comprehensive inventory should be conducted to determine the number, status, location, and individual descriptive information (e.g., unique kit identifier, date collected) for all SAKs.	Yes H.B. 945	Yes Act No. 134
	Law enforcement agencies should perform an annual audit verifying that all SAKs in the property room are present and in their specified location.	Yes H.B. 945	Yes Act No. 134

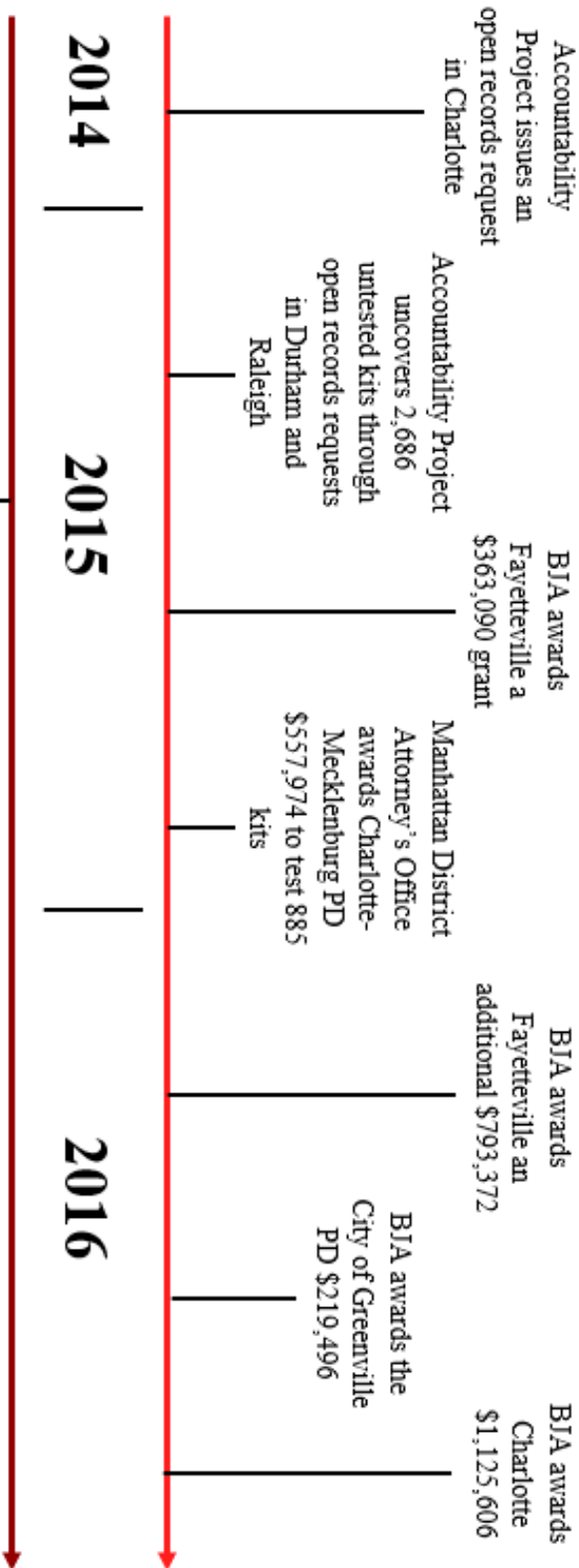
Investigative Considerations	All SAKs that the victim has consented to reporting to law enforcement should be submitted to the laboratory for DNA analysis.	Yes Survivor Act	No
	Law enforcement agencies should establish a system of accountability to ensure the timely follow-up on CODIS hits.	Yes Survivor Act	Yes H.B. 3309
	All law enforcement personnel involved in sexual assault investigations should receive training in the neurobiology of trauma and specialized skills for interviewing sexual assault victims.	Yes Survivor Act	Recommended AG Protocol
	Law enforcement agencies should implement electronic records management systems that incorporate investigative workflows to improve case investigations and communication.	N/A	N/A

Post-Analysis Communication and Policy Considerations	NIJ 2017 Recommendation	North Carolina	South Carolina
	With the goal of generating a CODIS-eligible DNA profile, if a laboratory is unable to obtain an autosomal CODIS-eligible DNA profile, the laboratory should evaluate the case to determine if any other DNA-typing results could be used for investigative purposes.	Recommended NC DOJ	Recommended AG Protocol
	Forensic laboratories should have an evidence submission policy/protocol that includes prioritization of evidentiary items.	Recommended NC DOJ	No
	Laboratories should consider the volume of sexual assault cases and use business process improvement tools to review their input/output, identify where bottlenecks occur, and determine if a high-throughput approach to processing will achieve efficiencies.	Recommended NC DOJ	N/A
	Laboratories should consider changing the order of processing the evidence by going <i>Direct to DNA</i> and then, only if needed, proceed to serology.	Yes NC DOJ	N/A
	Laboratories should consider incorporating robotics and/or automation at each step of the DNA process for the most efficient high-throughput approach.	N/A	N/A
	Laboratories should consider the use of standardized reporting templates, a paperless system, and specialized software to assist in the interpretation of DNA mixtures, to streamline interpretation and reporting of DNA results.	N/A	N/A

Post-Analysis Communication and Policy Considerations	NIJ 2017 Recommendation	North Carolina	South Carolina
	Jurisdictions should have a victim notification protocol for informing victims of the status of their sexual assault cases, including cases where SAKs are analyzed after many years.	Recommended NC DOJ	No
	Jurisdictions that do not have evidence retention laws should adopt biological evidence retention policies that are victim centered and preserve evidence from uncharged or unsolved reported cases for 50 years or the length of the statute of limitations, whichever is greater.	Yes G.S. 15A-268	No
	Unreported SAKs should be retained for at least the statute of limitations or a maximum of 20 years.	Yes G.S. 143 B-601(13)	Recommended AG Protocol
	States that have not already done so should consider eliminating the statute of limitations for sexual assaults	Yes	No S.C. Code § 16-3-615
	Jurisdictions should develop a communication strategy to increase transparency and accountability to stakeholders within their communities regarding the response to sexual violence.	Yes H.B. 945	Recommended AG Protocol
	Mandatory training for those responding to sexual assault should be incorporated into every agency's strategic plan.	Yes Survivor Act	Recommended AG Protocol

Appendix D

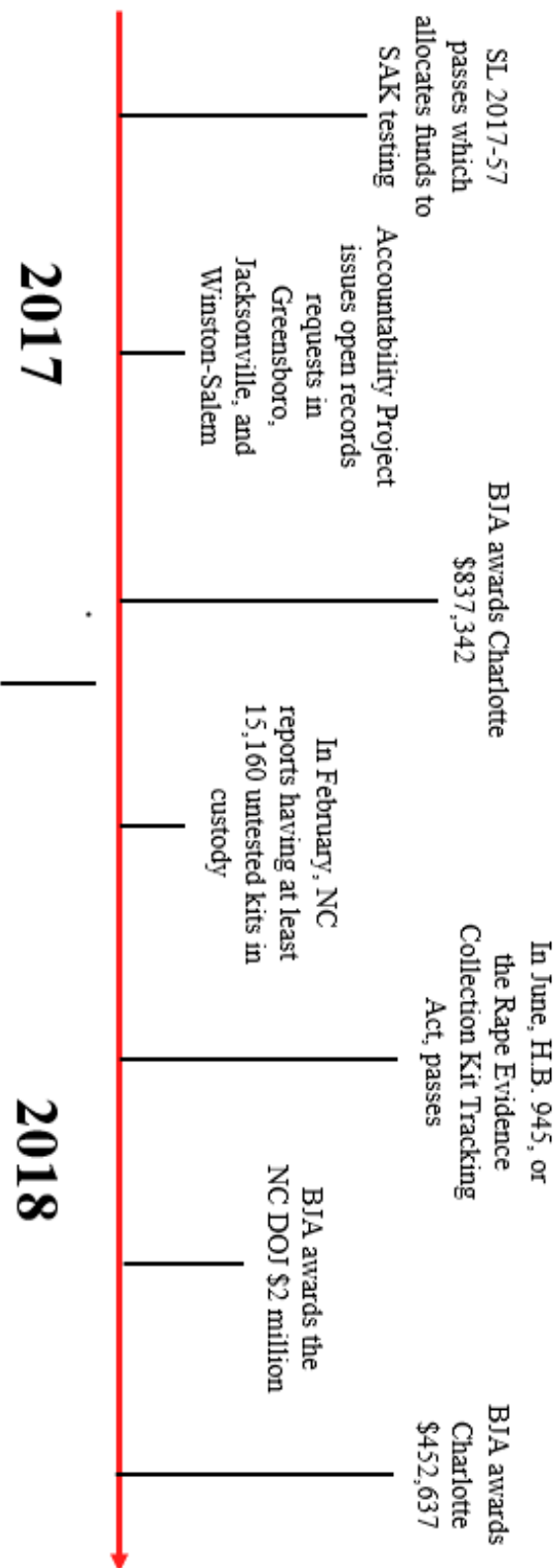
North Carolina



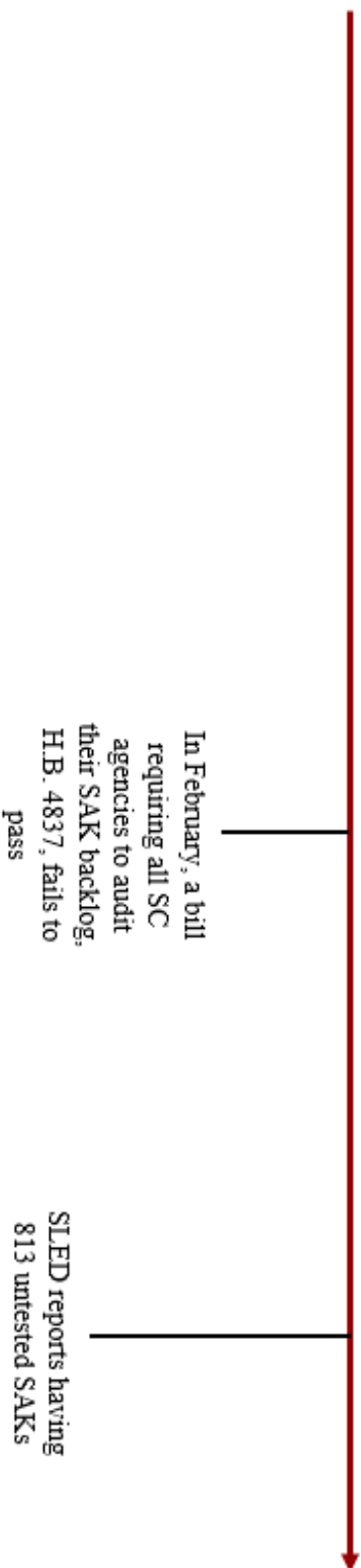
South Carolina

Accountability Project issues an open records request in Charleston

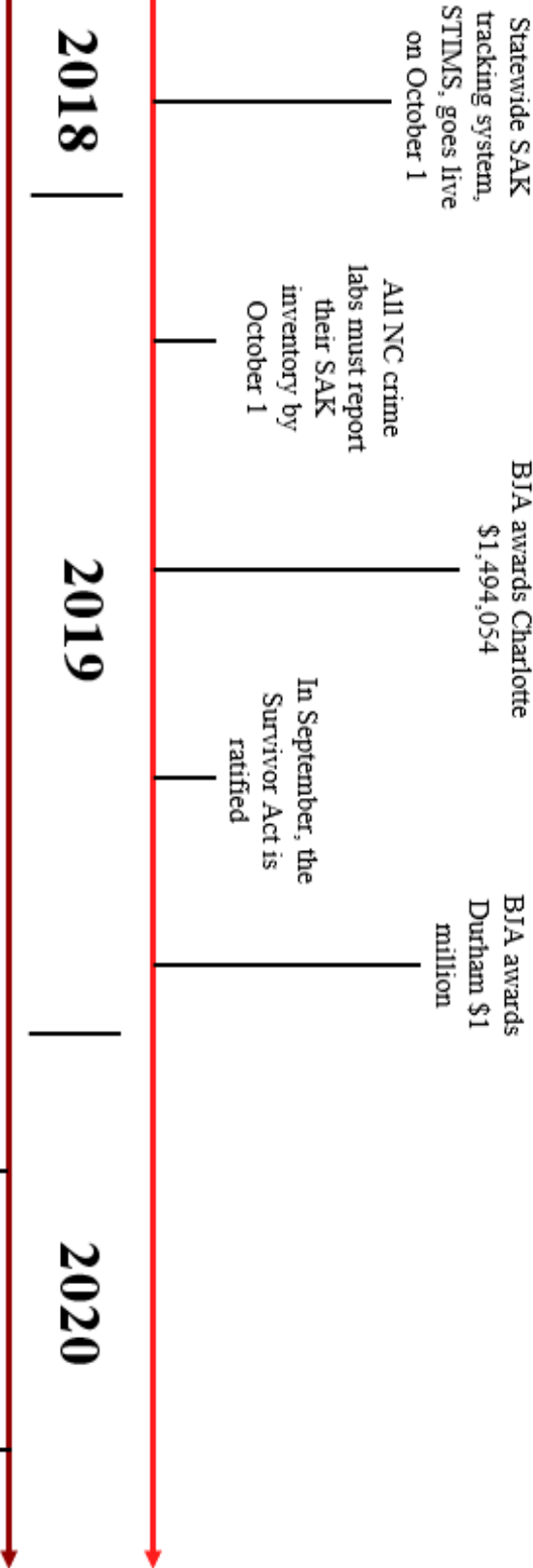
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South Carolina

Appendix E

Sexual Assault Kit Tracking

Web Portal

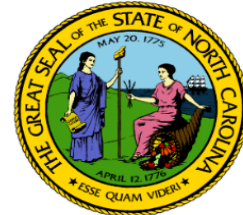
North Carolina Sexual Assault Evidence Collection Kit Tracking and Information Management System (STIMS)



This website enables tracking of sexual assault evidence collection kits in the State of North Carolina in compliance with [N.C. Gen. Stat. § 114-65](#), which was enacted into law through Session Law 2018-70 (HB 945).

"Sexual assault evidence collection kit" means a set of materials, such as swabs and tools for collecting blood samples, used to gather forensic evidence from a victim of reported sexual assault and the evidence obtained with such materials.

[Resources for Survivors and System Users](#)



Instructions

Victims of sexual assault can view the history and current status of their sexual assault evidence collection kit by entering the sexual assault evidence kit tracking # in the "serial number" box above and clicking the adjacent search button with the magnifying glass icon (Q)

Authorized medical providers, law enforcement agencies, prosecutors, and lab personnel should select "Login" and enter their unique Username and Password to manage the status of sexual assault evidence kits under the jurisdiction of their agency.

Sexual Assault Kit Tracking

Sexual Assault Kit #L000282

Status: **Analyzed by lab**



Created 10/15/2018

Sirchie created the kit.

Sent 11/20/2018

Sirchie sent the kit to Cone Health.

Received 11/29/2018

Cone Health received the kit from Sirchie.

Sent 01/15/2019

Cone Health sent the kit to Greensboro Police Department.

Received 01/16/2019

Greensboro Police Department received the kit from Cone Health.

Sent 02/21/2019

Greensboro Police Department sent the kit to NC State Crime Laboratory.

Received 02/21/2019

NC State Crime Laboratory received the kit from Greensboro Police Department.

Sent 07/11/2019

NC State Crime Laboratory sent the kit to Greensboro Police Department.

Received 07/11/2019

Greensboro Police Department received the kit from NC State Crime Laboratory.

Appendix F

North Carolina

Legal Term Definitions (N.C. Gen. Stat. §§ 14-27.20, 23, 33A; § 14-208.6, 2020)

Egregious Aggravation: can include further consideration of existing aggravating factors where the conduct of the defendant falls beyond aggravated disposition range; may also be considered based on the extraordinarily young or old age of the victim, the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim

Medical Treatment: Includes examinations and procedures

Mentally Incapacitated: A victim who due to (i) any act committed upon the victim or (ii) a poisonous or controlled substance provided to the victim without the knowledge or consent of the victim is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act

Person who has a mental disability: – A victim who has an intellectual disability or a mental disorder that temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act

Physically Helpless: A victim who is unconscious; a victim who is physically unable to resist an act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to an act of vaginal intercourse or a sexual act

Sexual Act: Cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body. It is an affirmative defense that the penetration was for accepted medical purposes

Sexual Contact: Touching the sexual organ, anus, breast, groin, or buttocks of any person; A person touching another person with their own sexual organ, anus, breast, groin, or buttocks; A person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person

Sexual Penetration: Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, regardless of whether semen is emitted, if that intrusion can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or done in a sexual manner.

Touching: Physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim

Crime Classifications & Punishment**Felonies (N.C. Gen. Stat. § 15A-1340.17, 2020)****Class A:** Death, or life with or without parole and/or a fine[^]**Class B1:** 144 months to life without parole and/or a fine**Class B2:** 94-383 months and/or a fine**Class C:** 44 to 182 months and/or a fine**Class D:** 38-60 months and/or a fine**Class E:** 15-63 months and/or a fine**Class F:** 10-41 months and/or a fine**Class G:** 8-31 months and/or a fine**Class H:** 4-25 months and/or a fine**Class I:** 3-12 months and/or a fine

Prior to conviction, the defendant is given a certain amount of points based on the classification of each prior conviction (N.C. Gen. Stat. § 15A-1340.14).

- **Class A:** 10 points
- **Class B1:** 9 points
- **Class B2, C, or D:** 6 points
- **Class E, F, or G:** 4 points
- **Class H or I:** 2 points
- **Misdemeanor:** 1 point

The number of points determines record level. The level helps inform the court's decision (N.C. Gen. Stat. § 15A-1340.14).

- **Level I:** 0-1 points
- **Level II:** 2-5 points
- **Level III:** 6-9 points
- **Level IV:** 10-13 points
- **Level V:** 14-17 points
- **Level VI:** 18 or more points

The punishment for a convicted felon is determined by the legal ranges, but the court will consider the record level of the convicted, the classification of the current felony conviction, and the features of the crime to determine the dispositional range (N.C. Gen. Stat. § 15A-1340.17).

- **Presumptive Range:** no aggravated nor mitigating circumstances; the standard
- **Mitigated Range:** mitigating circumstances present (i.e. defendant supports his or her entire family; the defendant accepts responsibility; etc.)
- **Aggravated Range:** aggravated circumstances present (i.e. the crime was especially, heinous, or cruel; the victim was very old or very young; etc.); the highest sentencing range

[^] The exact sentence and/or fine for a North Carolina felony is left to the discretion of the court (Theoharis, n.d.a)

Misdemeanors (N.C. Gen. Stat. § 15A-1340.23, 2020)

Class A1: 1-150 days of active^o, intermediate, or community[•] punishment and/or a fine amounting to as much as the court deems appropriate

Class 1: 1-120 days of active, intermediate, or community punishment and/or a fine amounting to as much as the court deems appropriate

Class 2: 1-60 days of active, intermediate, or community punishment and/or a fine, maximum of \$1,000, amounting to as much as the court deems appropriate

Class 3: 1-20 days of active, intermediate, or community punishment* and/or a fine, maximum of \$200 amounting to as much as the court deems appropriate

All persons convicted misdemeanor has a prior conviction level. The level helps inform the court's decision (N.C. Gen. Stat. § 15A-1340.21).

- **Level I:** No previous convictions
- **Level II:** 1-4 previous convictions
- **Level III:** 5 or more previous convictions

^o Active Sentence: Imprisonment

[•] Intermediate or Community Sentence: Allows judges to impose alternate penalties (i.e. house arrest, drug treatment facility)

<i>Sex Crime Legislation (2020)</i> <i>Crimes for which an SAK is collected (if possible)</i>	
<u>Crime Details</u>	<u>Definition</u>
<p><i>Name:</i> 1st Degree Forcible Rape</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.21</p> <p><i>Classification:</i> Class B1 Felony</p>	<p>A person engages in vaginal intercourse with another person by force and against the will of the other person, and does any of the following:</p> <ul style="list-style-type: none"> • Uses, threatens to use, or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon • Inflicts serious personal injury upon the victim or another person • The person commits the offense aided and abetted by one or more other persons
<p><i>Name:</i> 2nd Degree Forcible Rape</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.22</p> <p><i>Classification:</i> Class C Felony</p>	<p>A person is guilty of second-degree forcible rape if the person engages in vaginal intercourse with another person:</p> <ul style="list-style-type: none"> • By force and against the will of the other person OR • Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know the other person has a mental disability or is mentally incapacitated or physically helpless
<p><i>Name:</i> Statutory Rape of a Child by an Adult</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.23</p> <p><i>Classification:</i> Class B1 Felony</p> <p><i>Special Sentencing:</i></p> <ul style="list-style-type: none"> • At least 300-month sentence; upon termination of the active punishment, • If the crime is of an egregious aggravated manner, then the court may sentence the defendant to active punishment for a term of months greater than the dispositional range, up to and including life imprisonment without parole 	<p>A person is guilty of statutory rape of a child by an adult if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.</p> <p>Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life.</p>

<p><i>Name:</i> 1st Degree Statutory Rape</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.24</p> <p><i>Classification:</i> Class B1 Felony</p>	<p>A person is guilty of first-degree statutory rape if the person engages in vaginal intercourse with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.</p> <p>Lesser included offense* of Statutory Rape of a Child by an Adult</p>
<p><i>Name:</i> Statutory Rape of a Person Who is 15 Years of Age or Younger</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.25</p> <p><i>Classification:</i> Class B1 Felony OR Class C Felony</p>	<p>The defendant engages in vaginal intercourse with another person who is 15 years of age or younger and the defendant is at least 12 years old and at least six years older than the person, except when the defendant is lawfully married to the person.</p> <p>OR</p> <p>The defendant engages in vaginal intercourse with another person who is 15 years of age or younger and the defendant is at least 12 years old and more than four but less than six years older than the person, except when the defendant is lawfully married to the person.</p>
<p><i>Name:</i> 1st Degree Forcible Sexual Offense</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.26</p> <p><i>Classification:</i> Class B1 Felony</p>	<p>The person engages in a sexual act with another person by force and against the will of the other person, and does any of the following:</p> <ul style="list-style-type: none"> • Uses, threatens to use, or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon • Inflicts serious personal injury upon the victim or another person • The person commits the offense aided and abetted by one or more other persons
<p><i>Name:</i> 2nd Degree Forcible Sexual Offense</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.27</p> <p><i>Classification:</i> Class C Felony</p>	<p>A person is guilty of second degree forcible sexual offense if the person engages in a sexual act with another person:</p> <ul style="list-style-type: none"> • By force and against the will of the other person <p>AND/OR</p> <ul style="list-style-type: none"> • Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know that the other person has a mental disability or is mentally incapacitated or physically helpless

* A less serious crime that is committed during the perpetration of a greater crime as the lesser crime innately has some of the same criteria of the greater crime

<p><i>Name:</i> Statutory Sexual Offense with a Child by an Adult</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.28</p> <p><i>Classification:</i> Class B1 Felony</p> <p><i>Special Sentencing:</i></p> <ul style="list-style-type: none"> • At least 300-month sentence; upon termination of the active punishment, • If the crime is of an egregious aggravated manner, then the court may sentence the defendant to active punishment for a term of months greater than the dispositional range, up to and including life imprisonment without parole 	<p>A person is guilty of statutory sexual offense with a child by an adult if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.</p>
<p><i>Name:</i> 1st Degree Statutory Sexual Offense</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.29</p> <p><i>Classification:</i> Class B1 Felony</p>	<p>The person engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim</p>
<p><i>Name:</i> Statutory Sexual Offense with a Person Who is 15 Years of Age or Younger</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.30</p> <p><i>Classification:</i></p> <ul style="list-style-type: none"> • Unless the conduct is covered under some other provision of law providing greater punishment <p>Class B1 Felony</p> <p style="text-align: center;">OR</p> <p>Class C Felony</p>	<p>A person engages in a sexual act with another person who is 15 years of age or younger and the defendant is at least 12 years old and at least six years older than the person, except when the defendant is lawfully married to the person</p> <p style="text-align: center;">OR</p> <p>A person engages in a sexual act with another person who is 15 years of age or younger and the defendant is at least 12 years old and more than four but less than six years older than the person, except when the defendant is lawfully married to the person</p>

<p><i>Name:</i> Sexual Activity by a Substitute Parent or Custodian</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.31</p> <p><i>Classification:</i> Class E Felony</p>	<p>A person who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home.</p> <p>OR</p> <p>If a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim</p> <p>Consent is not a defense for this charge</p>
<p><i>Name:</i> Sexual Activity with a Student</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.32</p> <p><i>Classification:</i></p> <ul style="list-style-type: none"> Unless the conduct is covered under some other provision of law providing greater punishment <p>Class G Felony</p> <p>OR</p> <p>Class I Felony</p> <ul style="list-style-type: none"> 	<p>If a person, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student</p> <ul style="list-style-type: none"> At any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, except when the defendant is lawfully married to the student. <p>OR</p> <p>A person who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student</p> <p>Consent is not a defense for this charge</p>
<p><i>Name:</i> Sexual Battery</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.33</p> <p><i>Classification:</i> Class A1 Misdemeanor</p>	<p>A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:</p> <ul style="list-style-type: none"> By force and against the will of the other person <p>AND/OR</p> <ul style="list-style-type: none"> Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know that the other person has a mental disability or is mentally incapacitated or physically helpless

<p><i>Name:</i> Sexual Contact or Penetration Under Pretext of Medical Treatment</p> <p><i>Statutory Citation:</i> N.C. Gen. Stat. § 14-27.33A</p> <p><i>Classification:</i></p> <ul style="list-style-type: none"> Unless the conduct is covered under some other provision of law providing greater punishment <p>Class C Felony</p> <p><i>Special Sentencing:</i></p> <ul style="list-style-type: none"> This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law that is committed by that person while violating this section. The court may order a term of imprisonment imposed for a violation of this section to be served consecutively to a term of imprisonment imposed for any other crime, including any other violation of law arising out of the same transaction as the violation of this section. 	<p>A person who undertakes medical treatment of a patient does any of the following during that medical treatment:</p> <ul style="list-style-type: none"> Represents to the patient that sexual contact between the person and the patient is necessary or will be beneficial to the patient's health and induces the patient to engage in sexual contact with the person by means of the representation Represents to the patient that sexual penetration between the person and the patient is necessary or will be beneficial to the patient's health and induces the patient to engage in sexual penetration with the person by means of the representation Engages in sexual contact with the patient while the patient is incapacitated Engages in sexual penetration with the patient while the patient is incapacitated.
<p style="text-align: center;"><u>Additional Information</u></p> <ul style="list-style-type: none"> No Defense the Victim is Spouse of Person Committing Act (N.C. Gen. Stat. § 14-27.34): A person may be prosecuted under this Article whether or not the victim is the person's legal spouse at the time of the commission of the alleged rape or sexual offense No Presumption as to Incapacity (N.C. Gen. Stat. § 14-27.35): In prosecutions under this Article, there shall be no presumption that any person under the age of 14 years is physically incapable of committing a sex offense of any degree or physically incapable of committing rape, or that a male child under the age of 14 years is incapable of engaging in sexual intercourse Evidence Required in Prosecutions Under the Article (N.C. Gen. Stat. § 14-27.36): It shall not be necessary upon the trial of any indictment for an offense under this Article where the sex act alleged is vaginal intercourse or anal intercourse to prove the actual emission of semen in order to constitute the offense; but the offense shall be completed upon proof of penetration only. Penetration, however slight, is vaginal intercourse or anal intercourse. Parental Rights (N.C. Gen. Stat. § 14-27.21-24): Upon conviction, a person convicted under these sections has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child. 	

Appendix G

South Carolina
<i>Legal Terms (S.C. Code §§ 16-3.651, 16-3.755, 2020)</i>
<p>Actor: a person accused of criminal sexual conduct</p> <p>Aggravated Coercion: the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person</p> <p>Aggravated Force: the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon</p> <p>Intimate Parts: includes the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breasts of a female human being</p> <p>Mentally Defective: a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct</p> <p>Mentally Incapacitated: a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause</p> <p>Person Affiliated with a Public or Private Secondary School in an Official Capacity: means an administrator, teacher, substitute teacher, teacher's assistant, student teacher, law enforcement officer, school bus driver, guidance counselor, or coach who is affiliated with a public or private secondary school but is not a student enrolled in the school</p> <p>Physically Helpless: a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act</p> <p>Secondary School: either a junior high school or a high school</p> <p>Sexual Battery: sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes</p> <p>Student: a person enrolled in a school</p> <p>Victim: the person alleging to have been subjected to criminal sexual conduct</p>

Crime Classifications & Punishment

Felonies (S.C. Code § 16-1.10, 2020)

Class A: Imprisonment for up to 30 years and/or fine[▲]

Class B: Imprisonment for up to 25 years and/or fine

Class C: Imprisonment for up to 20 years and/or fine

Class D: Imprisonment for up to 15 years and/or fine

Class E: Imprisonment for up to 10 years and/or fine

Class F: Imprisonment for up to 5 years and/or fine

Exempted Felony: Each has its own potential penalties; crimes that do not fall into the categorization system

Unspecified Felony: Imprisonment for no less than 3 months and up to 10 year; crimes that do not fall into the categorization system nor specifically exempted

Misdemeanors (S.C. Code § 16-1.10, 2020)

Class A: Imprisonment for up to 3 years and/or fine

Class B: Imprisonment for up to 2 years and/or fine

Class C: Imprisonment for up to 1 years and/or fine

Exempted Misdemeanor: Each has its own potential penalties; crimes that do not fall into the categorization system

[▲] Fines or fine ranges in South Carolina vary for each statute and are ultimately left to the discretion of the court

<i>Sex Crime Legislation (2020)</i> <i>Crimes for which an SAK is collected (if possible)</i>	
<u>Crime Details</u>	<u>Definition</u>
<p><i>Name:</i> Criminal Sexual Conduct (CSC) in the 1st Degree</p> <p><i>Statutory Citation:</i> S.C. Code § 16-3.652</p> <p><i>Punishment:</i> Imprisonment for up to* 30 years and/or fine[^]</p>	<p>Engaging in sexual battery with the victim and if:</p> <ul style="list-style-type: none"> • The actor used aggravated force to accomplish sexual battery • The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act; or • The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.
<p><i>Name:</i> Criminal Sexual Conduct (CSC) in the 2nd Degree</p> <p><i>Statutory Citation:</i> S.C. Code § 16-3.653</p> <p><i>Punishment:</i> Imprisonment for up to 20 years and/or fine</p>	<p>Using aggravated coercion to accomplish sexual battery</p>
<p><i>Name:</i> Criminal Sexual Conduct (CSC) in the 3rd Degree</p> <p><i>Statutory Citation:</i> S.C. Code § 16-3.654</p> <p><i>Punishment:</i> Imprisonment for up to 10 years and/or fine</p>	<p>Engaging in sexual battery with the victim and if:</p> <ul style="list-style-type: none"> • The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. <p>A person cannot be guilty of this crime if the victim is the legal spouse of the person unless the couple is living apart or if the purported marriage includes a male under the age of 16 or a female under the age of 14.</p>

* Sentences are at the discretion of the court within statute guidelines in South Carolina

[^] Fines or fine ranges in South Carolina vary for each statute and are ultimately left to the discretion of the court (Theoharis, n.d.)

<p><i>Name:</i> Spousal Sexual Battery</p> <p><i>Statutory Citation:</i> S.C. Code §§ 16-3.615, 16-3.658</p> <p><i>Punishment:</i> Imprisonment for up to 10 years and/or fine</p>	<p>Sexual battery when accomplished through use of aggravated force or aggravated coercion by one spouse of the other spouse if they are living together.</p> <ul style="list-style-type: none"> • The offending spouse's conduct must be reported to appropriate law enforcement authorities within thirty days for that spouse to be prosecuted for this offense. • This section is not applicable to a purported marriage entered into by a male under the age of sixteen or a female under the age of fourteen.
<p><i>Name:</i> Misdemeanor Sexual Battery with a Student</p> <p><i>Statutory Citation:</i> S.C. Code § 16-3.755</p> <p><i>Punishment:</i> Imprisonment for up to 5 years and/or up to \$500 fine</p>	<p>Sexual battery with a student enrolled in the school who is eighteen years of age or older by a person affiliated with a public or private secondary school in an official capacity engages in</p> <ul style="list-style-type: none"> • Aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity • Upon conviction, must be fined not more than five hundred dollars or imprisoned for thirty days, or both
<p><i>Name:</i> Felony Sexual Battery with a Student</p> <p><i>Statutory Citation:</i> S.C. Code § 16-3.755</p> <p><i>Punishment:</i> Imprisonment for up to 5 years and/or fine</p>	<p>Sexual battery with a student enrolled in the school who is sixteen or seventeen years of age by a person affiliated with a public or private secondary school in an official capacity</p> <ul style="list-style-type: none"> • Aggravated coercion or aggravated force is not used to accomplish the sexual battery. <p style="text-align: center;">OR</p> <p>Sexual battery with a student enrolled in the school who is eighteen years of age or older by a person affiliated with a public or private secondary school in an official capacity has direct supervisory authority over a student enrolled in the school who is eighteen years of age or older</p> <ul style="list-style-type: none"> • Aggravated coercion or aggravated force is not used to accomplish the sexual battery
<p><i>Name:</i> Criminal Sexual Conduct with a Minor in the 1st Degree</p> <p><i>Statutory Citation:</i> S.C. Code § 16-3.655</p> <p><i>Punishment:</i> Imprisonment for at least 25 years and/or fine</p> <p style="text-align: center;">OR</p> <p>Imprisonment for at least 10 years and up to 30 years and/or fine</p>	<p>The actor engages in sexual battery with a victim</p> <ul style="list-style-type: none"> • Who is less than eleven years of age <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for a criminal sexual offense or has been ordered to be included in the sex offender registry

<p><i>Name:</i> Criminal Sexual Conduct with a Minor in the 2nd Degree</p> <p><i>Statutory Citation:</i> S.C. Code § 16-3.655</p> <p><i>Punishment:</i> Imprisonment for up to 20 years and/or fine</p>	<p>The actor engages in sexual battery with a victim</p> <ul style="list-style-type: none"> Who is fourteen years of age or less but who is at least eleven years of age <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> Who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age
<p><i>Name:</i> Criminal Sexual Conduct with a Minor in the 3rd Degree</p> <p><i>Statutory Citation:</i> S.C. Code § 16-3.655</p> <p><i>Punishment:</i> Imprisonment for up to 15 years and/or fine</p>	<p>The actor engages in sexual battery with a victim where</p> <ul style="list-style-type: none"> The victim is a child under sixteen years of age The actor is over fourteen years of age and willfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child However, a person may not be convicted of a violation of the provisions of this subsection if the person is eighteen years of age or less when the person engages in consensual lewd or lascivious conduct with another person who is at least fourteen years of age