



Idaho State Police

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To: Idaho Law Enforcement, Public Defenders, County Prosecutors
From: Matthew Gamette, ISP Forensic Services Laboratory System Director *MMG*
Subject: **Implementation of Idaho H116 (Test All Sexual Assault Kits)**
Date: April 1, 2019

Effective July 1, 2019 every Sexual Assault Evidence Collection Kit (SAECK) in Idaho must be submitted to Idaho State Police Forensic Services (ISPFS) for testing except anonymously collected SAECK kits and “unfounded” collected kits. This bill is not retroactive, so the previous state law is applicable to all kits collected before July 1, 2019.

House bill 116, amends Idaho Code, section 67-2919, to revise provisions regarding the testing of sexual assault evidence kits, to define a term, and to make technical corrections. All sexual assault evidence kits collected in this state where a crime is alleged and the allegation has not been determined to be unfounded shall be processed by the Idaho State Police forensic services laboratory except for kits where the victim requests the kit be collected as an anonymous kit, such as under the provisions of the federal violence against women act. The full text of the bill is available at www.trackbill.com/bill/idaho-house-bill-116-sexual-assault-evidence-kits/1682285/.

Anonymous Kits

Anonymous SAECKs are only collected on the rare occasion that a victim does not want to report the sexual assault to law enforcement at the time of kit collection. If a victim has reported, in any way, to law enforcement, they cannot have an anonymous collection. Law enforcement should take every precaution to allow for a victim to have an anonymous kit collected if they desire.

Anonymous kits will continue to be stored by the investigating law enforcement agency until the storage time limit expires (55 years from time of collection). There was no change to this retention period in the law this year. If, at any time after anonymous collection, the victim decides to report the crime, the kit will then be submitted to ISPFS for testing. Law enforcement agencies should have policies/procedures in place to preserve and maintain anonymous SAECKs.

Anonymous SAECKs should have NO victim personal identifiers on the outside of the kit. The kit should be identified by the kit tracking number. Law enforcement may choose to assign a SAECK a law enforcement case number for agency tracking purposes. Law enforcement should not open the kit for any purpose if the kit is to remain anonymous. The victim information is known to the SANE or medical entity collecting the kit, but the collecting entity should give no victim identifying information to law enforcement. A victim must file a report with law enforcement if they want the evidence kit tested. A victim will no longer remain anonymous if the SAECK is submitted to ISPFS.

Unfounded Kits

In rare circumstances when law enforcement has found that the reported crime is “unfounded,” the kit will be preserved and retained by the investigating agency that collected the kit, and will not be sent for forensic

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testing. As defined in the statute, "unfounded" means **evidence** exists that proves no crime occurred. The focus for law enforcement is having evidence that no crime happened. This was specifically rewritten in the legislation to make it easier for law enforcement to make this determination. Again, it is our anticipation that most kits will be submitted. For cases on and after July 1, 2019, where a crime is alleged and the allegation has been determined to be unfounded, the kit must still be retained for ten (10) years from collection of the kit. If the reported crime is unfounded after the kit has been submitted for testing, the investigating law enforcement agency must contact ISPFS to have kit returned and any DNA data removed from CODIS. The SAECK will be returned to the submitting agency.

Additional Provision

The new law states that law enforcement agencies shall make a good faith effort to collect and submit the required reference samples associated with a submitted sexual assault evidence kit. Our preference is to have these samples accompany the initial kit submission, but ISPFS should be contacted if the kit is being submitted without all necessary reference samples.