

SEXUAL ASSAULT EVIDENCE KIT TESTING IN MICHIGAN: WHAT VICTIMS HAVE THE RIGHT TO KNOW

A Victim's Right to Information

Under Michigan law, a sexual assault victim has the right to know:

- **When the Sexual Assault Evidence Kit was sent to a crime lab for testing;**
- **Whether a DNA profile (DNA evidence) was obtained from the Sexual Assault Evidence Kit;**
- **Whether a DNA profile was entered into CODIS (a case evidence database);**
- **Whether a DNA profile resulted in a CODIS hit.**

The police agency investigating the sexual assault is required to provide this information to the victim, if available.

However, in some circumstances, the police agency may wait to share it if providing the information would somehow impede or compromise the investigation. MCL 752.956.

What is a Sexual Assault Medical Forensic Exam?

This sexual assault medical forensic exam includes a collection of a medical history, a physical examination, treatment for injury, and preventative treatment for pregnancy and/or sexually transmitted diseases. If a victim consents, forensic evidence is also collected through the use of a sexual assault evidence kit. This exam is typically performed at a local hospital emergency room or by a Sexual Assault Nurse Examiner (SANE) Program. Healthcare providers must offer the exam to any person indicating that they have been sexually assaulted in the previous 120 hours (5 days). MCL 333.21527.

What is a Sexual Assault Evidence Kit (SAEK)?

A Sexual Assault Evidence Kit, or SAEK, is a box that contains swabs, envelopes, instructions and forms. If a victim agrees, the SAEK is used during a sexual assault medical forensic exam to collect possible DNA evidence. DNA evidence can be found in semen, saliva, hairs, or blood that may be on a victim's body or on items like clothing. This evidence may be used in the criminal investigation and prosecution.

Does a victim have to pay to have a SAEK collected or tested?

No. It is against the law to require a victim to pay for the cost of collecting or testing evidence in a SAEK. MCL 18.355a.

Where does the SAEK go after collection?

If the victim gives permission and signs a form to release the SAEK, the SAEK will be given to the police. Police then send the SAEK to a crime lab for testing. If the victim does not want to release the SAEK, the healthcare provider must store it for one year.[†] In most cases, a SAEK stored by a healthcare provider cannot be given to police or tested unless the victim later decides to release it. MCL 752.933.

Are all released SAEKs sent to a crime lab for testing?

Yes.[‡] If a victim has released the SAEK to police, the police are required to send the SAEK to a crime lab for testing within a certain period of time, typically two weeks. A crime lab has 90 days to test the evidence. This can take longer if the process involves more than one police agency or the lab has limited resources. MCL 752.934.

A victim has the right to ask when the sexual assault kit was sent to a crime lab for testing.

What will the crime lab test for?

A scientist will test the samples collected in the SAEK for DNA evidence. If there is enough DNA in the sample, a DNA profile is developed. A DNA profile is like a fingerprint that can help identify a suspect. In some cases, a DNA profile may also identify the DNA of a consensual sexual partner.

A victim has the right to ask police if DNA profile (DNA evidence) was obtained from the Sexual Assault Evidence Kit.

[†] The mandate to store unreleased SAEKs for one year only applies to SAEKs collected after March 31, 2015.

[‡] Only SAEKs released after March 1, 2015 are mandated to be submitted to a crime laboratory for testing.

What if there is no DNA evidence?

Lack of DNA evidence does not mean that the sexual assault didn't happen. There are many reasons why DNA may not be present. As one example, the offender may not have left any DNA or the offender may have left too little DNA.

DNA evidence is not always necessary for a sexual assault conviction. DNA is only one piece of evidence in an investigation. Other types of evidence include victim and witness statements, pictures of injuries, phone records, and other physical evidence.

What if there is DNA evidence?

If a crime lab detects enough DNA evidence, it will develop a DNA profile (DNA fingerprint) and enter that DNA profile into a national database called CODIS.

A victim has the right to ask if a DNA profile was entered into CODIS.

What is CODIS?

The COmbined DNA Index System, or CODIS, is a system of national, state, and local databases administered by the FBI. CODIS allows crime labs to compare SAEK evidence to DNA profiles from known criminal offenders and arrestees. They can also compare SAEK evidence to DNA evidence from unknown suspects in other crimes. CODIS has proven crucial in solving crimes by:

- Identifying unknown suspects;
- Linking DNA profiles from more than one crime to find serial offenders; and
- Eliminating suspects.

What is a 'hit' in CODIS?

When a DNA profile is put in CODIS it is compared to offender profiles that are already in CODIS. When a DNA profile is linked to an offender or a different crime scene it is called a 'hit.' There are two types of hits: (1) a 'hit' to an identified offender; or (2) a 'hit' to a DNA profile developed from crime scene evidence where the offender is still unknown.

A victim has the right to ask police whether a DNA profile resulted in a CODIS 'hit.'

A 'hit' in CODIS does not necessarily mean that the case is solved or that the case will automatically go to trial. DNA is only one piece of evidence in an investigation. If the offender's name is unknown, a 'hit' that leads to an offender identity can be very important. Other times, a 'hit' can add to existing evidence and build a stronger case by identifying a serial offender.

Does a victim's DNA go into CODIS?

No. The CODIS database is made up of DNA profiles from individuals convicted of or, in some states, arrested for particular crimes. It also includes DNA profiles of the possible perpetrators from crime scene evidence.

What about the DNA profile of a consensual sexual partner?

If the DNA profile identifies a recent consensual sexual partner, rather than the offender, that profile may be removed from CODIS. A victim can talk to the police about this process.

How can a victim find out where the SAEK is or DNA testing results?

A victim can contact the police investigating the sexual assault. If the police do not provide the information, a victim can contact a local community based sexual assault program or the prosecutor's office for assistance.

Incident Number/Case Number	
Law Enforcement Agency/Investigator Name	Phone
Law Enforcement Agency/Investigator Name	Phone
Sexual Assault Services Program	Phone

National Sexual Assault Hotline: 800-656-HOPE (4673)