



## Bureau of Criminal Apprehension

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November 3, 2015

### Report on the MN Law Enforcement Agency Survey of Untested Rape Kits as required by SF0878

#### EXECUTIVE SUMMARY

The MN Bureau of Criminal Apprehension (BCA) has completed the collection and compilation of untested rape kit survey results from law enforcement agencies and forensic science laboratories from the State of Minnesota. The survey indicates that there are 3,482 untested rape kits in the possession of 171 agencies. As of July 1, 2015, the BCA Laboratory was in possession of 157 untested kits not included in the reports of the submitting agencies.

The BCA proposes three options for potential testing that include internal testing, external testing by private laboratories, or a combination of the two. This report has also addressed the increase of submissions in 2015.

#### ENABLING LEGISLATION - (2015 Session Laws, Chapter 65)

Chapter 65 requires a complete inventory of untested rape kits that are in the possession of all publicly funded forensic laboratories, county sheriff offices, and police departments in Minnesota. The law required inventories to be submitted to the superintendent of the BCA by August 1, 2015 in a form prescribed by the Superintendent. The statewide inventory applied only to untested rape kits collected prior to July 1, 2015. The legislation also required the BCA to submit a report to the Legislature by December 1, 2015 which included the following information:

- 1) Summarization of results of all untested rape kits reported by local law enforcement agencies in Minnesota as well as the four forensic science laboratories operating forensic DNA testing laboratories (BCA St. Paul, BCA Bemidji, Hennepin County Sheriff's Office, and Tri-County Regional Crime Lab).
- 2) A plan for addressing the potential untested rape kits reported by the local entities.

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## UNTESTED RAPE KIT SURVEY AND RESULTS

On June 25, 2015, the BCA communicated via email to all law enforcement agencies (LEA's) advising them of their responsibility to submit their survey results to the BCA by August 1, 2015. This email also contained instructions on how to submit the survey information along with information to assist them in filling out the survey. The survey form and instructions were also placed on the BCA Laboratory website. The cover letter and survey form are included in this report as Appendix A and Appendix B.

In an effort to obtain the most comprehensive assessment of the number of untested rape kits, reports received through October 8, 2015 are included in the BCA summary.

SURVEY RESPONSE SUMMARY	
Total agencies - surveyed	434
Total agencies - response received by BCA	409
Total agencies - no response received by BCA	25
Total agencies - possessing untested kits	171
Total agencies - possessing no untested kits	238

The reported offense dates ranged from the early 1990's through 2015. Agency responses and offense date data are summarized in Appendix C and Appendix D.

### Survey Process

The following information was requested during the survey.

- Agency contact information
- List of untested rape kits in possession of the agency (including case numbers)
- Date of offense for each untested kit
- Date of collection for each untested kit
- Reason for not submitting each kit for forensic examination – There were seven options that could be selected from a drop-down menu. Those options and survey results are included in the table below.

Survey Option	Number of untested kits reported
Anonymous Report	175
Incident currently under investigation	92
Kit not relevant for prosecution (Confession)	181
Kit not relevant for prosecution (Consent)	257
Prosecution Declined	738
Victim elected not to participate further in the criminal justice process	1056
Other	983
<b>Total reported untested rape kits</b>	<b>3482</b>

If the selection was ‘Other’, a space was provided for a brief explanation. Explanations (provided by reporting agencies) were then further subdivided into the following nine common categories for ease of summarization (based on the prevalence across agencies). Those categories and survey results are included in the table below.

Local Agency Explanations for “other” Survey Option	Number of untested kits reported
Unfounded/false report	193
Adjudicated	41
Different jurisdiction	37
Testing not needed	166
Investigation closed	144
Consent	3
Victim not participating	20
Unknown	329
Miscellaneous/Other	50

Previous BCA Untested Rape Kit Efforts

Over the past 10 years, the BCA has been proactive in its efforts to coordinate with local law enforcement agencies regarding the topic of untested rape kits. In 2005, the BCA Laboratory contacted the larger Minnesota law enforcement agencies (LEA) to inquire about the existence of untested rape kits that may exist within their jurisdictions. This outreach included but was not limited to police departments in Minneapolis (MPD), St. Paul (SPPD), Duluth, and Rochester. This was an unofficial inquiry limited to verbal communication. Generally, agencies indicated they were unaware of the existence of any untested kits that required testing.

Starting in 2011, agencies began identifying untested rape kits in their custody and sought out the BCA Laboratory for assistance. Due to the volume of cases, it quickly became apparent that a submission plan for each agency backlog was required. This was necessary to avoid shifting local agency backlogs to the laboratory. Submission plans helped to mitigate the negative impact on current reactive cases.

From 2011 through 2015, the BCA Laboratory entered into submission plans with St. Paul Police Department, Minneapolis Police Department, and Duluth Police Department, resulting in the submission and testing of over 359 untested rape kits with offense dates ranging from 1994 to 2013.

MN BCA Laboratory – Untested kits

The BCA Laboratory does not hold kits that would be considered “untested kits” because all kits accepted for testing by the BCA are immediately placed in a queue for examination<sup>1</sup>. The amount of time it takes to start the testing on a given kit is dependent upon the number of kits already waiting in line. Therefore, the “untested kits” at the BCA Laboratory as of the July 1, 2015 were kits awaiting testing and totaled 202. These kits can be categorized as follows:

<b>BCA Kits Pending Testing</b>	
Current cases awaiting testing - normal testing queue	126
Untested kits submitted for testing - but also included on the local agency's survey	45
Untested kits submitted for testing - NOT included on local agency's survey	31
<b>TOTAL</b>	<b>202</b>

**PLAN FOR ADDRESSING UNTESTED RAPE KITS**

Following the review of the statistics and supporting information contained within the reports submitted by Minnesota’s law enforcement agencies and forensic laboratories, the Legislature may determine that all or a portion of the kits require testing. These policy decisions will determine the overall impact and required resources to accomplish Minnesota’s response to this potential issue.

Testing decisions will need to address two different aspects.

- 1) Existing untested kits currently stored by local agencies dependent upon the decisions made by policy makers
- 2) Increase in current submissions likely due to changes in local agency policies with regards to which cases will be submitted for testing today and in the future.

Testing options to consider include internal testing by the BCA Laboratory, external testing by a private laboratory, or a combination of the two. It should be noted, however, that external testing will also require BCA Laboratory involvement as outlined below.

Cost of Testing – Existing Untested Kits in Possession of Local Agencies

An analysis of current costs associated with testing of untested kits in the possession of local agencies has been completed and scalable figures have been calculated. Staffing and supply requirements for the following areas were considered during this cost assessment:

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<sup>1</sup> Starting in May of 2015, some agencies began submitting their “untested kits” to the BCA Laboratory. Kits with offense dates prior to 2014 were accepted and placed into a pending status while this survey process was underway.

- 1) Kit submission to laboratory
- 2) Tracking of kits throughout the process
- 3) Laboratory testing of kits
- 4) Entry of DNA results into the Combined DNA Index System (CODIS)
- 5) Follow up DNA testing and reporting for CODIS hits
- 6) Final dispositioning of kits upon completion of testing
- 7) Anticipated costs of additional case evidence submissions (e.g. clothing, bedding)

The resources required will be directly proportional to the number of untested kits that will require testing. All estimates must consider the existing backlog of untested kits as well as the increasing submissions of current and future rape kits. An assessment of additional funding needed to adequately address increases in future submissions for testing by the BCA Laboratory is included following Option 3.

***Option 1: BCA to conduct all testing for existing untested kits in the possession of local agencies.***

Kits would be handled and tested according to current laboratory protocols.

The cost for staff and supplies to test all reported untested kits would be approximately \$4.4 million. Testing could be completed in approximately 3 years provided an additional 8 dedicated staff (FTEs) are funded or 6 years with 4 additional dedicated FTEs.

This cost estimate is scalable in the event that policy decisions determine that less than 100% of the existing backlog requires testing. For example, the cost for staff and supplies to test *half* of the kits would be approximately \$2.7 million. Testing could be completed in under 2 years provided an additional 8 dedicated FTEs are funded.

The completion times are based on average scientist case output and include training of new staff. The number of dedicated FTE's include scientists plus one support position. The cost estimates are based on current supply costs and salaries.

Refer to Appendix E contains the range of scalable options.

***Option 2: External private laboratory(ies) to conduct all testing for existing untested kits in the possession of local agencies.***

Testing would be subject to external laboratory protocols. Two significant points must be considered.

- a. BCA Laboratory would still need to be heavily involved if this Option is ultimately selected. The BCA Laboratory serves as the administrator of the State DNA Index System (SDIS) which is the state's portion of CODIS. As such, the responsibility and oversight of the state DNA database resides with the BCA Laboratory; and all DNA profiles that will be entered into SDIS must meet strict quality assurance

requirements set by the FBI. Therefore, any external laboratory generating DNA results that will be entered into CODIS must be audited and approved by the BCA Laboratory. Additionally, all data must be reviewed by BCA scientists prior to entry into CODIS and any DNA hits resulting from CODIS searches must be handled by BCA scientists according to BCA protocol. This oversight and responsibility will require a significant resource investment in the form of staffing and supplies by the BCA Laboratory in addition to the cost of actual testing by the external laboratory.

- b. Rape kits usually consist of several evidence swabs that have been used to collect samples from various areas of the victim's body. When kits are examined by the BCA Laboratory, all or some of these swabs are customarily examined first for the presence of semen or saliva (or other biological material depending on the circumstances of the case). Based on the results of these examinations, various levels of DNA testing will be performed on some or all swabs. However, the selection of services offered by external vendors varies significantly. For example, one vendor provides at least three options for testing ranging from limited male DNA screening for one kit swab only to a full examination similar to that employed by the BCA Laboratory. The price of testing will be dependent upon the service selected.

Based on quotes obtained as of September 21, 2015, cost of external testing for all reported untested kits would range from approximately \$2.4 to \$5.5 million depending on the service level selected as described in (b) above. This estimate includes 2 additional dedicated FTEs for the BCA Laboratory to perform the duties outlined in (a) above. The timeframe for testing is undetermined at this time. This would be subject to contract negotiations with the private laboratory.

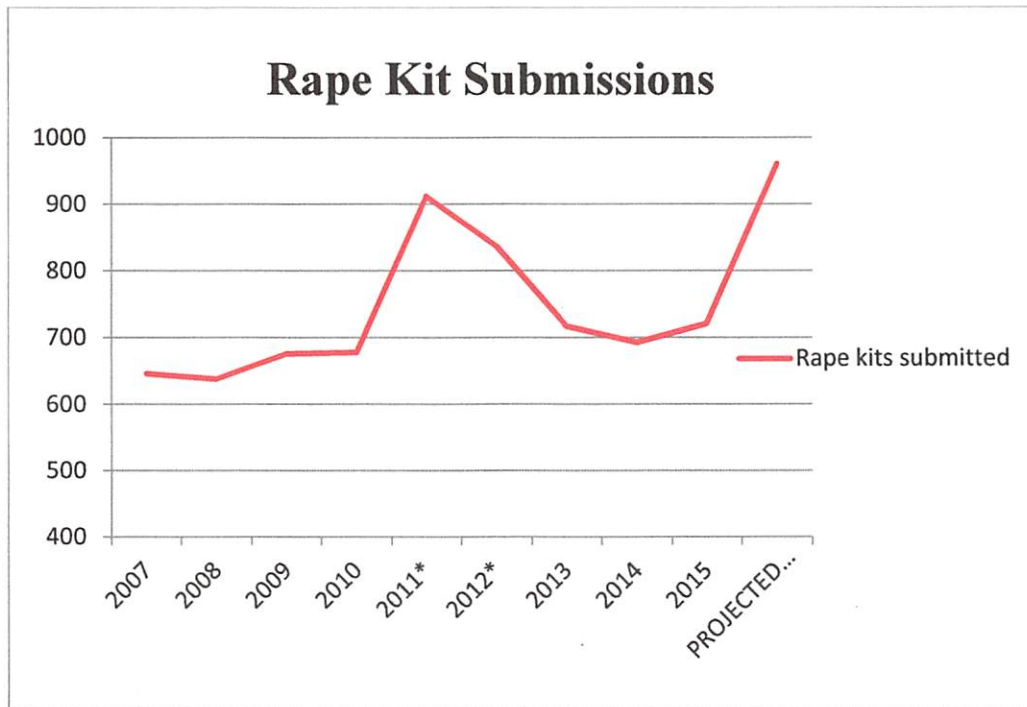
***Option 3: A combination of Option 1 and Option 2***

A hybrid approach may be warranted dependent upon the policy decisions made with consideration to factors such as desired timeframe, type of testing, or other level of triaging of the untested rape kits.

**ADDITIONAL CONSIDERATION**

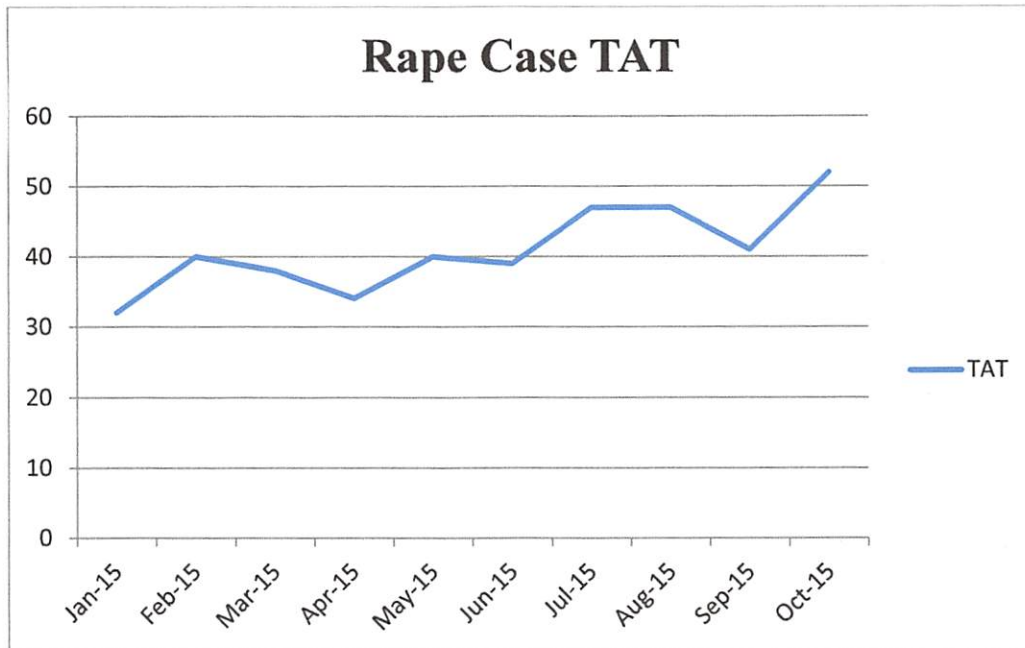
***Increase in requests for testing of rape kits***

It is important to note that the BCA Laboratory has experienced a sharp increase in rape kit submissions for testing in 2015. Thus far, the 2015 submissions represent a projected 39% increase over 2014 submissions. As a result, the turn-around time (TAT) for current rape kit testing will likely surpass 60 days by the end of 2015. This increase in rape kit submissions will slow the processing of other violent crime evidence as well.



It is anticipated that as changes in submission trends at the local level continue, the BCA Laboratory will experience a persisting elevation in requests for testing of rape kits.<sup>2</sup>

<sup>2</sup> The spike in 2011 and 2012 includes over 300 untested older rape kits submitted as a result of the BCA Laboratory's submission agreement with St. Paul Police Department



Over the past 5 years, the DNA Section has had an increase in case submissions of 43%. This increase in demand has primarily been addressed by implementation of automation and other procedural efficiencies. With these efficiencies along with select case submission restrictions, the DNA Section reached an average TAT of 33 days in 2013. Since then, demand continued to grow which caused a steady increase in the TAT to approximately 48 days by the end of 2014. This 48-day TAT held steady until mid-2015 when a sharp increase in demand for testing of sexual assault kits occurred. The BCA attributes this increase to increased scrutiny at the local level. The BCA DNA Laboratory can no longer maintain the expected TAT. The current sharp increase in submissions will lead to TATs exceeding 60-70 days by the end of 2015. In order to achieve the ideal TAT of 30 days for all DNA cases without implementation of an excessively restrictive case submission policy, an additional 8 FTE's would be needed (\$1million annually).