Dynamic Strategies
Innovations for Social Change

Audit of Physical Evidence Recovery Kits (PERKs)

By

Elisabeth Olds
SAVRAA Independent Expert Consultant

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Executive Summary

The Sexual Assault Victims' Rights Amendment Act of 2014 (SAVRAA) is the result of survivor and systems advocacy efforts to improve the District of Columbia's response to sexual assaults. Among other important changes such as giving survivors the right to a confidential community-based advocate, the right to receive the results of toxicology and forensic evidence kit testing, and to receive a forensic exam free of charge, the law also defines timely transport and processing of forensic evidence kits, and creates new reporting requirements for the Metropolitan Police Department, the Department of Forensic Sciences (DFS) and the Office of the Chief Medical Examiner (OCME).[1] To ensure and facilitate implementation of SAVRAA, the DC Office of Victim Services was required to retain an Independent Expert Consultant for a period not to exceed two years. One of the specific tasks of the Independent Expert Consultant was to audit the process for delivering and processing the forensic evidence kits, or Physical Evidence Recovery Kits (PERKs), to ensure that these kits were being transported and processed according to the new requirements.[2] This document is the report from that audit.

Physical Evidence Recovery Kits (PERKs), also known as forensic evidence kits or sexual assault kits consist of evidence gathered during a medical and forensic examination performed at the request of a survivor of sexual assault to gather any evidence of sexual assault, document and address injuries from the assault, and also test for and treat any sexually transmitted infections including HIV. The DC Forensic Nurse Examiner (DCFNE) program conducts these exams free of charge for any adult in the District of Columbia who requests one with or without a report to law enforcement.[3] If the survivor wishes to report to law enforcement or has already done so and wishes to continue with that process, the kit is turned over to the Metropolitan Police Department's Sexual Assault Unit (SAU) as evidence. During the period reviewed, kits were picked up in batches by MPD from DCFNE at MedStar Washington Hospital Center twice a week, and delivered to the Department of Forensic Science (DFS) for processing by the Forensic Biology Unit, i.e. the DNA lab.[4] After processing the kit, DFS issues a report of its findings to MPD, and where prosecution has already begun, to the US Attorney's Office or the Office of the Attorney General for the District of Columbia. If DNA is recovered and the case meets certain legal criteria, that DNA profile is uploaded into the Combined DNA Index System (CODIS).

Any exams that were conducted in which drug facilitated sexual assault is suspected[5] also may include blood and/or urine samples that are delivered to the Office of the Chief Medical

[1] DC Code §4-561.02.
[2] DC Code §4-561.04.
[3] Under the Violence Against Women Act of 2005 and 2013, survivors of sexual assault are entitled to a medical and forensic examination free of charge and without being required to report the assault to law enforcement. The process in place in the District of Columbia for adult survivors is compliant with this requirement. 42 U.S.C.A § 3796gg-4(d)(1)(2005).
[4] The Department of Forensic Science's Forensic Biology Unit (FBU) is currently not testing kits in its lab, but outsourcing to private labs until the reorganization of the FBU that began in April 2015 is complete.
[5] The need to test for possible drug facilitated sexual assault (DFSA) is established by a short questionnaire administered by the nurse at the time of the exam.

Examiner (OCME) for testing in their Toxicology Unit. The results are transmitted via email to MPD and/or the USAO.

Under SAVRAA, MPD must retrieve the evidence kit from DCFNE no more than seven days after a police report is made[6] and requires that DFS and OCME process the forensic evidence kits and toxicology specimens, respectively, within 90 days of receiving them.[7] The law also requires that the Independent Expert Consultant verify that any survivor who received an exam and also wished to report to law enforcement had their case properly documented as a report of sexual assault by MPD.

This audit required answers to four questions: 1) were all of the cases in which a survivor had a forensic examination done and wished to report to police documented appropriately as reports to police; 2) were all of the evidence kits and toxicology specimens that were part those cases delivered to DFS and OCME; 3) were those kits and specimens delivered within the time frame required by SAVRAA and the Metropolitan Police Department (MPD)'s Standard Operating Procedure; 4) were those kits and toxicology specimens processed by DFS and OCME respectively within the required 90 days. The answers to these questions are presented in the findings below followed by recommendations for improvements to the system as a whole.

The bulk of the data reviewed and compared for this audit focuses on January 2014 through June 2015. Each agency in this process keeps its own spreadsheet with different tracking requirements. Ultimately, this audit required that these spreadsheets be compared to each other, and that the data also be reviewed in MPD's records management system in individual cases. The total number of cases was also compared across all record keeping systems to ensure that the totals were identical, or at least within an explainable range of each other depending on how records were kept and the point at which a case may have stopped progressing through the system.

The DC Forensic Nurse Examiners (DCFNE), the SANE nurses who conduct the medical and forensic exams, provided a list of all exams for which a report to law enforcement was made, whether immediately or later, from March 2013 through January 2015. This list contained the date of the exam, the patient's initials, whether a PERK, or evidence kit, or only a medical exam was provided, the case number if available, as well as the date the PERK was released to MPD for transfer to DFS and, if relevant, OCME. DFS then provided a list of kits received and the dates of receipt, as well as the corresponding processing times.

The findings from this audit indicate that 1) all of the cases in which a forensic exam was conducted and the survivor wished to report to law enforcement were properly documented by MPD; 2) all evidence kits from those reported cases were delivered to DFS and OCME; 3) the kits and toxicology specimens were delivered in the required timeframe of 7 days by MPD; and

[6] DC Code §4-561.02 (a) "Within 7 days after a sexual assault victim makes a report to the MPD, the MPD shall retrieve the kits and specimens and deliver: (1) the sexual assault forensic examination kit to DFS; and (2) the biological specimens for toxicology testing to the OCME."
[7] DC Code §4-561.02(b)(b) The DFS shall process all sexual assault forensic examination kits within 90 days from the date of receipt; and DC Code §4-561.02(c): The OCME shall process all biological specimens within 90 days from the date of receipt.

4) the majority of kits were *not* processed by DFS within the 90 days required by the statute but the toxicology specimens submitted *were* processed within 90 days by OCME.

Summary List of Findings

1. Of the 426 cases listed by DCFNE as having been reported to law enforcement, all are documented appropriately by MPD.

2. All of the evidence kits were transported to DFS by MPD. Toxicology specimens are delivered to OCME in tandem with kits and all of those are accounted for as well.

3. The kits were delivered by MPD as required within an average time of 2.45 days of the exam being conducted as shown in the review of kits submitted in calendar year 2014 through February 2015.

4. The data showed a significant problem with processing times at the lab, but these problems are being resolved. Of the 363 cases that should have been tested within the required 90 days by July 1, 2015, 98 were tested within 90 days and 159 were tested but the processing times exceeded 90 days. The average processing time was 114 days, with the shortest at 16 days and the longest at 395 days. An additional 69 kits that should have already been tested by July 1, 2015 were not tested at all. These 69 untested kits constitute a backlog.

5. The 69 backlog cases have been sent to private labs on 15, 30, 45, 60, and 75-day turnaround contracts to ensure that the backlog is cleared up quickly and that it does not continue with incoming cases.

6. The data from the Office of the Chief Medical Examiner (OCME)'s Toxicology Unit showed that the processing times for toxicology specimens were taking place well within the statutory requirement.

7. Seventy-two kits were pulled from the testing queue for a variety of reasons before they were completed and therefore no results reported. There is a disparity in perception between MPD and DFS about what should and should not be tested, as well as a disparity between what victims are led to believe will happen with their kits and the possibility that results will never obtained.

Summary List of Recommendations

1. OVS should fund two additional analysts to augment the two positions already funded for this project at DFS.

2. The Sexual Assault Response Team (SART) should create a shared database to track a kit from its inception with the survivor at DCFNE through processing at DFS and OCME, and assign a unique tracking number to each kit that will follow the kit through the process.

3. DFS and MPD should determine an adequate staffing level or back up staffing for to ensure that evidence can be submitted immediately when it is brought to the Central Evidence Unit.

4. DFS, MPD, the US Attorney's Office, and the Office of the Attorney General should continue to meet bi-weekly about prioritizing cases for testing and to discuss any logistical problems with testing that exist.

5. MPD, DFS and DCFNE should establish a more open dialogue about what can and cannot be tested in a given case so that realistic and clear expectations exist among themselves and are communicated to the survivor about the utility of the forensic exam.

6. DFS should submit monthly reports to the Independent Expert Consultant until such time as the backlog is resolved and DFS is processing cases within the 90-day time limit established by SAVRAA.

The Sexual Assault Victim's Rights Amendment Act of 2014 (SAVRAA)

The Sexual Assault Victims' Rights Amendment Act of 2014 (SAVRAA) is the result of survivor and systems advocacy efforts to improve the District of Columbia's response to sexual assaults. Effective November 23, 2014, this new law provides rights for survivors of sexual assault, victim-centered guidance and regulations for the Metropolitan Police Department (MPD) and other system actors, and defines a clear continuum of services for survivors of sexual assault. Specifically, SAVRAA gives survivors the right to a community-based victim advocate[8]to confidential communication with that advocate[9], and to have that advocate present at any interview with law enforcement[10]. Survivors also have a right to know the results of their toxicology and forensic evidence kits[11], as well as the right to not be billed for any expenses related to their forensic exams[12]. The law also defines timely transport and processing of forensic evidence kits[13], and creates new reporting requirements for MPD, the Department of Forensic Sciences (DFS) and the Office of the Chief Medical Examiner (OCME)[14], as well as the structure and membership of the coordinated community response to sexual assault through the Sexual Assault Response Team (SART).[15] Overall, SAVRAA is designed to implement nationally recognized models of victim advocacy and law enforcement in sexual assault cases.

To ensure and facilitate implementation, the DC Office of Victim Services was also required to retain an Independent Expert Consultant for a period not to exceed two years[16]. One of the specific tasks of the Independent Expert Consultant was to audit the process for delivering and processing the forensic evidence kits, or Physical Evidence Recovery Kits (PERKs), to ensure that these kits were being transported and processed according to the new requirements. This document is the report from that audit.

Forensic Evidence Kit Process

Physical Evidence Recovery Kits (PERKs), also known as forensic evidence kits or sexual assault kits consist of evidence gathered during a medical and forensic examination performed at the request of a survivor of sexual assault to gather any evidence of sexual assault, document and address injuries from the assault, and also test for and treat any sexually transmitted infections including HIV. The DC Forensic Nurse Examiner (DCFNE) program conducts these exams free of charge for any adult in the District of Columbia who requests one with or without a report to law enforcement.[17] After the exam, the forensic nurse seals the kit

[8] DC Code §23-1908.
[9] DC Code §14-312(b)-(d).
[10] DC Code §23-1908(1)-(2) and §23-1909.
[11] DC Code §23-1910.
[12] DC Code § 4-561.03.
[13] DC Code § 4-561.02.
[14] DC Code § 4-561.09-11.
[15] DC Code § 4-561.13.
[16] DC Code § 4-561.04.
[17] Under the Violence Against Women Act of 2005 and 2013, survivors of sexual assault are entitled to a medical and forensic examination free of charge and without being required to report the assault to law enforcement. The process in place in the District of Columbia for adult survivors is compliant with this requirement. 42 U.S.C.A § 3796gg-4(d)(1)(2005).

and affixes the nurse's report which contains information about injuries and a basic description of the physical findings to the outside of the kit. The kit is assigned a number by DCFNE and placed in a locked storage unit at MedStar Washington Hospital Center.[18]

If the survivor wishes to report to law enforcement or has already done so and wishes to continue with that process, the kit is turned over to the Metropolitan Police Department's Sexual Assault Unit as evidence. During the period reviewed, kits were picked up in batches by MPD from DCFNE at MedStar Washington Hospital Center twice a week, and delivered to the DFS for processing by the Forensic Biology Unit, i.e. the DNA lab.[19] After processing the kit, DFS issues a report of its findings to MPD, and where prosecution has already begun, to the US Attorney's Office for the District of Columbia (USAO) or the Office of the Attorney General for the District of Columbia (OAG). If DNA is recovered and the case meets certain legal criteria, that DNA profile is uploaded into the Combined DNA Index System (CODIS). The DNA profiles obtained from the testing of the kit may be uploaded to CODIS for searches against the national DNA database which may result in a match to a putative perpetrator or aid in the identification of serial offenders increasing overall public safety.[20]

Any exams that were conducted in which drug facilitated sexual assault is suspected[21] also may include blood and/or urine samples that are delivered to OCME for testing in their Toxicology Unit. The results are transmitted via email to MPD and/or the USAO.

New Requirements under SAVRAA

SAVRAA promulgated specific requirements for the transport and processing of PERKs to prevent undue delay, untested or lost kits so that survivors receive the answers they seek about their assault and so that offender accountability through the criminal justice system is enhanced. Under SAVRAA, MPD must retrieve the evidence kit from DCFNE no more than seven days after a police report is made.[22] SAVRAA also requires that the DFS and OCME process the forensic evidence kits and toxicology specimens, respectively, within 90 days of receiving

[18] The majority of medical and forensic examinations are performed at MedStar Washington Hospital Center but if a survivor presents at another hospital and does not wish to go to MedStar, DCFNE and the accompanying advocate from the Network for Victim Recovery will also go to other area hospitals as needed. This process will be discussed in greater detail in the final Independent Expert Consultant's report issued in October 2015.
[19] The Department of Forensic Science's Forensic Biology Unit (FBU) is currently not testing kits in its lab, but outsourcing to private labs until the reorganization of the FBU begun in April 2015 is complete.
[20] A study by David Lisak at the University of Massachusetts showed that 60% of undetected rapes are perpetrated by repeat offenders. Lisak, D.& Miller, P. (2002). Repeat Rape and Multiple Offending Among Undetected Rapists. *Violence and Victims, 17*, 73-84. Retrieved March 13, 2015, from http://www.wcsap.org/sites/www.wcsap.org/files/uploads/webinars/SV on Campus/Repeat Rape.pdf
[21] The need to test for possible drug facilitated sexual assault (DFSA) is established by a short questionnaire administered by the nurse at the time of the exam.
[22] DC Code §4-561.02 (a) Within 7 days after a sexual assault victim makes a report to the MPD, the MPD shall retrieve the kits and specimens and deliver: (1) the sexual assault forensic examination kit to DFS; and (2) the biological specimens for toxicology testing to the OCME.

them.[23] The law also requires that the Independent Expert Consultant verify that any survivor who received an exam and also wished to report to law enforcement had their case properly documented as a report of sexual assault by MPD.

This audit required answers to four questions:

1) were all of the cases in which a survivor had a forensic examination done and wished to report to police documented appropriately by MPD;

2) were all of the evidence kits and toxicology specimens that were part those cases delivered to DFS and OCME;

3) were those kits and specimens delivered within the time frame required by SAVRAA and MPD's Standard Operating Procedure;

4) were those kits and toxicology specimens processed by DFS and OCME respectively within the required 90 days.

The answers to these questions are presented in the findings below followed by recommendations for improvements to the system as a whole.

Audit Methodology

The process of gathering information for this report was particularly challenging given that this process changed dramatically during 2013 and only began to function in its current form in January 2014. Therefore the bulk of the data reviewed and compared for this audit focuses on January 2014 through June 2015.

Each agency in this process (DCFNE, MPD, DFS, and OCME) keeps its own spreadsheet with different tracking requirements. Ultimately, this audit required that these spreadsheets be compared to each other, and that the data also be reviewed in MPD's records management system in individual cases. The total number of cases was also compared across all record keeping systems to ensure that they were identical, or at least within an explainable range of each other depending on how records were kept and the point at which a case may have stopped progressing through the system.

DCFNE provided a list of all exams for which a report to law enforcement was made, whether immediately or later, from March 2013 through January 2015. This list contained the date of the exam, the patient's initials, whether a PERK or only a medical exam was provided, the case number if available, as well as the date the PERK was released to MPD for transfer to DFS and, if relevant, OCME. DFS then provided a list of kits received and the dates of receipt.

In DCFNE's records, a significant number of cases were missing case numbers and were therefore untraceable without access to MPD's files. Of the 426 cases listed by DCFNE in

[23] DC Code §4-561.02(b): The DFS shall process all sexual assault forensic examination kits within 90 days from the date of receipt; and DC Code §4-561.02(c): The OCME shall process all biological specimens within 90 days from the date of receipt.

which a PERK was done, 82 (19%) did not have case numbers. The fact that the cases did not have case numbers is not the fault of DCFNE or MPD, nor is it a flaw in the system per se. Rather, it indicates that case numbers were assigned after the exam was completed. The date of the exam and the patient's initials were used to locate the MPD case number in MPD's Sexual Assault Unit spreadsheet. Using MPD's Sexual Assault Unit spreadsheet to identify all cases in which MPD had a record of a kit being done, and removing the cases that already had case numbers in DCFNE's spreadsheet accounted for the remaining cases.

MPD's records management system, iLEADS, was also used to randomly verify DCFNE and DFS' list of dates of release and receipt of kits respectively. In the randomly selected 75 cases verified in MPD's system, no significant discrepancies were found with DCFNE or DFS' records. This indicates that MPD is recording the transport of kits accurately internally as well.

A list of cases was then provided to DFS to obtain processing times for these kits measured from the date the kit is received in their Central Evidence Unit (CEU) to the date a report is sent to MPD and/or the US Attorney's Office.

Findings

The current system for providing, transporting and processing PERKs is highly coordinated in some ways, but still a work in progress in others. Overall, kits are accounted for, law enforcement is documenting reported assaults appropriately, and this process is being taken extremely seriously by all involved. However, processing times for PERKs were beyond the statutory limit, and a backlog of untested kits was discovered. Most issues that are noted below are the result of resource and coordination issues rather than deliberate indifference, and they are being aggressively addressed by all parties. .

1. Of the 426 cases listed by DCFNE as having been reported to law enforcement, all are documented by MPD and classified according to MPD's newer classification system as either a sexual assault or a sexual allegation.

2. All of the evidence kits were transported to DFS by MPD. Sixteen kits required additional research to locate and thought to be misplaced. However, they have all been located and accounted for in the correct location, meaning these were documentation issues rather than actual lost kits. Toxicology specimens are delivered to OCME in tandem with kits and those are accounted for as well.

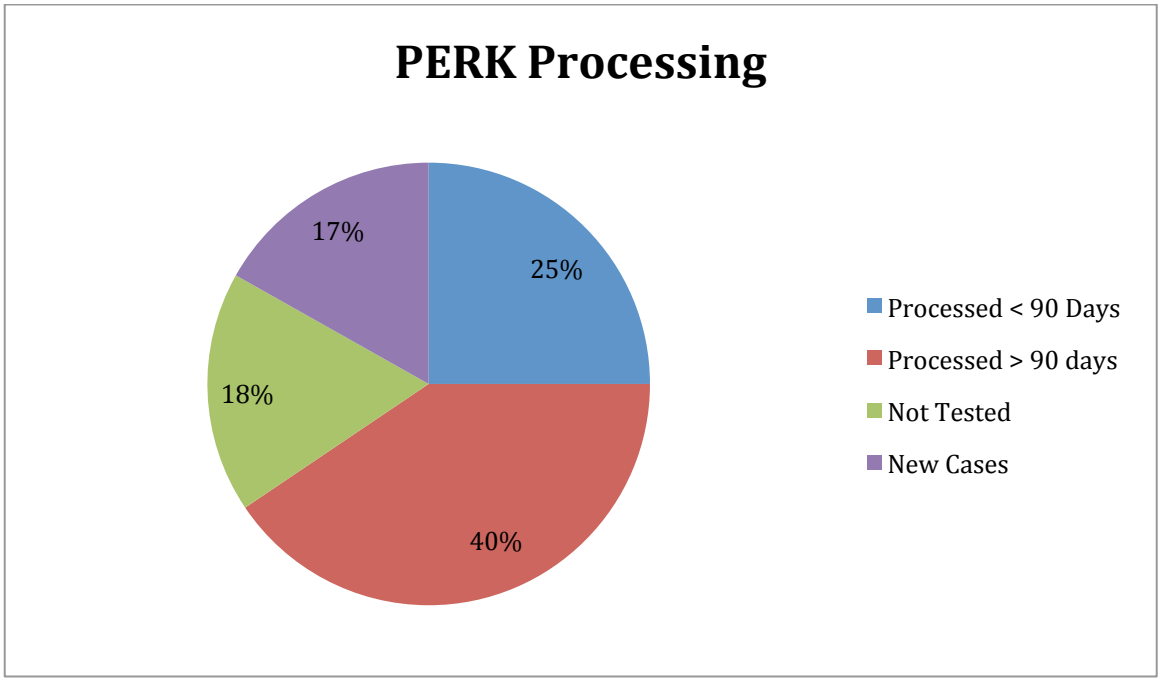
3. The kits were delivered by MPD as required within an average time of 2.45 days of the exam being conducted in the review of kits submitted in calendar year 2014 through February 2015. Although the timeline in from March, 2013 to December, 2013 was five days, and outside of MPD's standard operating procedure requirement of four days, they still are compliant with the seven day timeline required by SAVRAA. For delayed reports or so called conversion cases[24], MPD is also picking them up and delivering them to DFS and

[24] Conversion cases are those that start out as requests for SANE exams and medical care without a report to law enforcement and later get reported to law enforcement by the survivor based on their own personal choice. Currently, 40% of the exams conducted by DCFNE are non-reports and 60% are

OCME within seven days of a report to law enforcement. All delivery timelines were well within the seven days required by SAVRAA.

4. The data showed a significant problem with processing times at the lab that was also apparent in the review of MPD's case files and in interviews with survivors. Processing times were provided by DFS for 429 cases dating from January 2014 through July 1, 2015. This time frame was chosen because the tracking mechanism for kits did not begin until January, 2014 and the two analysts dedicated solely to processing kits began in February and June 2014. Of 429 cases, 66 (15%) were considered new cases, meaning they were less than 90 days old and therefore they are not considered backlog nor out of compliance if they haven't been tested or if they are still being tested.

   Of the 363 cases remaining that should have been tested within the required 90 days by July 1, 2015, 98 were tested within 90 days and 159 were tested but their processing times exceeded 90 days. The average processing time was 114 days, with the shortest at 16 days and the longest at 395 days. It should also be noted that SAVRAA did not become law until November 23, 2014 and therefore these processing times are not all out of strict legal compliance with the statute. An additional 69 kits that should have already been tested by July 1, 2015 were not tested at all.[25] These 69 untested kits constitute a backlog.



immediate reports to law enforcement. Approximately 13% of the non-reports eventually convert to reports to law enforcement.

[25] These untested kits date as early as January 8, 2014 and are from random dates throughout the year and reflect the triage process that was occurring at the FBU prior to its reorganization that began in April 2015.

These problems are now being aggressively addressed by DFS and the backlog is almost resolved. The 66 new cases and 69 backlog cases have been sent to private labs on 15, 30, 45, 60, and 75-day turnaround contracts to ensure that the backlog is cleared up quickly and that it does not continue with incoming cases. From May 1-July 1, 111 cases have been sent to BODE, of which reports have been received for 70 cases. Two cases were pulled from testing by the USAO. There are 39 cases which have been sent to Bode for testing for which DFS has not received a report to date. MPD also reports having received a large number of reports the week of August 3rd, 2015 corresponding to backlogged cases.

Although DFS is working to remedy this situation, the systemic and survivor-related ramifications of these delays cannot be overstated. Based on my review of 215 of MPD's case files as well as interviews with Sexual Assault Unit detectives, investigators usually finish the bulk of their investigation within four to six weeks of receiving a report even while being incredibly thorough. They and the survivor then must wait for the kit to be processed.

This wait has a significant impact on survivor participation and satisfaction with the process. During this time, the victim may come to believe that the detective is not investigating their case, or the detective may lose touch with the victim during this long wait period. Victim dissatisfaction with the overall process mounts as the delays continue and can seriously impact their decision to continue to participate in the process should the case go to trial.

Waiting for results can also impact the ability of law enforcement to follow through on their mandate. Given the volume of cases MPD is presented with, these delays also produce an inordinate number of open cases making workload management and case tracking extremely difficult. This backlog also requires the US Attorney's Office to make warrant and charging decisions sometimes without benefit of a DNA report in hand. They will request these reports to ultimately present their case in court, but the timelines do not initially coincide in the way the system intends.[26]

5. The data from the Office of the Chief Medical Examiner (OCME)'s Toxicology Unit showed that the processing times for toxicology specimens were taking place well within the statutory requirement. For the 92 cases received in 2013, the average processing time was 62 days and for the 80 cases received in 2014, the average processing time was 68 days. For the 90 cases not reported to MPD where DFSA was suspected, the average processing time was 54.1 days in 2013 and 75.6 days in 2014. It should be noted, however, that these processing times are averages that may exceed 90 days soon in individual cases if not the mean.

6. Two related issues that arose in both processing the data, reviewing MPD case files and interviewing detectives are kits being pulled out of the queue and testing discontinued entirely for a variety of reasons, and the disparity in perception between MPD and DFS regarding what can be tested and who should make those decisions.

[26] The use of these results by the US Attorney's Office and MPD in the overall context of investigation and prosecution is discussed in the larger report about MPD's implementation of SAVRAA.

Seventy-two kits were pulled from the testing queue before they were completed and therefore no results reported. Those reasons and the agencies making those decisions are reflected in the chart below.

Requesting Agency and/or Reason for Discontinuing Testing	**Number of Cases**
US Attorney's Office for the District of Columbia	32
DFS Forensic Biology Unit (lack of probative evidence)[27]	18
Metropolitan Police Department	7
Office of the Attorney General for the District of Columbia	3
Significant delay between assault and time of exam too great	2
Lack of jurisdiction over the crime (reporting jurisdiction takes responsibility for testing)	2
No biological evidence in kit to test	2
Kits sent to DFS in error – no police report made	3
No Further Information Provided	3

Based on MPD's case files, interviews with detectives, as well as a discussion with DFS about the 18 cases DFS removed from the testing queue and the reasons for those decisions, it is clear that a disparity exists between DFS and MPD about who should make the determination about what constitutes useful evidence in any given case.

E-mail correspondence exists in MPD's case files between DFS and MPD SAU supervisors in which DFS declines to test particular items that a detective believes may have evidence to assist his or her case. These determinations by DFS may be because the appropriate body swabs were not collected, i.e. they were either declined by the survivor or not collected by DCFNE, and all other evidence collected may have been from areas of the body that were not involved in the assault. Additionally, DFS may determine that there is no reliable way to test for a digital assault, or that the time frame between the assault and the evidence collection was too long to provide reliable results.

However, there are instances in which the detective may believe that there is useful evidence available to answer or rule out certain portions of their case. Interviews with survivors and advocates revealed that survivors place an enormous emphasis on the results of the kit because it can validate their experience in empirical terms. They have also been

[27] In this context, the term "probative" is used to denote that there was no scientific basis for testing to be performed.

led to believe that having a kit done will add to the criminal justice process in some way and may also provide them with additional information about what happened to them. A lack of closure in this regard was particularly troubling to many of those interviewed, and was taken as an indication that they weren't believed or taken seriously by the system as a whole.

6. Delays have also been reported in the process of dropping off kits. There have been instances where detectives or the officer dropping off kits or other pieces of evidence to be tested must wait an inordinately long time because the appropriate staff is not available or there to receive the evidence. The process currently requires DFS' CEU staff to notify the MPD CSID Sergeant on duty that evidence is being submitted and that sergeant assigns an officer to take the evidence. If an officer is in the building, they will respond immediately, but this is not possible if an officer is not in the building because they may be out on a homicide case or are short staffed for other reasons.

   There have also been instances in which this situation arises and the detective must continue to hold the evidence for several days because they have been told no one is available to accept the evidence at DFS.

Recommendations

As the findings above demonstrate, the kits are being picked up and dropped off well within the time frame required and being delivered to DFS and OCME promptly by MPD. However, there are changes recommended that would make this process more transparent and efficient, and would clarify who has decision-making authority regarding testing. Beyond mere efficiency and accuracy, these recommendations are also intended to create an environment in which each player does their part to ensure that the process moves quickly and correctly so that survivors receive both information and case resolution as quickly as possible. While DFS must remain impartial and independent, the law enforcement members of the process have a responsibility to ensure that the system functions in a way that increases offender accountability overall.

1. OVS should fund two additional analysts to augment the two positions already funded for this project at DFS.

Cases reported to MPD have increased by nearly 17% per year from 2013 to 2014, and there will likely be a demonstrable increase in 2015.[28] DCFNE reports a nearly 17% increase over the past five years in the number of requests for forensic exams in 2015, with or without a report to law enforcement as well.[29] This staffing increase is required to resolve the existing backlog, process cases in a timely but thorough and accurate way, and allow the Forensic Biology Unit to keep up with this ever-increasing workload. Additionally, it allows staff to go on allowable vacation, sick leave, and testify in court as needed, without compromising the lab's ability to test kits in a timely way. Although the processing times for OCME's Toxicology Unit are within the 90-day limit, the average processing time is creeping closer to that limit. As caseloads increase,

[28]Metropolitan Police Department Sexual Assault Unit records showing 939 cases filed in 2013 and 1102 filed in 2014..
[29] DC Forensic Nurse Examiners (DCFNE), Mid-Year SANE Report, April 2015.

additional staff will be needed to maintain legal compliance. An additional analyst is also needed for the Office of the Chief Medical Examiner's Toxicology Unit to ensure they have the capacity to remain in statutory compliance as caseloads increase, but this need is less urgent than the pressing need for staff in the FBU.

2. The Sexual Assault Response Team (SART) should create a shared database to track a kit from its inception with the survivor at DCFNE through processing at DFS and OCME, and assign a unique tracking number to each kit that will follow the kit through the process.

Evidence kits need to be tracked through the system from beginning to end to ensure that each kit was picked up and received by DFS and toxicology specimens received by OCME. Currently, without a survivor, an advocate or a detective raising a question or a complaint about a missing kit, or an independent consultant conducting an audit such as this one, theoretically, no one would know that a kit was missing or had not been dropped off or processed. DCFNE keeps an electronic form signed by MPD for each kit to indicate when MPD has picked it up. MPD keeps a record of each case in both a large spreadsheet that tracks evidence kits among other data, as well as its own records management system in which dates of pick up and drop off are noted in each individual case. DFS and OCME each keep yet another spreadsheet with their own matrices for evidence kit processing that indicates when they received a kit and when results were processed and notification made to MPD and the USAO. An enormous amount of data is being kept by all four agencies, but they are completely separate and therefore never compared. When cases are documented and handled this many times the potential for data error also increases.

Because this is a critical part of the sexual assault response in terms of medical care, investigation and prosecution, it is imperative that a system exists in which kits are universally accountable if only for purposes of assuring victims and the general public that the system is efficient and documenting legal compliance with SAVRAA.

A secure database that is shared among DCFNE, MPD, the USAO, DFS and OCME would resolve this problem and is strongly recommended. The information shared in this database should be purely procedural, i.e. drop off and pick up dates, as well as the date on which results are available and notification made to MPD and the US Attorney's Office if applicable. No actual substantive results, case or survivor information would be shared.

Ideally, the database would also have the ability to send notifications when an item is complete or requires attention, and allow for search and aggregate data analysis to ensure compliance with the statute easily. Reports from the database can be used to inform the SART on a monthly basis. A group of staff from DFS, OCME, DCFNE, MPD, the US Attorney's Office, and the Office of Victim Services is currently creating this database. It is their hope that this project will be completed by the first quarter of fiscal year 2016.

The most significant challenge experienced in this audit was the lack of police report numbers attached to evidence kits originally, and the possibility that a simple typo could render a kit untraceable. Nineteen percent19%) of the evidence kits listed did not have a report number

initially. Kits should be tracked by the kit number assigned by DCFNE when the exam is performed. DCFNE would enter kits into the system based on that number and MPD would add in their case number when a case is opened and a kit is picked up. Any other numbers assigned in the process, such as MCL numbers at DFS and any OCME tracking numbers, could be added, but the cases would be tracked by the original DCFNE generated kit number across the system.

3. DFS and MPD's CSID should determine an adequate staffing level or back up staffing for the CSID to ensure that evidence can be submitted when it is brought to the Central Evidence Unit.

While this is not a chronic issue overall, it is a periodic problem that can have ramifications for an already over-taxed Sexual Assault Unit, as well as create a deterrent to dropping off evidence as soon as it is in hand. There should be enough CSID staff available to take in evidence in a timely way when requested by CEU staff. The solution to this problem may be as simple as providing a back-up officer assigned to the schedule and providing authorization and training for the MPD personnel who normally drop off evidence to be able to draw MCL numbers themselves.

4. DFS, MPD, the US Attorney's Office, and the Office of the Attorney General should continue to meet bi-weekly about prioritizing cases for testing and to discuss any problems with testing that exist.

These meetings are currently occurring as a way to work through DFS' restructuring and the halt of DNA testing at the Forensic Biology Unit. They have proven useful and should continue beyond DFS' reorganization to catch problems early in the process and maintain a dialogue about what is and is not being tested and possible reasons for that. These meetings will also ensure that questions about particular cases are answered in a timely way if questions arise after the kit or specimens are dropped off.

5. MPD, DFS and DCFNE need to establish a more open dialogue about issues related to what can and cannot be tested in a given case so that the expectation communicated among themselves and to the survivor about the utility of the forensic exam in a particular case is realistic.

The results of testing a kit or an item may not be dispositive of the entire case, but it may rule out or bolter a theory that the detective or the prosecution has about a case or a suspect. Similarly, while MPD personnel should receive training about the science of DNA to know what is and is not reasonable to request, DFS is the designated expert regarding what is scientifically possible. DFS should attempt to test any and all kits and items sent by MPD where it is scientifically possible to obtain a reliable profile of any kind. These issues should be discussed at the bi-weekly meetings. Clear documentation of kits or specimens, as well as other physical evidence not tested, the reason for this decision, and which agency made the decision should appear in the kit-tracking database. These explanations will help prevent confusion about why a kit was not tested, and help refine the system so that expectations and limitations may be understood proactively by all involved, including the survivor.

Beyond each agency contributing its own expertise to the process, the kits should be tested as submitted where at all feasible, i.e. scientifically possible, to provide closure for the survivor. While each case is different and each forensic evidence kit may yield different levels of new information, the survivor went through an extremely invasive examination with the understanding that the kit would be tested as originally described. Survivors are often very focused on the results of the kit, particularly when they are unclear exactly what happened to them in an assault or how extensive the assault was. All of these disparate expectations– from the SAU detectives to DFS to survivors themselves - were significant enough to warrant future dialogue and agreement on both process and communicating with survivors. The guiding principle should err on the side of testing what has been submitted unless it is scientifically impossible to obtain a result.

6. DFS should submit monthly reports to the Independent Expert Consultant until such time as the backlog is resolved and DFS is processing cases within the 90-day time limit established by SAVRAA.

As discussed above, previous issues with triaging cases and lengthy processing times are being aggressively addressed by DFS. The FBU is currently submitting these reports to the Independent Consultant and meeting with her regularly. DFS and the FBU have been extremely forthcoming, helpful and available in this process. Once kits are being tested in a timely way, i.e. within the 90-day limit at DFS rather than being outsourced, any outstanding issues can be discussed at the SART meetings as needed using the kit-tracking database.

Conclusion and Next Steps

The delayed kit results experienced over the last year and a half have had a serious impact on MPD's ability to investigate and close cases in a timely manner where the case hinged on the contents of the kit. These delays, as well as failure to test kits at all and other agencies pulling kits from testing before results were reported, also create victim dissatisfaction with the process. However, parts of the system are working extremely well. During the period reviewed, MPD was well within the statutorily required seven-day time limit for transporting kits to DFS and OCME, as well as their own four-day window for picking up kits and dropping them off outlined in the Sexual Assault Unit's Standard Operating Procedure. However, the overall system itself needs to be unified and appropriately resourced with additional staff both for purposes of transparency and accountability as well as ease of use by MPD, and DFS and OCME personnel alike.

The Department of Forensic Sciences is working aggressively to remedy the issues identified in this report as part of their overall reorganization, and based their efforts thus far these delays will be a thing of the past. Further, the relationships needed to ensure that a victim-centered team approach exists from the point at which an exam is conducted and an assault reported to law enforcement to the point where that evidence is used in law enforcement decision-making and subsequently in court are also present and improving.

The SART has formed a subcommittee made up of relevant staff from the agencies and organizations listed in this report to create the aforementioned kit tracking database. This

database will increase accountability and transparency in the process for all system actors and alert the SART early on if delays, backlogs or excessive discontinuation of testing arise again. The work of the subcommittee should be completed by the end of the first quarter of fiscal year 2016. An update will be provided to the Committee on the Judiciary in October 2016 as to its progress as part of the report on the SART case review process.