

Prepared Statement
Illinois Attorney General Lisa Madigan
“Taking Sexual Assault Seriously: Rape Kit Backlog and Human Rights”

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I. Introduction

Chairman Cornyn, Ranking Member Durbin, and members of the Committee, thank you for giving me the opportunity to speak with you. As a strong advocate for the rights of crime victims in Illinois, I am honored to testify about the very important issue of testing sexual assault evidence.

Sexual assaults have reached epidemic proportions in our nation. It is happening in our homes, in our neighborhoods, on military bases, on our college campuses, and on tribal land. The White House reports that 1 in 5 women will be sexually assaulted during their lifetimes.¹ According to the Department of Defense, 1 in 4 military members reported a sexual assault during their military service in 2014.² A White House Report found that 1 in 5 women experience sexual assault or attempted sexual assault while they are attending college.³ The statistics for Native American women are even bleaker. The Washington Post reported that 1 in 3 Native American women will be sexually assaulted during their lifetimes.⁴

¹ White House Council on Women and Girls, “Rape and Sexual Assault: A Renewed Call to Action,” Jan. 2014,” available at whitehouse.gov.

² Department of Defense, Sexual Assault Prevention and Response, “Fiscal Year 2014 Annual Report on Sexual Assault in the Military,” Appendix A, p. 2, May 1, 2015.

³ White House, “Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault,” Apr. 2014, available at www.notalone.gov/assets/report.pdf.

⁴ Washington Post, “New law offers protection to abused Native American women,” Feb. 8, 2014.

Furthermore, a distressingly low number of women report sexual assaults. Fewer than 4 in 10 survivors report their rape to the police.⁵ Many victims do not report sexual assaults out of fear they will not be believed, lack of support from friends and family, or lack of confidence in the criminal justice system. Those who do report and submit to a rape kit, do so with the belief that the kit will be tested and the offender brought to justice.

But in 2010, Human Rights Watch discovered that tens of thousands of sexual assault kits were stored in police stations nationwide, untested.⁶ The untested kits had been gathering dust for years; hundreds were more than a decade old. Many kits had been completed more recently but never sent to a lab for DNA testing.

Strong survivors and advocates urged law enforcement to focus on these unconscionable numbers and test all sexual assault kits so offenders could be brought to justice. The timely testing of sexual assault kits is essential to our fight against sexual assault. When kits are not tested, public safety is jeopardized; the offender remains free to look for the next victim. Because we know that many rapists are repeat offenders, every day a kit is not tested, women, girls, men, and boys are placed in danger.

There are serious consequences when rape kits are not timely tested. Victims must deal with the devastating effects of the trauma and waiting for test results exacerbates the stress. Some survivors want to put the ordeal behind them and as time passes are less likely to assist with the apprehension and prosecution of the offender. They may begin to question why they consented to an intrusive medical forensic examination that took hours. They may wonder why they bothered to report the incident in the first place.

⁵ U.S. Department of Justice, Bureau of Justice Statistics, "Criminal Victimization, 2013," revised Sept. 19, 2014 (34.8% of rape/sexual assaults reported to police in 2013).

⁶ Human Rights Watch, "I Used to Think the Law Would Protect Me: Illinois' Failure to Test Rape Kits," July 7, 2010.

Testing delayed is justice denied. Many of the unsubmitted tests in Illinois were stored in police departments in economically distressed communities, as was the case in Robbins, IL. Natasha, a resident of Robbins, was 14 years old in 1991 when she was brutally assaulted and raped. Natasha's parents immediately reported the crime to the police and Natasha was taken to the hospital where she underwent an intrusive medical forensic examination that lasted several hours. Nurses collected evidence from Natasha's body and gave the rape kit to the police, but the rape kit sat on a police department shelf for more than two decades. When the kit was tested in 2013, the results identified Natasha's rapist. Testing of other unsubmitted kits revealed that another victim had been raped by the same man who raped Natasha. Unfortunately, the delay in testing was so long, the offender could not be prosecuted because the 10-year statute of limitations had run.⁷

These delays represent a horrific failure of our criminal justice system.

II. Two Types of Backlogs Must be Addressed

In 2010, Human Rights Watch investigated the backlog of rape kits in Illinois and reported that only 1,474 of 7,494 rape kits had been tested in the 127 jurisdictions that provided information.⁸ Hundreds of these kits had been collected more than 10 years earlier, one dating as far back as 1978.

At my urging, Illinois passed the Sexual Assault Evidence Submission Act in 2010.⁹ It was the first law of its kind and did two things:

⁷ Chicago Magazine, "The Trouble with Robbins," Dec. 2, 2014; New York Times, "Despite DNA, the Rapist Got Away," May 9, 2015.

⁸ Human Rights Watch, "I Used to Think the Law Would Protect Me: Illinois' Failure to Test Rape Kits," July 7, 2010.

⁹ 725 ILCS 202 (P.A. 96-1011).

First, it required all law enforcement agencies with untested kits on the effective date of the law (September 1, 2010) to submit an inventory of untested rape kits in their possession. Ninety-six percent of law enforcement agencies inventoried the evidence in their custody and reported 4,138 unsubmitted kits.¹⁰

The Illinois State Police then developed a plan for the testing and analysis of the unsubmitted kits.¹¹ Testing began in March 2011 and was completed in November 2013. Testing of the 4,138 rape kits produced 969 CODIS hits.¹²

Second, it required law enforcement to send all rape kits that were released for testing after the effective date of the law to the Illinois State Police Crime lab for testing. The kits must be sent within 10 days from the day law enforcement takes custody of the kit. Compliance with this part of the law resulted in a second type of backlog. Since all kits must now be tested, the number of kits submitted to the crime lab increased. It now can take a year or more to test a timely submitted kit.

We need to address both of these issues: rape kits that were not submitted in the past and the increased number of kits that are submitted shortly after a kit is completed. The goal should be to have new kits tested by the lab within 30 days of receipt. If we fail to address these backlogs and fail to timely test rape kits, the ability to arrest, prosecute and convict is compromised.

¹⁰ Ninety-six rape kits were not tested because of administrative reasons or because further investigation indicated that no sexual assault had occurred.

¹¹ Illinois State Police, "The Sexual Assault Evidence Submission Plan," March 1, 2011.

¹² Illinois State Police, "FY 2014 DNA Testing Accountability Report," Nov. 13, 2013.

Survivors continue to suffer from the devastating effects of the sexual assault, witnesses move away, the opportunity to obtain other physical evidence may no longer exist, and statutes of limitations expire. Offenders are not held accountable; they remain free to rape again.

III. How to Fix the Backlogs

While the backlog is often addressed as an issue of funding, funding is not the only thing we must fix. We must look throughout the criminal justice system.

To address these issues in Illinois, my office is doing a number of things. Currently, I co-chair a statewide Sexual Assault Work Group with two State's Attorneys and the Executive Director of the Illinois Coalition Against Sexual Assault. Along with law enforcement, prosecutors, forensic scientists, and advocates we are identifying the barriers that prevent the efficient reporting, investigation, and prosecution of sexual assault cases.¹³ From what we have learned thus far, I propose the following recommendations:

First, states should adopt a law or implement a statewide protocol that requires all DNA to be submitted to a crime lab for testing once it is collected in a timely manner. Not only do all kits need to be timely submitted, but kits should be submitted for testing even when police are skeptical of the victim's story. This will ensure that all evidence is preserved for future use.

Second, all police departments must comply with those laws. Since the enactment of the 2010 law, there have been reports of police departments that failed to submit all of the rape kits that were in their custody. Oversight will be an important piece of this puzzle.

Third, states should implement tracking systems to improve accountability and satisfy chain of custody concerns. The ability to track a rape kit from hospital, to police department, to crime lab, to prosecution, will improve efficiency in the system. This is necessary for assessing

¹³ Illinois Attorney General Lisa Madigan, Press Release, "Attorney General, Prosecutors & Advocates Announce Joint Working Group to Combat Sexual Assault Crime in Illinois," March 31, 2015.

whether DNA matches made through CODIS or statewide databases are resulting in arrests, prosecutions and convictions.

Fourth, forensic labs need sufficient funding and resources to test the evidence they receive. The “second backlog” of long-processing times is unacceptable and we must make sure that labs and police departments have capacity to process kits in a timely fashion.

Fifth, forensic labs must look at their systems and improve efficiency. Programs like those in Louisiana and New York are examples of how to restructure testing to achieve maximum results. In Louisiana, for example, the number of DNA testing requests sent to the Louisiana State Police Crime Laboratory increased 22% from 2006 to 2007 and 48% from 2008 to 2009.¹⁴ The lab could not keep up with the increase and over time, it took more than a year to test DNA evidence. In May of 2008, the average turnaround time was 291 days. The lab hired outside consultants who applied a methodological approach called Lean Six Sigma. As of June 2011, the average turnaround time was 31 days, with 95% of the evidence processed within 30 days. The lab’s productivity went from 50 cases per month to 160 cases. The results at the crime lab in Monroe County, in Rochester, New York, were similar. Implementation of the Lean Six Sigma approach increased productivity four-fold -- from 25 cases per month to 100 cases. States should use similar approaches to examine the effectiveness of their crime labs.

Sixth, we must increase access to Sexual Assault Nurse Examiners who are trained on how to properly collect evidence and respond appropriately to the victim. How the criminal justice system responds when a victim first seeks help can dictate whether they receive proper support from law enforcement and support services. SANEs are an incredible asset to survivors and we must increase their availability.

¹⁴ Louisiana State Police Crime Laboratory, “Increasing Efficiency in a DNA Unit Using Lean Six Sigma; Forensic DNA Unit Efficiency Improvement Grant Final Report,” June 2011.

Finally, we must improve and increase training for law enforcement and prosecutors. The fact is that often rape kits are unsubmitted for testing because of a blame-the-victim mentality or because investigators mistrust the survivor's story. This outdated way of thinking must change. Training for law enforcement when they are studying in the academy as well as ongoing education throughout their career is crucial.

IV. Looking at the Whole Picture

We cannot look at the backlogs of rape kits in isolation. We must explore changes to how our society, law enforcement and prosecutors treat sexual assault victims starting from the moment a victim reports a crime and submits to a rape kit to the day an offender is sentenced.

In Illinois, I hired a Sexual Assault Nurse Examiner (SANE) Coordinator to provide training to registered nurses with the goal of providing every victim of sexual assault access to a SANE. The use of SANEs improves the treatment the victim receives during the medical forensic examination and improves the collection of evidence resulting in more successful prosecutions. Since 2004, a total of 1,131 nurses attended the classroom training to become an Adult/Adolescent SANE and 135 nurses attended the classroom training to become a Pediatric SANE.

Training of law enforcement is essential to change the culture of sexual assault. Too often an officer will question the credibility of a sexual assault victim from the moment the victim reports. This doubt about what the victim is telling the officer is conveyed in a number of ways. Questions focus not what the offender did, but rather on what the victim was wearing, whether she was drinking, and why she was where the rape occurred.¹⁵ This doubt is further manifested in the officer's decision not to have the rape kit tested, not to interview the offender

¹⁵ See, e.g., Belleville News-Democrat, "Absent Justice: Sex crime victims in Southern Illinois find that police, prosecutors typically do not charge their attackers," Feb. 12, 2015.

or not pursue evidence that would corroborate victim's story. Unlike other crimes, the officer classifies the rape as "unfounded" before any investigation is conducted.

Training of prosecutors is also essential, particularly in cases where the victim and the offender know each other or the victim has consumed alcohol or been slipped a drug to make her vulnerable. Prosecutors have limited time during voir dire to educate jurors about sexual assault. And they must encourage the jurors to not blame the victim.

Yet training those in the criminal justice system is not enough. We need to change our culture and the way society views sexual assault. We need to educate high school and college students on how to respect one another. We need to educate the public that when someone resists sexual contact and the contact continues, a sexual assault is being committed. We need to teach friends and family members to believe the victim and to respond with compassion. We need to encourage bystanders to intervene.

In closing, eliminating the backlogs of rape kits is essential to the fair and human treatment of victims and the protection of women, girls, men and boys.

Thank you for the opportunity to testify.