



One of "America's 100 Best Charities"
— *Worth* magazine

Hearing on the Rape Kit Backlog
Written Testimony of Scott Berkowitz of the
Rape, Abuse & Incest National Network (RAINN)
Before the U.S. Senate Judiciary Committee
Subcommittee on the Constitution
May 20, 2015

Chairman Cornyn, Ranking Member Durbin and members of the subcommittee, thank you for convening today's hearing and for the opportunity to address you on the backlog of untested DNA evidence from unsolved rape cases. The vast number of rape kits sitting in warehouses, and the frightening number of rapists left free to strike again, make this an urgent national issue that threatens public safety.

My name is Scott Berkowitz, and I am the founder and president of the Rape, Abuse & Incest National Network, or RAINN. RAINN, the nation's largest anti-sexual violence organization, founded and operates the National Sexual Assault Hotline (NSAH) in partnership with more than 1,000 local sexual assault service providers across the U.S. The NSAH, which has helped more than 2.1 million survivors of sexual assault by telephone and through online chat, serves as the nation's primary resource for victims of sexual violence. RAINN also operates, on behalf of the Department of Defense, the DoD Safe Helpline, which provides services to members of the US military affected by sexual assault.

RAINN also educates more than 130 million Americans each year about sexual assault prevention and recovery, and works hard to improve the criminal justice response to rape and create an environment in which more victims will feel comfortable reporting.

This is a crime that reaches every corner of our society – about once every two minutes, an American is sexually assaulted, according to the Justice Department. But it's also a crime for which, all too often, the only one who pays a price is the victim. More than two-thirds of sexual assaults — 68% — go unreported to law enforcement. Meanwhile, rapists tend to be serial criminals, striking more than once and assaulting more than one victim in the course of their criminal careers. Forensic DNA, which enables law enforcement to identify sexual predators early on and stop them in their tracks, is not only important to attain justice for those who have already been harmed, it is one of the most effective rape prevention tools that we have available.

Congress made the processing of forensic DNA a national priority by passing the DNA Analysis Backlog Elimination Act. It expanded its commitment — specifically in regards to rape kits — through enactment of the Debbie Smith Act in 2004. That act, which RAINN worked hard, in partnership with Debbie Smith and other advocates, to get passed and reauthorized, established the nation's first and largest anti-rape kit backlog program. In 2013, Congress passed a key amendment to this landmark law to require, for the first time, support law enforcement audits of their so-called "hidden" backlogs of unsubmitted forensic evidence, and to make sure that a higher percentage of the DNA funding dollars goes directly to what matters most: testing rape kits and making sure labs have the capacity to meet demand.

Before I discuss the incredible advancements we've witnessed in both science and public policy in the nearly two decades of work around this issue, I want to remind everyone exactly what it is we're talking about.



One of "America's 100 Best Charities"
— *Worth* magazine

To the untrained eye, a rape kit is little more than a cardboard box that contains slides, swabs, white sheets, plastic bags, and the like, in which is stored biological evidence collected during a sexual assault forensic medical exam.

But we must look beyond the box. Each rape kit, in actuality, represents a victim — a victim who chose to endure an invasive, hours-long examination. Often starting just minutes or hours after the sexual assault, this victim will stand over a sheet and lie on a table to allow evidence — a ripped fingernail, a piece of torn clothing, anything his or her attacker might have left behind — to fall, be scraped or removed from their body. A medical professional (ideally, but not always, a trained sexual assault nurse examiner) will examine and photograph the victim's genitals for evidence of trauma. The victim's buttocks, armpits, breasts, and mouth will be wiped and swabbed in the hope that a strand of hair, a bit of dried blood, or a drop of semen or spit might be recovered.

Once collected, in the event that a victim decides to report the crime to law enforcement, the items in that box will, if the system is working as it should, go to a laboratory for DNA analysis. Unfortunately, it is often at this stage that the system breaks down. Hundreds of thousands of kits, it is estimated, have never reached a lab. Instead, they became part of what we call the "hidden backlog," warehoused in evidence rooms and, often, never seen again.

Assuming the kit makes it to the lab for processing, is analyzed in a timely fashion and, after processing, yields a profile to be uploaded to the FBI's Combined DNA Index System (CODIS), the results may be used by law enforcement to bring an assailant to justice.



One of "America's 100 Best Charities"
— *Worth* magazine

No one, of course, *expects* (nor deserves) to be a victim of sexual violence. Nobody wakes up in the morning expecting to later lie prone on an examination table and have their body, now a crime scene, poked and prodded to collect evidence.

And they certainly do not expect, after this incredibly difficult process, for the evidence so painstakingly collected to be shelved in a warehouse or evidence room for decades on end, never to be reviewed or analyzed.

What a victim does — and should — expect is that the evidence from the assault will be treated with care and taken seriously. Not every rape kit will lead to a conviction, of course. Getting a conviction will still require lots of hard work by law enforcement and prosecutors, who will conclude, in some cases, that there's just not enough evidence to make an arrest or to prosecute. But even when, in a state where testing is not mandated, a decision is made not to test a particular kit, the victim deserves to know that someone, somewhere, took time to review it and make an informed determination about its disposition.

Recognizing this, and the fact that forensic DNA has the ability to spare potential new victims, bring justice to those who have been victimized, and exonerate the innocent, Congress, the administration, and, increasingly, states, have taken actions to reduce current backlogs and prevent future ones.

For two decades, RAINN has worked closely with policymakers on this front. As earlier discussed, we supported and advocated for landmark legislation, including the DNA Backlog Elimination Act of 2000 and Debbie Smith Act of 2004 and its subsequent reauthorizations.



One of "America's 100 Best Charities"
— *Worth* magazine

In 2013, we worked with you, Chairman Cornyn, to encourage passage of the SAFER Act, an important amendment to the Debbie Smith Act. SAFER mandated an increase in the percentage of DNA funds that are spent on DNA testing and analysis, and it will, when implemented by the National Institute of Justice (NIJ), provide funds to law enforcement agencies to audit their backlogged forensic evidence.

Many states are also starting to do their part to fix the problem. Working with our partners in the Rape Kit Action Project (RKAP), we have encouraged states to require law enforcement agencies to inventory unsubmitted rape kits and devise policies for prompt evidence processing.

Last year, with RKAP's technical assistance and support, seven states¹ passed new laws. To date, 13 have started or completed audits of their state's hidden backlog.² However, in a number of states, the information gleaned from these audits has been less than perfect: without meaningful enforcement mechanisms, they encountered challenges in getting results from all jurisdictions. This is where the SAFER Act will be particularly helpful — once it is implemented as the law requires.

This legislative session alone, there have been about 40 bills introduced in 20 states, while five states have enacted new reforms.³ States are also starting to build this work into their budgets. Texas and Illinois have been national leaders in this area. Illinois was the first state in the nation to legislate a statewide audit. Texas conducted audits that found an estimated 20,000 kits and then allocating \$11 million to address the backlogged cases. In Washington state, lawmakers are expected to soon approve \$2.7 million for anti-backlog work.

¹ CA, LA, MA, MI, TN, UT, and VA.

² CA, CO, IL, KY, LA, MA, MD, MI, TN, TX, WA

³ AR, KY, MD, TN, WA

Also reflective of the power of DNA as a tool to stop rapists and other criminals in their tracks is the fact that nearly thirty states are properly treating DNA as, essentially, a more sophisticated and accurate version of fingerprints, collecting it after someone is arrested on certain felony charges. (The remaining states wait until a conviction to collect DNA.)

As more and more communities discover large numbers of unsubmitted kits, they sometimes encounter systemic challenges, including a lack of investigative resources and weak inter-organizational collaborations for victim-centered, post-assault services. For these reasons, we also support programming — like the new Sexual Assault Kit Initiative funded in this year's budget and announced by the Bureau of Justice Assistance — to ensure that communities grappling with rape kit backlogs have the necessary tools, resources, training, and opportunities for collaboration to turn a CODIS hit into a conviction, and promote victim healing. Similarly, we are pleased that Manhattan District Attorney Cy Vance has pledged \$35 million to help states test backlogged kits. We view these as great complements to the critically important work being done through the Debbie Smith Act.

Is there a benefit to public safety to test kits from crimes that happened years ago? So far, the data are encouraging: In Colorado, 24 rape suspects were identified after the testing of 150 previously unsubmitted kits. In Ohio, 1,600 rape suspects were identified after 4,000 old kits were tested. In Detroit, where a tremendous undertaking has been supported through Debbie Smith Act dollars, after testing a batch of 1,600 kits, 100 rape suspects were identified. We're encouraged by NIJ initiatives like the Detroit Sexual Assault Kit Action Research Project. Through such initiatives, we are gaining insights into the why backlogs occurred and how they should be handled.

For all of our progress in recent years, there remain challenges that we urge the Judiciary Committee to evaluate and address.

Our first challenge lies in ensuring existing programs are implemented to the letter of the law and in keeping with explicit Congressional intent.

Since it was first authorized in 2004, the Debbie Smith DNA backlog Grant program has provided states the help and resources they desperately need to carry out DNA analyses of backlogged evidence, particularly rape kits. The law, which was just renewed for another five years with overwhelming bi-partisan Congressional support, is authorized at the level of \$151 million per year. Yet, consistently, the program has been funded below that authorization level – for the last several years at the level of \$117 million.

Even worse, only about 65% of that \$117 million, on average from FY11 through FY14, is actually being spent on Debbie Smith backlog testing and capacity building purposes. That means, out of \$476 million appropriated in that period, about \$309 million went to testing and lab capacity. Further, this trend actually shows signs of worsening, not improving: according to DOJ's figures, from FY11 to FY13, the amount of DNA money that allocated to administrative and program support costs rose by 94%, or approximately \$6.8 million, after excluding costs imposed by sequestration, while the amount spent on Debbie Smith Act backlog reduction grants decreased by 16%, or about \$14.2 million per year.

While spending 65% of DNA funds on testing is an improvement over some prior years, it still falls short of the 75% floor that Congress mandated in the SAFER Act, and the president signed into law, more than two years ago.



One of "America's 100 Best Charities"
— *Worth* magazine

We hope that all members of the Judiciary Committee will urge appropriators to rectify this in the FY16 budget. We believe that Congressional intent on this point is clear: the law mandates that not less than 75% of the funding available for the purposes of the Debbie Smith Act shall support testing and capacity enhancement; and an additional 5-7%, as required by the SAFER Act, must be made available for law enforcement evidence audits. Clearer appropriations language would result in testing thousands of additional kits without any additional federal spending.

This need is urgent: As law enforcement increasingly accounts for the hidden backlogs, states will be grappling with higher-than-ever demand for critical forensic DNA casework. Already, according to NIJ, public crime labs processed 10% more DNA cases in 2011 than in 2009, while demand for such tests grew by 16%. We can't afford to have funds siphoned away from the Debbie Smith Act purpose areas, however worthy those other goals are.

This need is time-sensitive: Without accelerated testing of backlogged cases, many victims will lose their chance at justice. Among the 43 states that still have a statute of limitations on felony sex crimes, , DC and 16 states, including Ohio and Rhode Island, do not make an exception for when DNA evidence is available. It is heartbreaking when we hear about a victim who is unable to secure justice against her rapist, even after a CODIS hit identifies the assailant, because the statute of limitations has already run out.

In addition to improving the funding process to favor testing and audits, the SAFER Act requires increased transparency around local backlogs. Grant recipients are required to disclose the number of kits discovered, testing status, status of the cases' statute of limitations, and the state's plan for those kits that have been discovered. The attorney general, under SAFER, is required to share these findings with the American public.



One of "America's 100 Best Charities"
— *Worth* magazine

Unfortunately, more than two years after SAFER became law, NIJ has yet to release a grant solicitation for law enforcement agencies to conduct audits. Also, the law required the development of national protocols and policies related to rape kit evidence processing and testing. These were due no later than September, 2014, but as of this date have not been released.

Thank you again for the opportunity to address and bring awareness around these critical issues and I look forward to further discussion.