SAKI Kit Testing Order

- All agencies who have less than 10 untested kits will be able to submit all of their kits for testing under the SAKI grant. This will allow 22 law enforcement agencies (LEAs) to eliminate their backlog.
- The remaining grant funds allocated for testing will be distributed amongst the remaining agencies proportionate to the number of untested kits in their possession. All calculations will be based on the inventory data.
    - For example, an agency with 900 kits (out of 5,000 kits) would be able to send 18% of their kits for testing, which is equivalent to 162 kits.
- Each agency will submit kits for testing based on the date of the offense. The more recent kits will be tested first.
- Anonymous Kits—We will not test Anonymous kits
    - All law enforcement agencies should review their kits to ensure that they are in fact active cases. Potential errors have been identified in the process for designating inactive Anonymous kits as active when using the official State of Maryland sexual assault evidence kit (SAEK).
    - <u>Background</u>:
        - When an Anonymous kit is collected, the kit is labeled with a fluorescent green sticker provided within the kit. The sticker is placed on the upper right corner of the exterior envelope of the kit so that it can be easily identified as an Anonymous kit. The words "Date Reported" are printed on the green sticker followed by a blank line. Nothing should be written on the green sticker at the time of collection.
        - Anonymous kits cannot be tested until the victim decides to press charges. The victim has 20 years to "report" to law enforcement their decision to press charges and therefore, activate the investigation. At that time, law enforcement should record the date on the green sticker as the "Date Reported."
        - Once the investigation has been activated and the date written on the green sticker, the kit is submitted to the laboratory for analysis.
    - <u>Concern and Action</u>:
        - During the SAKI inventory, we noticed that many of the Anonymous kits had a date entered on the green sticker, indicating that the kit had been activated. However, we found that a high percentage of the dates entered on the green sticker were the same as the date that the kit was collected at the hospital. We suspect that the date field on the Anonymous sticker was mistakenly filled out

upon collecting the kit, rather than upon receiving notice from the victim to proceed with the investigation as intended. As a result, many of these kits may appear to have been activated when, in fact, they should have remained anonymous.

- It should be noted, that the potential also exists for law enforcement to mistakenly not record the kit activation date. In this instance, there is the potential that a kit will remain anonymous and untested when it should be tested. Therefore, please review all Anonymous kits before you remove them from those that will be sent for testing.

- DNA Profile already in CODIS—If the offender's DNA is already in CODIS, testing is discretionary.
    - The LEA must determine if any charges were filed related to the case from which the SAKI kit was obtained. If charges were filed and it is determined that (1) there was only one offender involved in the case; (2) that offender was convicted and a final judgement was entered in the case; [and] (3) a DNA profile of that offender was obtained and uploaded into CODIS, then the SAKI kit is not required to be tested.
- Partially Tested Kits—Partially tested kits will not be tested in the first round of testing under the SAKI grant. Please do not include partially tested kits within the kits that your agency outsources for SAKI grant testing. We will focus on testing completely unsubmitted kits first and test partially tested kits after we eliminate the unsubmitted kit backlog.
- Unfounded Kits Under SAKI grant:
    - All cases previously labeled as "unfounded" should be pulled and reviewed first by the LEA.
    - If the LEA decides to change the "unfounded" designation, then the kit should be submitted for testing with all other untested kits.
    - If the LEA chooses to retain the "unfounded" designation, then the kit must be reviewed according to the review process developed by the SAEK Committee.
        - The case will first be reviewed by the local SART, if the SART includes representation from the disciplines listed below. There will be no further review if the SART unanimously agrees that the case is "unfounded."
        - If the SART's decision is not unanimous, then the case will be reviewed by a subset of the SAEK Committee, to include one representative from each discipline listed below.

Review Process: Kits Designated As "Unfounded"

- Under the SAKI grant, when law enforcement decides to designate a kit as "unfounded" or wishes to retain a previous unfounded designation, the case must be submitted for review.
- The review process will be a two-tiered system.
- The case will first be reviewed by the local SART, if the local SART includes representation from the following disciplines:
    - Forensic Nurse Examiner providing services at a local sexual assault forensic examination program, or other qualified health care provider from the local hospital;
    - Local Law Enforcement Agency;
    - Local States Attorney's Office;
    - Local certified Rape Crisis Center;
    - Maryland Coalition Against Sexual Assault;
    - Crime Lab, if available; and
    - Crime Victim Rights Attorney, if available.
- In jurisdictions where there is not a functioning SART, the case should be submitted directly to the SAEK Committee for review.
- Both the local SART and the SAEK Committee's review and determination will serve as a recommendation. The local LEA retains authority to make "unfounded" determinations.

Testing Protocol

(1) All SAKI kits must be separately coded and submitted to Bode in accordance with the contract terms negotiated by MSP. All non-SAKI kits may be submitted for testing in accordance with the LEAs policies.

(2) Once testing is complete, labs will notify the appropriate LEA of the result. Each LEA must designate a SAKI grant liaison who will be responsible for monitoring and notifying MCASA and OAG in regular intervals (at least quarterly) of the results of any kit tested under the SAKI grant.

- The SAKI grant liaison must also track and report the following information to OAG:
    - Number of kits sent for testing
    - Number of kits determined to not need testing
    - Reasons why kits were determined to not need testing
    - Number of CODIS hits received
    - Type of CODIS hit (offender or forensic)
    - Number of cases forwarded for investigation as a result of SAKI testing

- Number of cases forwarded for prosecution
- Number of cases charged
- Outcomes of those cases (e.g. plea, conviction, acquittal, mistrial, decline to prosecute)

(3) MCASA will then employ the victim notification protocol developed pursuant to the SAKI grant (and approved by the SAEK Committee).