

Kansas Sexual Assault Kit Initiative (SAKI)

“Unfounded” Case Coding

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There has been significant confusion regarding the use of “Unfounded” for sexual assault cases. While law enforcement agencies are expected to follow UCR guidelines for case clearance, there is a notable lack of clarity for when cases should be coded as “Unfounded” and as a result local standards and practices differ between agencies.

To prevent a future accumulation of sexual assault kits (SAKs) the Kansas Bureau of Investigation (KBI) and the Kansas Sexual Assault Kit Initiative (SAKI) working group have recommended a submit all/test all policy. However, current and older cases coded as “Unfounded” have created additional barriers to forensic analysis at the laboratory.

Due to limited financial and personnel resources at forensic laboratories, sexual assault kit (SAK) analysis is based on prioritization as determined through discussions between the laboratory, submitting law enforcement agency, and prosecutor's office. **When a case is coded as “Unfounded” the laboratory is prohibited from uploading any results into the national DNA database.** As such, “Unfounded” cases become deprioritized for testing in favor of focusing resources towards cases that are deemed more viable by law enforcement and prosecution.

The use of “Unfounded” for sexual assault cases should be reserved for those cases in which investigation can clearly demonstrate that **no crime occurred**.

When to use “Unfounded”

Cases should only be coded as “Unfounded” after a thorough investigation has been completed and the collected evidence demonstrates that no crime occurred.

A thorough investigation considers all available evidence, including the forensic analysis of a SAK when available. Testing SAKs has been shown to identify offenders, link cases forensically, and connect suspects to additional sexual and other violent crimes. The analysis of a SAK should be included in the evaluation of all available evidence before a case is coded.

The *Kansas Model Policy for Investigating Sexual Assault* indicates that all sexual assault cases should be thoroughly investigated and formally reviewed with a prosecutor prior to case coding. This consultation provides an opportunity for law enforcement and prosecutors to explore any incomplete information and understand charging decisions.

When NOT to use “Unfounded”

Sexual assault cases are complex and may not always have enough evidence to support a victim’s report. Because these crimes are often committed by someone known to the victim in a private or secluded location and typically do not result in extensive physical injuries, physical evidence may be limited.

Research has shown that trauma from a sexual assault can impact a victim’s memory, behavior, and emotions which may affect a victim’s ability to recall details of the assault. A victim’s trauma response may be considered evidence. Failure to understand and recognize the trauma response, as well as a lack of victim support throughout the investigative process, can result in a victim withdrawing participation or recanting in order to close the case.

A case should NOT be considered “Unfounded” based solely on the following:

- The victim is not cooperating with law enforcement or the judicial system;
- The victim cannot be located;
- The suspect states sex occurred but it was consensual;
- Prosecution of the case has been declined; or
- Statute of limitations has been met.

While these challenges are common in sexual assault investigations, they are not indicative of a case being “Unfounded.” Instead, these cases should be considered “Inactive” due to a lack of evidence.

Next Steps for Law Enforcement

All reports of sexual assault should be considered valid unless evidence collected as part of a thorough investigation proves otherwise. Cases should not be coded until all available evidence is evaluated and the case is formally reviewed with a prosecutor.

All SAKs associated with a report of sexual assault should continue to be submitted to a forensic laboratory for analysis within 14 days of collection from a medical facility. Case coding should not occur prior to the forensic analysis of the SAK. The prioritization of testing kits will continue to be based on case-specific communication among prosecutors, law enforcement, and laboratory professionals.

For SAKs associated with old cases coded as “Unfounded” and were submitted to a laboratory as a result of the Kansas SAKI submit all/test all recommendation, law enforcement agencies should review these cases to ensure appropriate case coding. If a case is determined to have inappropriately been coded as “Unfounded,” please notify your forensic laboratory as soon as possible.

Resources

Agencies are encouraged to review and adopt the *Kansas Model Policy for Investigating Sexual Assault* and the *Kansas Model Policy for Sexual Assault Evidence Collection Kit Submission, Retention, and Disposal*. These documents, as well as all other publications from the Kansas SAKI project, are available through the KBI SAKI webpage:

<http://www.kansas.gov/kbi/saki.shtml>.