

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Public Safety intends to adopt the rules cited as 14B NCAC 19A .0101-.0104; 19B .0101-.0107; and 19C .0101.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncdps.gov>

Proposed Effective Date: *May 1, 2020*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A request for a public hearing must be made within 15 days of notice. Email Rulemaking Coordinator Margaret McDonald at Margaret.mcdonald@ncdps.gov to request a public hearing.*

Reason for Proposed Action: *The Department of Public Safety (DPS) is promulgating permanent rules as required pursuant to N.C. Sess. Law 2018-70. Sections 1 and 2 established a statewide Sexual Assault Evidence Collection Kits (SAECK) tracking system (beginning October 1, 2018) to be administered according to protocols developed by the Director of the State Crime Laboratory. The Secretary of Public Safety is required to adopt rules, guidelines, and sanctions for agencies required to participate in the tracking system. In addition, pursuant to S.L. 2018-70, the Secretary convened a working group of diverse stakeholders and tasked them with making recommendations to both the Secretary and the State Crime Lab concerning SAECK tracking rules and protocols. The proposed rules reflect both those recommendations and the protocols currently being followed by agencies in possession of untested SAECK.*

Comments may be submitted to: *Margaret McDonald, NC Department of Public Safety, 4201 Mail Service Center, Raleigh, NC 27699-4201*

Comment period ends: *March 2, 2020*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 19 – STATEWIDE SEXUAL ASSAULT EVIDENCE COLLECTION KIT TRACKING SYSTEM

SUBCHAPTER 19A – GENERAL PROVISIONS

14B NCAC 19A .0101 SCOPE

The rules in this Chapter are applicable to persons or entities in the State that have custody of any sexual assault evidence collection kits, including medical service providers, law enforcement agencies, forensic laboratories, and the Department of Public Safety Law Enforcement Support Services.

*History Note: Authority G.S. 114-65;
Eff. [DATE]*

14B NCAC 19A .0102 DEFINITIONS

As used in this Chapter:

- (1) "Covered entity" means an agency, medical facility, or medical professional, person, or entity subject to the System tracking requirements.
- (2) "Director" means the Director of the North Carolina State Crime Laboratory.
- (3) "Forensic laboratory" means a person, agency, or department that takes custody of a sexual assault evidence collection kit for purposes of conducting forensic testing.
- (4) "Forensic medical examination" means an examination provided to a sexual assault victim by medical personnel trained to gather evidence of a sexual assault in a manner suitable for use in a court of law and includes collection and evaluation of physical evidence.
- (5) "Kit" or "sexual assault evidence collection kit" means a prepared kit used to conduct a forensic medical examination.

- (6) "Law enforcement agency" means any police department, sheriff's office, campus police department, or any other person, agency, or department investigating a reported sexual assault for which a sexual assault evidence collection kit has been utilized by a medical service provider or that is taking possession of or storing an unreported or anonymous sexual assault evidence collection kit.
- (7) "Medical service provider" means a medical facility or medical professional in the State who administers a forensic medical examination using a sexual assault evidence collection kit.
- (8) "Previously untested kit" means a sexual assault evidence collection kit used in a forensic medical examination which has not undergone forensic testing and was identified and included in the 2017 statewide inventory.
- (9) "System guidelines" means the guidelines published by the Director of the North Carolina State Crime Laboratory for use by covered entities.
- (10) "Statewide System Administrator" means an employee of the North Carolina State Crime Laboratory who has responsibility for the overall administrative functions of the System, including providing assistance to covered entities, training all covered entities, making corrections in the system, and generating data reports for the Director's annual tracking report to the Joint Legislative Oversight Committee on Justice and Public Safety.
- (11) "System" means Sexual Assault Evidence Collection Kit Tracking and Inventory Management System (STIMS).

History Note: Authority G.S. 114-65; G.S. 143B-1200;
Eff. [DATE]

14B NCAC 19A .0103 SYSTEM ADMINISTRATOR DESIGNATION

- (a) The System shall be administered by the Statewide Administrator.
- (b) The Statewide Administrator shall grant System access to each covered entity.
- (c) The Statewide Administrator shall provide training and technical assistance to all local administrators.
- (d) The Statewide Administrator shall keep a log of all notifications for entities out of compliance with the rules of this Chapter as covered in 14B NCAC 19C .0101 Compliance and Sanctions.
- (e) The Statewide Administrator contact information is NCSTIMS@ncdoj.gov.

History Note: Authority G.S. 114-65;
Eff. [DATE]

14B NCAC 19A .0104 COVERED ENTITY SYSTEM ACCESS; LOCAL ADMINISTRATORS

- (a) Each covered entity shall access the System and require that its users are trained to enter kit information data in the System.
- (b) Each covered entity shall designate a local administrator, who shall provide his or her contact information to the Statewide Administrator in writing, by mail, hand delivery, or email. If a covered entity changes its local administrator or contact information for its local administrator, the covered entity shall update the System administrative information and provide written notice of the change to the Statewide Administrator within 10 business days.
- (c) The local administrator shall report any issues requiring technical support to the Statewide Administrator within two business days at NCSTIMS@ncdoj.gov.

History Note: Authority G.S. 114-65;
Eff. [DATE]

SUBCHAPTER 19B – COVERED ENTITY TRACKING REQUIREMENTS

14B NCAC 19B .0101 SYSTEM COMPATIBILITY FOR KITS

Any State or local government agency responsible for the production of kits to be used in this State shall produce kits that are compatible with the System. A government agency that contracts for kit production by a vendor shall ensure that the vendor is contractually obligated to meet this requirement.

History Note: Authority G.S. 114-65; 143B-1201;
Eff. [DATE]

14B NCAC 19B .0102 MEDICAL SERVICE PROVIDERS

- (a) Medical service providers shall:
 - (1) In the System, receive all kits used for the collection of physical evidence during forensic medical examinations from the kit vendor;
 - (2) make all required data entries in accordance with System guidelines; and
 - (3) track all kit transfers from the provider to a law enforcement agency or to Law Enforcement Support Services (LESS) in the System.
- (b) Prior to using any kit that does not already have a tracking number, the medical service provider shall affix a tracking label received from the statewide System administrator.
- (c) The medical service provider shall inform the victim of the North Carolina Department of Justice Sexual Assault Kit Tracking Web Portal found at <https://www.sexualassaultkittracking.ncdoj.gov/SexualAssaultKitTracking/> and provide the victim with the kit tracking number to view kit tracking and testing information.

History Note: Authority G.S. 114-65;
Eff. [DATE]

14B NCAC 19B .0103 LAW ENFORCEMENT AGENCIES

(a) Each law enforcement agency in the State shall comply with System guidelines to track the:

- (1) receipt of kits by the law enforcement agency from medical service providers or Law Enforcement Support Services (LESS);
- (2) the transfer of kits from the law enforcement agency to forensic laboratories; and
- (3) the transfer of kits from forensic laboratories back to the law enforcement agency.

Each law enforcement agency shall enter all data in accordance with System guidelines and keep the data updated as the investigation of the incident evolves.

(b) When a law enforcement agency submits a kit to any private vendor laboratory or any public laboratory outside of North Carolina for forensic testing, the law enforcement agency shall coordinate with that forensic laboratory to ensure that entries for the tracking of the kit are made in the System, in accordance with System guidelines.

(c) Each law enforcement agency that receives into its custody a kit that does not already have an assigned tracking number shall affix a tracking label received from the Statewide System Administrator.

(d) Each law enforcement agency shall enter all data from each previously untested kit in their custody into the North Carolina SAKI online data collection tool. Kits entered in the collection tool will be placed into STIMS by the system administrator to make them trackable. Each law enforcement agency shall send an e-mail to NCSAKI@ncdoj.gov to gain access to the online data collection tool.

History Note: Authority G.S. 114-65;
Eff. [DATE]

14B NCAC 19B .0104 LAW ENFORCEMENT SUPPORT SERVICES

Law Enforcement Support Services shall:

- (1) confirm all kits held or received into its custody have tracking labels or are otherwise System compatible;
- (2) enter tracking data in accordance with System guidelines; and
- (3) track the subsequent transfer of any kit to a law enforcement agency in the System.

History Note: Authority G.S. 114-65;
Eff. [DATE]

14B NCAC 19B .0105 FORENSIC LABORATORIES

(a) Any forensic laboratory in this State that takes custody of a kit for purposes of conducting forensic testing shall:

- (1) Enter the transfer and receipt of the kit in the tracking System in accordance with System guidelines;
- (2) Enter all data on the examination in accordance with System guidelines and keep the data updated if a CODIS hit occurs; and
- (3) Enter the transfer of the kit back to the submitting law enforcement agency in the tracking System in accordance with System guidelines.

(b) Any forensic laboratory in this State that receives into its custody a kit that does not already have tracking label shall affix a tracking label to the kit received from the Statewide System Administrator or otherwise make the kit System-compatible.

(c) North Carolina law enforcement agencies that submit kits to private vendor laboratories or public laboratories outside of this State for purposes of conducting forensic testing shall coordinate with those laboratories to ensure that entries for the tracking of the kit are made in the System in accordance with System guidelines.

History Note: Authority G.S. 114-65;
Eff. [DATE]

14B NCAC 19B .0106 PREVIOUSLY UNTESTED KITS

(a) Each covered entity's local administrator shall contact the Statewide Administrator to obtain tracking labels designated for previously untested kits.

(b) Covered entities shall comply with System guidelines for submitting data to be used by the Statewide System Administrator to enter previously untested kits in their custody in the tracking System.

History Note: Authority G.S. 114-65;
Eff. [DATE]

14B NCAC 19B .0107 VICTIM NOTIFICATION FOR KITS COLLECTED PRIOR TO OCTOBER 1, 2018

Law enforcement agencies shall take reasonable measures to provide victims with kit tracking numbers and information about the System after a previously untested kit is assigned a tracking number and entered into the System.

History Note: Authority G.S. 114-65;
Eff. [DATE]

SECTION .0100 - PROVISIONS

14B NCAC 19C .0101 COMPLIANCE AND SANCTIONS

(a) The Statewide Administrator shall give written or oral notice to any covered entity out of compliance with the rules of this Chapter and such notice shall include:

- (1) identification of the deficiency or failure to comply; and
- (2) notice that the deficiency must be corrected within 10 business days following notification.

(b) If a covered entity fails to correct the deficiency within 10 business days following notification, the Statewide Administrator shall give written notice by mail, hand delivery, or email to the covered entity and such notice shall include:

- (1) identification of the deficiency or failure to comply; and
- (2) notice that the failure to resolve the identified deficiency within 10 business days following notification may result in the covered entity being listed in the Director's annual tracking report to the Joint Legislative Oversight Committee on Justice and Public Safety.

(c) The Statewide Administrator shall keep a log of all notifications for entities out of compliance with the rules of this Chapter.

*History Note: Authority G.S. 114-65;
Eff. [DATE]*