Regulatory Impact Analysis
Creation of SAECK Testing System
Updated by Agency: June 2019

Agency Name: Department of Justice

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Rules proposed for adoption: Rule 14B NCAC 19A.0101
Rule 14B NCAC 19A.0102
Rule 14B NCAC 19A.0103
Rule 14B NCAC 19A.0104
Rule 14B NCAC 19B.0101
Rule 14B NCAC 19B.0102
Rule 14B NCAC 19B.0103
Rule 14B NCAC 19B.0104
Rule 14B NCAC 19B.0105
Rule 14B NCAC 19B.0106
Rule 14B NCAC 19B.0107
Rule 14B NCAC 19C.0101

State Impact: Yes
Local Impact: Yes
Substantial Economic Impact: No

Statement of Necessity:

The Department of Public Safety (DPS) is promulgating permanent rules as required under N.C. Sess. Law 2018-70. These new rules reflect current agency practice. The necessity for a statewide sexual assault kit tracking system was highlighted by a report completed by the North Carolina Department of Justice (DOJ) on March 1, 2018. That report found that there were 15,160 untested sexual assault evidence collection kits located throughout the state held by local law enforcement agencies. The reporting period for the audit opened on July 1, 2017, with a suspense date of no later than December 31, 2017, and a reporting date of March 1, 2018. This meant that the numbers reported were only a snapshot in time. The report made apparent that the state did not have a way to determine in real-time the number of untested sexual assault kits that existed and their location. Nor did survivors of sexual assault have a way to track the testing progress of their kit. As such, DOJ recommended a statewide sexual assault evidence collection kit tracking system, which was created under N.C. Sess. Law 2018-70.

Rule Text: Attached as Appendix 1

Background Information

On March 1, 2018, the North Carolina Department of Justice (DOJ) and the State Crime Laboratory submitted to the General Assembly the "2017 Sexual Assault Evidence Collection Kit Law Enforcement Inventory Report" pursuant to Section 17.7 of the Appropriations Act of 2017 (N.C. Sess. Law 2017-57).
The March 1, 2018 Report, based upon a 92% response rate from law enforcement agencies in North Carolina, estimated that 15,160 sexual assault evidence collection kits (SAECK or “kit”) in law enforcement custody had not previously been submitted for forensic testing.

In response to the March 1, 2018 Report, the General Assembly enacted legislation N.C. Sess. Law 2018-70, which was signed into law by Governor Roy Cooper on June 25, 2018. Sections 1 and 2 established a statewide 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 was required to adopt rules, guidelines, and sanctions for agencies required to participate in the tracking system. Per N.C. Sess. Law 2018-70, the Secretary of Public Safety convened a working group of diverse stakeholders and tasked them with making recommendations to both the Secretary of Public Safety and the State Crime Laboratory 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 SAECKs.

Proposed Rule Change and Estimated Impact:

The proposed rule additions and changes include the following:

1. 14B NCAC 19A.0101

This rule establishes the entities or persons that are subject to the rules applicable to the Statewide Sexual Assault Evidence Collection Kit Tracking System (system). This rule clarifies that medical service providers, law enforcement agencies, forensic laboratories, and the Department of Public Safety Law Enforcement Support Services and others are subject to the Chapter if they have in their custody an untested sexual assault kit.

2. 14B NCAC 19A.0102

This rule provides necessary definitions for terms used in the Chapter.

3. 14B NCAC 19A.0103

This rule clarifies the designation of the administrator of the Statewide Tracking System and clarifies the administrator’s role in granting access to covered entities, providing assistance and training to local administrators, and keeping a log of all notifications for entities out of compliance.

4. 14B NCAC 19A.0104

This rule clarifies each covered entity's access to the system and its designation of a local administrator. This rule clarifies that each covered entity shall have access to the system, and its users shall be trained in entering kit information into the system. This rule clarifies that each covered entity shall designate a local administrator, and they shall provide their contact information to the statewide administrator. This rule also clarifies how the local administrator reports any technical support required to the statewide administrator.

5. 14B NCAC 19B .0101

This rule requires any state or local government agency that is responsible for the production of kits to be used in the state to produce kits that are compatible with the system. The rule requires that government agencies that contract with a vendor to produce kits must ensure the vendor is contractually obligated to produce kits that are compatible with the system.
6. 14B NCAC 19B .0102

This rule requires medical service providers to make all required data entries in accordance with system guidelines, as well as, track all kit transfers from the provider to a law enforcement agency or to Law Enforcement Support Services (LESS) in the system. Additionally, it requires a medical service provider to affix a tracking label on any kit that does not already have a tracking number. Finally, it requires the medical service provider to inform the victim of the North Carolina Department of Justice Sexual Assault Kit Tracking Web Portal found at https://wwwsexualassaultkittracking.ncdoj.gov/SexualAssaultKitTracking/ and provide the victim with the kit tracking number to view the kit tracking and testing information.

7. 14B NCAC 19B .0103

This rule requires law enforcement agencies in the state to track the receipt of kits and the transfer of kits to and from forensic laboratories. It also requires law enforcement when working with out-of-state forensic laboratories or private vendors to coordinate with the out-of-state laboratory or private vendors to ensure that tracking entries are made in the system in accordance with system guidelines. The rule requires any law enforcement agency that receives a kit without a tracking label already affixed to affix a tracking label provided by the system administrator. Finally, the rule requires law enforcement agencies to enter all previously untested kits in their custody into the North Carolina SAKI online data collection tool by emailing NCSAKI@ncdoj.gov.

8. 14B NCAC 19B .0104

This rule requires Law Enforcement Support Services to confirm all kits in their custody to have tracking labels or be system compatible, enter tracking data in accordance with system guidelines, and track the subsequent transfer of any kit to a law enforcement agency in the system.

9. 14B NCAC 19B.0105

This rule clarifies the duties of any forensic laboratory in the state that takes custody of a kit for the purpose of conducting forensic testing. This rule also clarifies that any forensic laboratory in the state that receives a kit without a tracking label already affixed shall do so or make the kit, system-compatible. Finally, this rule clarifies when state law enforcement agencies submit kits to private or public laboratories outside of the state, they have a responsibility to coordinate with those laboratories to ensure that entries for the tracking of a kit are made in the system in accordance to system guidelines.

10. 14B NCAC 19B.0106

This rule clarifies how local administrators shall handle previously untested kits in obtaining tracking labels and requires them to comply with system guidelines in submitting data to be used by the Statewide System Administrator.

11. 14B NCAC 19B.0107

This rule clarifies how law enforcement agencies shall take reasonable measures to provide victims with kit tracking numbers and information about the system after the untested kit is assigned a tracking number and entered into the system.

12. 14B NCAC 19C.0101
This rule clarifies Statewide Administrator's role in giving oral notice to covered entities that are out of compliance. This rule also clarifies that the Statewide Administrator shall keep a log of all notifications for entities out of compliance with the rules of this Chapter.

Quantified Impacts Summary:

Benefits

The tracking system went live on October 1, 2018. With this tracking system, all-new kits are trackable throughout the testing process, and previously untested kits are in the process of being barcoded and uploaded into the tracking system as well.

The benefits of having a SAECK tracking system are that now, survivors of sexual assault can track their kit throughout the testing process. This will provide accountability, transparency, and efficiency in the evidence testing process and help work to prevent the accumulation of unsubmitted kits. Per statute, all medical facilities, law enforcement agencies, forensic labs, or others having custody or use of any sexual assault kit is required to participate and comply. This means every time they interact with the kit (i.e., use it for an exam; transfer to law enforcement; receive it into evidence, transfer it to the lab; and test the kit) they will use this system. These rules will provide the guidance these agencies need to comply with G.S. 114-65.

We believe the increase in transparency that this system provides will impact testing as well. For FY 18-19, the State Crime Lab received 586 kits and outsourced another 303. For this year the State Crime Lab has already received 750 kits to analyze in-house. The State Crime Lab anticipates this number to continue to increase as more agencies use the system and also due to The Survivor Act (S.L. 2019-221) which requires local law enforcement to contact the State Crime Lab to request testing of their previously untested sexual assault kits and send all future sexual assault kits to the State Crime Lab for testing.

To assist with this endeavor, the Department of Justice secured $2M (over the course of 3 years) in funding from the Bureau of Justice Assistance Sexual Assault Kit Initiative and $2M (over the course of 2 years) in funding from the Victims of Crime Act (VOCA) via the Governor’s Crime Commission to help cover the costs associated with the identification and testing of sexual assault kits. The Survivor Act added an additional $6M to aid in the testing of remaining sexual assault kits. We approximate the cost of testing 15,160 kits to be approximately $10M and will take several years, depending on our vendor lab’s capacity to complete testing.

Costs

1. Department of Justice:

The agency incurred a one-time fee of $130,990 for a temporary programmer to customize another state’s existing tracking system for North Carolina. The agency incurs an annual cost of $15,275 for website security and server maintenance and $85,038 in annual cost for one full-time employee who is the system’s administrator located at the State Crime Lab.

2. State Crime Lab and forensic laboratories:

The Department of Public Safety is responsible for purchasing sexual assault kits for the state. However, the State Crime Lab must provide the technical specifications to the Department of Public Safety as to the type of kits that need to be purchased in order to comply with the system. The cost
was previously $11.65 for an individual kit. The new trackable kits costs $11.96 per kit. We currently order 3,000 kits annually. The tracking system should not cause the Department of Public Safety to purchase more kits than in the past.

The State Crime Lab will also incur a cost in the form of employee time. State Crime Lab employees will be responsible for: (1) entering the data from the kit into the system; and (2) returning the kit to Law Enforcement. It is estimated that this will take 66 seconds of an employee's time.

While the tracking system and costs associated with testing sexual assault kits are not directly related, there is an indirect relationship. It is important to note that the scientists that conduct the testing often times have to testify in court. For FY 18-19, State Crime Lab scientists spent a total of 37 hours devoted to travel, wait time and testifying in court, costing the crime lab $1,310.08. As for the cost of testing alone, the lab contracted with a vendor lab to assist with outsourcing kits held by local law enforcement that were older than a year, which cost $212,100. The lab tested the cases submitted by law enforcement that were less than a year old in-house costing approximately $468,800. This does not include costs associated with the time spent on scientific analysis. For in-house testing, total analysis time cost the State Crime Lab approximately $262,772, while the screening of kits for outsourcing cost a total of $14,243.85.

Private forensice labs would benefit from any outsorced testing, equivalent to the costs estimated here.

3. **Medical Agency**

A medical agency will incur a cost in the form of employee time. A medical agency will be responsible for logging in to the system after they have received the kit, entering the data of the kit, and sending the kit to Law Enforcement. It is estimated that this will take 45 seconds of an employee's time.

4. **Law Enforcement Agency and Department of Public Safety Law Enforcement Support Services:**

Law enforcement agencies will incur a cost in the form of an officer's time for entering kit data into the system for new and previously untested kits, and for providing victims with kit tracking information after an untested kit is assigned a tracking number and entered into the system. An officer will be responsible for logging in to the system after they have received the kit, entering the kit data, sending the kit to the State Crime Lab, and ensuring the kit is returned to the agency from the lab. It is estimated that this will take an officer a total of 1 minute and 15 seconds. A series of YouTube videos are provided on DOJ's website to provide guidance on how to use the tracking system. The total watch time is approximately 1 hour. The Department of Public Safety Law Enforcement Support Services will incur similar staff time costs for ensuring system compatibility and tracking.

5. **Uncertainty**

It should be noted that there is a degree of uncertainty in the figures provided above. The money and time calculated is an estimate based on agency consultation. Also, we believe that the monetary and staff time expense associated with kit tracking and system compatibility requirements does not meet the substantial impact ceiling.
14B NCAC 19A .0101 is proposed for adoption as follows:

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 is proposed for adoption as follows:

**14B NCAC 19A .0102 DEFINITIONS**

As used in this Chapter:

(a) “Covered entity” means an agency, medical facility, or medical professional, person, or entity subject to the System tracking requirements.

(b) “Director” means the Director of the North Carolina State Crime Laboratory.

(c) “Forensic laboratory” means a person, agency, or department that takes custody of a sexual assault evidence collection kit for purposes of conducting forensic testing.

(d) “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.

(e) “Kit” or “sexual assault evidence collection kit” means a prepared kit used to conduct a forensic medical examination.

(f) “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.

(g) “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.

(h) “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.

(i) “System guidelines” means the guidelines published by the Director of the North Carolina State Crime Laboratory for use by covered entities.

(j) “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.

(k) “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 is proposed for adoption as follows:

**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.0102 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 is proposed for adoption as follows:

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]
14B NCAC 19B .0101 is proposed for adoption as follows:

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; G.S. 143B-1201.

Eff. [DATE]
14B NCAC 19B .0102 is proposed for adoption as follows:

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 is proposed for adoption as follows:

14B NCAC 19B .0103 LAW ENFORCEMENT AGENCIES

(a) Each law enforcement agency in the State shall comply with System guidelines to track the
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 is proposed for adoption as follows:

**14B NCAC 19B .0104  LAW ENFORCEMENT SUPPORT SERVICES**

Law Enforcement Support Services shall:

(a) confirm all kits held or received into its custody have tracking labels or are otherwise System compatible;

(b) enter tracking data in accordance with System guidelines; and

(c) 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 is proposed for adoption as follows:

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 is proposed for adoption as follows:

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 is proposed for adoption as follows:

**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]*
14B NCAC 19C .0101 is proposed for adoption as follows:

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]