

http://www.usatoday.com/story/news/2015/07/16/untested-rape-kits-evidence-across-usa/29902199/



Steve Reilly, USA TODAY

CHAPTER 1

Joanie's story

Eighteen years later, a surprise call

After 18 years without justice, Joanie Scheske believed the man who raped her would never be caught.

That changed when St. Louis police called in 2009. Evidence in a separate, eight-year old sexual assault was finally tested and matched her attacker's DNA.

Rapist Mark Frisella, whose attack was so brutal Scheske still suffers from epilepsy, is serving 19 years in prison.

"I had a really difficult time wrapping my head around why that rape kit was never tested," Scheske said. "My case is a poster child as to why you test these kits."

A USA TODAY Media Network investigation identified tens of thousands of sexual assault evidence kits never tested by police.

In the most detailed nationwide inventory of untested rape kits ever, USA TODAY and journalists from more than 75 Gannett newspapers and TEGNA TV stations have found at least 70,000 neglected kits in an open-records campaign covering 1,000-plus police agencies – and counting. Despite its scope, the agency-by-agency count covers a fraction of the nation's 18,000 police departments, suggesting the number of untested rape kits reaches into the hundreds of thousands.

The kits contain forensic evidence collected from survivors in a painstaking and invasive process that can last four to six hours. Testing can yield DNA evidence that helps identify suspects, bolster prosecutions and in some cases exonerate the wrongly accused.

The records reveal widespread inconsistency in how police handle rape evidence from agency to agency, and even officer to officer. Some departments test every rape kit. Others send as few as two in 10 to crime labs.

Decades of promises from politicians, and more than \$1 billion in federal funding, has failed to fix the problems. The roughly \$1,000 cost to analyze each kit is among the

hindrances for police.

Records obtained from police agencies in all 50 states show:

- While attention has been focused on large metro police agencies, tens of thousands of untested sexual assault kits are accumulating almost without notice at rural and smaller city departments. Hundreds of rape kits remain untested in places like Muncie, Ind., Visalia, Calif., St. Cloud, Minn., and Green Bay, Wis.
- In most states and at most law enforcement agencies, there are no written guidelines for processing sex-crime evidence. Decisions often are left to the discretion of investigating officers, leading to inconsistencies.
- Although uploading offenders' DNA information into state and national databases is proven to identify serial predators who move across jurisdictions, po-

lice often treat rape kits as if the evidence is relevant only to the single assault with which it is associated.

- Authorities at all levels of government are failing to quantify the problem. At least 50 major law enforcement agencies from Montgomery, Ala., to Reno, Nev. have never counted the untested rape kits in their evidence rooms. Most states haven't undertaken an inventory.
- The U.S. Department of Justice is failing to comply with a 2013 law that was meant to get more rape kits tested and set national protocols for processing sexual assault evidence.

For rape survivors like Scheske, the accumulation of untested evidence is more than abstract statistics.

"Every single one of those rape kits is a person, and (their)



Wayne County Prosecutor Kym Worthy holds up an example of a rape test kit at a press conference in January. The Prosecutor's Office discovered thousands of untested rape kits in a Detroit police storage unit five years ago.



Debbie Smith of Williamsburg, Va., and her husband Rob.

family and friends," she said. "It's like a baby's mobile: You touch one piece and it moves all the others. It's not just one person. Everyone that their sphere of influence touches is affected by what happens to a victim."

CHAPTER 2

Discretion question

No consistency in decision to test or store evidence

Debbie Smith of Williamsburg, Va., is one of thousands whose cases were solved by DNA analysis. After a masked man invaded her home in 1989 and raped her — threatening to come back and kill her if she told anyone — she lived

in constant fear of his return for more than six years.

Smith remembers the day she was notified that a DNA match identified her attacker. He was already behind bars in Maryland for another crime. "It was the first time in those 61/2 years that I took a deliberate breath. I wanted to breathe. I wanted to live."

The inconsistent analysis of rape kits persists even as comprehensive testing in some cities — including New York, Cleveland and Detroit — has demonstrated the power of the previously unused evidence to identify unknown assailants, confirm the accounts of sexual assault survivors, and exonerate wrongly accused suspects.

The results showed the discretion investigating officers have over whether to test rape kits has often been misused, said Sarah Haacke Byrd, managing director of the Joyful Heart Foundation, a group pushing for testing of all kits tied to a reported sexual assault.



"Time and time again, we have seen that law enforcement frequently disbelieves victims when they're seeking help from law enforcement," she said. Mandatory testing "takes discretion out of the hands of law enforcement."

In the course of this investigation, the questions from local and national journalists started prompting change, even before publication. State agencies and local police that didn't know how many untested rape kits they held started counting because of reporters' questions and open records requests. Those new audits alone found more than 2,000 kits containing untested evidence. Several agencies decided, based on reporters' inquiries, to send some or all of their untested rape kits to crime labs. In South Carolina, told of the findings, legislative leaders began pursuing statewide standards defining when police should test rape evidence.

Yet for uncounted thousands more rape survivors, the evidence remains untested, in storage.

CHAPTER 3

Cold hits

Testing evidence, even years later, is resolving rape cases

It took more than a decade for Michael J. Brown to face justice for the 1993 rape of a school-aged girl at a New York City apartment complex.

On Aug. 6, 1993, Brown followed the girl inside a Queens apartment building where she was visiting a friend. He placed his hand over her mouth and abducted her, taking her to the rooftop, where he raped her and knocked her unconscious with a brick, according to court records.

The victim was taken to a local hospital, where she was interviewed by police and a rape kit was prepared. Then, for nine years, that evidence sat in a freezer among a trove of 16,000 untested rape kits held by the New York City Police Department.

In prior decades, the evidence had little value unless new leads emerged. But DNA technology advanced and state and federal governments built offender databases. Police and policymakers saw value in analyzing the evidence.

In the late 1990s, NYPD spent \$12 million to send every kit to a private lab for analysis. About 2,000 matched DNA in offender databases — "cold hits" as police call them. One of the matches: Michael Brown.

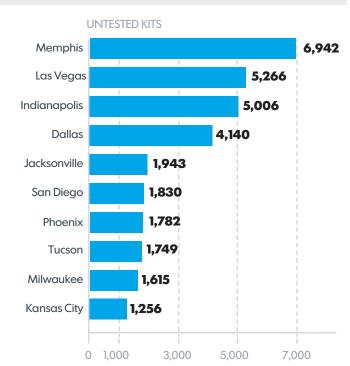
His DNA had been entered into the FBI's Combined DNA Index System (CODIS) database after an unrelated crime in Maryland. The DNA match led to his indictment in 2003 for the New York girl's rape. He was convicted in 2005.

Other cities and several states followed New York's example and now send all rape kits for testing. New laws and changing attitudes in some jurisdictions have led to CO-DIS matches resulting in thousands of new investigations and hundreds of indictments — many involving serial offenders tied to sex crimes in different parts of the country.

Testing by Cleveland-area prosecutors linked more than 200 alleged serial rapists to 600 assaults. Statewide, Ohio Attorney General Mike DeWine's effort to collect and test sexual

UNTESTED SEXUAL ASSAULT KITS

A number of the nation's largest law enforcement agencies have not tested hundreds or thousands of the sexual assault kits they booked into evidence in recent years.



Source: Agency and state figures obtained by USA TODAY as of early 2015

assault kits has resulted in at least 2,285 CODIS hits so far.

In Houston, analysis of about 6,600 untested rape kits resulted in about 850 matches, 29 prosecutions and six convictions.

And, since the Colorado Bureau of Investigation began requiring police statewide to submit sexual assault kits for testing last year, more than 150 matches have been found.

Despite those successes, many police agencies haven't changed their policies.

In New York state, law enforcement agencies outside of New York City are under no legal requirement to test rape evidence. No state law exists requiring agencies to track how many untested kits are stored in their evidence rooms.

New York is one of 44 states with no law stipulating when police should test rape kits and 34 states that haven't conducted a statewide inventory.

"We need to have a full accounting for the state of what's left, what hasn't been tested, why it hasn't been tested and just clear it up," said New York State Assembly member Linda Rosenthal, a Democrat, who has introduced legislation requiring an inventory. The bill has yet to make it out of committee.

CHAPTER 4

Reasons why

Why police say they don't test every kit

Interviews with law enforcement officials, and a review of police records obtained by USA TODAY, reveal sexual-assault-kit testing is often arbitrary and inconsistent among



law enforcement agencies — and even within agencies.

In Jackson, Tenn., for example, notations in evidence records show contradictory reasons as to why rape kits were not tested. In some cases, the Jackson Police Department did not test evidence because the suspect's identity was already known, records show. In 13 other cases since 1998, records show police decided not to test kits because there was "no suspect" or "no known suspect," even though testing the kits could help identify a suspect.

Another untested sexual assault kit held by the Jackson Police Department is from a 2005 case where a woman was found under a car and told police in two separate interviews she was raped after using drugs with a man in a hotel, according to case records.

"She asked (him to) stop but he continued to have sexual intercourse with her," the investigator wrote in one report. But the investigator's notes from a third interview days later indicate "she did not remember what had happened" and the sex was voluntary. The case was closed. The sexual assault kit had not been tested as of last month.

"That should have been investigated further and I feel confident that it would be now," Jackson Police Capt. Mike Holt said of the case, noting changes over the past decade in how police interact with victims.

Law enforcement officials said the most common reason kits are not tested is there is not a prosecutable case, usually due to a lack of cooperation from victims.

Perceived lack of cooperation from a victim is not a valid reason to jettison forensic evidence, said Mai Fernandez, executive director of the National Crime Victims Center, a Washington-

based non-profit. Some survivors may fear retaliation if they press charges.

"The victim might not decide that they want to go forward with the case, but they might decide later on that they do," Fernandez said. "Or, if there's enough circumstantial evidence, including the kit, a jurisdiction could decide to go forward without the victim."

Some government officials and researchers have faulted police for a predisposition to doubt survivors' stories.

"The fact is that often rape kits are unsubmitted for testing because of a blame-the-victim mentality or because

How sexual assault kit testing works

Forensic tests of sexual assault evidence kits have been used to identify thousands of offenders since the 1990s. Here is how testing the evidence from a kit can help identify a suspect in sexual assault cases:



HOSPITAL

Sexual assault kit is assembled by collecting biological and other forensic evidence including blood, semen, saliva and loose hairs.



LAW ENFORCEMENT

Investigators decide whether or not to forward the kit to a crime lab for testing.



CRIME LAB

Analyzes and enters DNA into the Combined DNA Index System (CODIS). Alerts investigators of a match; otherwise, DNA remains in CODIS for future reference.

ZACH WALKER, USA TODAY

investigators mistrust the survivor's story," Illinois Attorney General Madigan told a U.S. Senate subcommittee at a hearing in May. "This outdated way of thinking must change."

After more than 10,000 untested sexual assault kits were discovered in Detroit in 2008, a landmark study funded by the Justice Department faulted police for "negative, victim-blaming beliefs."

"Rape survivors were often assumed to be prostitutes and therefore what had happened to them was considered to be their own fault," researchers from Michigan State University wrote in their analysis of Detroit's rape investigations.

At some agencies, records reviewed by USA TODAY show untested sexual assault kits come from cases involving child victims.

Records from the Dallas Police Department show at least 43 sexual assault kits taken into custody from 1996 to 1999 were from children, some as young as 12. In an interview, Dallas police officials said there are likely many more kits from children among its inventory of more than 4,000, but there are no plans to specifically target them for testing.

"Often, someone will say that they were victimized. But when you get into the case, actually what it is, is that their parent had told them not to go visit a friend, so they had to make up a story," said Dallas police spokesman Major Jeff Cotner, who noted that testing of older kits could delay testing that is more urgently needed for current investigations.

CHAPTER 5

Failure to act

Congressional fix so far ignored

Many law enforcement officials are adamant in their defense of leaving some kits untested.

At about \$1,000 per kit, officials said submitting a rape kit for testing unnecessarily could divert resources from other policing needs or delay testing of evidence in cases where the need for analysis is more urgent.

"The kit itself isn't always the best science or the best evidence to a case," said Sgt. Trent Crump, spokesman for the Phoenix Police Department, which has accumulated 1,782 untested rape kits since 2000. He said the agency uses an "evidence-based testing procedure" to decide in each case.

A growing number of advocates are pushing universal testing.



"I think that in cities that have started testing all of their backlog, they're finding enough patterns of serial rapists for the information to be really valuable in current cases as well as the ones that have been sitting on shelves for years," said Scott Berkowitz, president of the non-profit Rape, Abuse and Incest National Network.

Over the past decade, Congress has appropriated about \$1.2 billion to cut the nation's backlog of DNA testing needs, including sexual assault kits. In other terms: enough to test 1 million rape kits.

In 2013, Congress passed legislation to focus federal spending and set national testing standards. The Sexual Assault Forensic Evidence Registry Act, or SAFER Act, required at least three-quarters of the funding for sexual assault kits be used for testing or taking inventory of the evidence. The law set up grants to help local police pay for inventories and testing. No grants have been awarded. A Justice Department steering committee met only once, in March 2014.

Sen. John Cornyn, R-Texas, who authored the law, called it "completely unconscionable" that the Justice Department has not complied.

With federal action stalled, changes in how sexual assault

evidence is treated is falling to state and local officials. As more cold hits emerge, some law enforcement leaders have started to advocate for more stringent record-keeping and testing policies.

Col. Elmer Setting, who leads the New Castle Police Department in Delaware, said he has pushed for a statewide mandate to test every rape kit.

"They've had success stories with testing these kits," he said. "It's amazing how, (for) many of these sexual predators, we have their DNA and we never tested the kit. It doesn't make any sense."

In addition to New York, bills are pending in other states — including Massachusetts, New Jersey, Oklahoma and Maryland — to require inventories of untested rape kits. In five states, legislation is pending requiring testing of any new rape kits.

The mandatory testing bills being considered in New Jersey, Oklahoma, Tennessee and West Virginia would add to testing laws on the books in Colorado, Illinois, Michigan, Ohio, Texas and Washington.

"If we could catch more rapists through testing," said Rosenthal, the New York lawmaker, "we ought to test every single kit we have."





http://www.usatoday.com/story/news/2015/07/17/lb--rape-kit-funding-not-being-spent--fix-problem/29902283/



Steve Reilly, USA TODAY

Over the past decade alone, Congress has approved enough money to reduce the nation's backlog of DNA evidence testing to have tested more than 1 million sexual assault evidence kits.

So far, however, despite evidence that the number of untested rape kits could number into the hundreds of thousands coast to coast, the vast majority of the money is not reaching local and state police authorities where the abandoned rape evidence could be tested and the problem reduced.

A USA TODAY Media Network investigation found that the U.S. Department of Justice has failed to comply with laws enacted by Congress aimed at paying for testing and reducing the backlog of untested rape kits — despite the power of the kits to provide evidence that can identify unknown assailants, exonerate wrongly accused suspects, and confirm the accounts of survivors.

The examination across all 50 states identified at least 70,000 sexual assault kits at more than 1,000 law enforcement agencies nationwide — likely only a small fraction of the national accumulation that likely reaches into the hundreds of thousands across the nation's 18,000 law enforcement agencies.

"If we're able to test these rape kits, more crimes would be solved, more rapes would be avoided," Vice President Biden said in March, announcing an additional \$41 million in grant funding as part of a White House initiative to address the problem.

Notwithstanding the funding and the attention of policymakers, the effort to quantify and reduce the number of untested sexual assault kits is not anywhere close to complete.

Scott Berkowitz, president of the Rape, Abuse and Incest National Network, said the issue is not the amount of the funding, but the fact that it isn't reaching its intended target.

"There's ample money there," he said. "But to date, only about 51% of that has gone towards casework and making sure labs have the capacity to do the testing."

The \$1.2 billion allocated over the past decade toward addressing the nation's DNA testing needs, including taking inventory and testing sexual assault kits, has often been spent on more general DNA testing improvements.

Some of the funding has gone toward administrative expenses or been siphoned off for apparently unrelated purposes. A 2012 congressional report found some of the money set aside for rape kit testing was instead going to polling firms and toward the purchase of cellphone equipment and payments to "entities of uncertain mission that employ heads of influential forensics policy advisory groups."

In an effort to focus the use of the federal funding and to address inconsistent sexual assault kit testing policies, Congress in 2013 enacted the Sexual Assault Forensic Evidence Reporting Act, or SAFER Act.

The SAFER Act established benchmarks requiring that at least three-quarters of the funding for sexual assault kits is actually used for testing or taking inventory of the kits.

The SAFER Act also established a grant program to fund inventories of untested sexual assault kits by state and local agencies. However, the Department of Justice has so far not awarded any grants under the law. At about \$1,000 per kit, testing sexual assault kits is not free and the USA TODAY count of untested kits indicates that many smaller departments — those least able to afford to pay — have piled up hundreds of untested kits.

Gerald LaPorte, director of the Office of Investigative and Forensic Sciences for the U.S. Department of Justice's National Institute of Justice, blamed the agency's failure to issue grants on a lack of devoted funding to implement the law.

Sexual assault survivors and advocates including Debbie Smith of Williamsburg, Va. — who is the namesake of federal DNA testing legislation — say they are frustrated by bureaucratic delays.

"The administrators of the grant have not done what they were supposed to do," said Smith, who lived for six years in fear that her attacker would follow through on his threat to return and kill her, until he was identified through a DNA match. "They closed some of the loopholes, but the administrators of the grant continue to find more and more loopholes."

Decisions about whether sexual assault kits should be tested should not be based on funding, said Mai Fernandez, executive director of the National Center for Victims of Crime. Instead, there should be criteria in place to guide police decisions about whether the kits should be tested.

"It can't just be at the discretion of whoever is at the police station that day," sdevhe said.

The SAFER Act endeavored to address that issue by establishing national standards for sexual assault kit processing. The law required the Department of Justice, by no later than Sept. 7, 2014, to develop and publish "a description of protocols and practices ... for the accurate, timely, and effective collection and processing of DNA evidence, including protocols and practices specific to sexual assault cases."

Yet the nation's top law enforcement agency failed to comply with the law. The national set of protocols for processing DNA evidence still has not been developed.

Sen. John Cornyn, R-Texas, who authored the SAFER Act, called it "completely unconscionable" that the Department of Justice has not complied with the SAFER Act.

"Victims of sexual assault deserve better than to have critical evidence that could help find their attacker left to sit on a shelf because the Obama Administration refuses to fully implement this law," he said in a statement to USA TODAY.

In a December 2014 letter to Cornyn, responding to an inquiry about why DOJ had not complied with the SAFER Act, Assistant Attorney General Peter Kadzik said developing the protocols required by the law "has presented many challenges," but indicated no plans to comply with the law in the future.

"After thoughtful deliberation, the steering committee came to consensus on the need to identify best practices, protocols, statute and policies currently in existence throughout the country," Kadzik wrote last year. The committee has not met in more than 16 months.

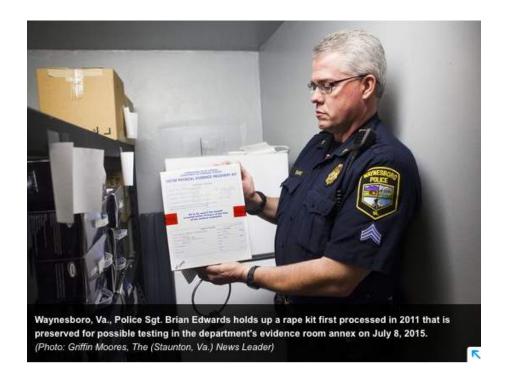
In response to questions to USA TODAY, LaPorte, of the National Institute of Justice, said a 42-person "steering committee of stakeholders" was formed to develop the protocols and met once in March 2014.

"The National Institute of Justice's goal is to have a final document prepared for Department (of Justice) review in the summer of 2016," he said, "with a release date around December 2016."





http://www.usatoday.com/story/news/2015/07/20/state-local-officials-reviewing--changing-rape-kit-testing-policies/30411803/



State, local officials reviewing or changing policies on rape-kit testing

Steve Reilly, USA TODAY

Local and state officials across the country are reviewing policies and procedures for processing rape kits after a USA TODAY Media Network investigation last week.

Reports by USA TODAY and more than 80 Gannett and TEGNA local news organizations identified at least 70,000 untested sexual-assault kits across more than 1,000 law enforcement agencies nationwide.

Although testing can yield DNA evidence that helps identify suspects, bolster prosecutions or exonerate the wrongly accused, many agencies have not tested large numbers of kits that have been booked into evidence.

Following inquiries by the Tallahassee (Fla.) Democrat, the Leon County Sheriff's Office decided to review each of the 66 untested sexual assault kits in its custody and institute new practices to ensure they do not accumulate without reasonable explanation.

"This has opened our eyes to some degree," Leon County

Sheriff Mike Wood told the Democrat. "We have to change our way of thinking and think more globally and outside the box, and we are going to do that here."

Nationally, records obtained by the USA TODAY Media Network show widespread variation in how law enforcement agencies handle the sensitive evidence. Some agencies send as few as two in 10 sexual-assault kits to crime labs for testing, while others send every kit.

Although attention has focused in recent years on rapekit backlogs at the nation's largest metro law enforcement agencies, records show hundreds of kits have accumulated at rural and small-city departments.

Responding to a report in the Green Bay (Wis.) Press-Gazette disclosing approximately 350 untested rape kits in Green Bay, state Rep. David Steffen said the issue "requires immediate investigation."

"It is a priority for me to ensure that victims of rape are

protected, and district attorneys are provided the necessary tools to have these cases properly prosecuted," Steffen said in a statement, noting plans to meet with state officials to determine whether legislative involvement is warranted.

In Beaumont, Texas, half of the police department's untested sexual-assault kits were from cases originating in other jurisdictions. Beaumont Police Department Lt. Karen Froman told 12News the department would change its procedure and begin to send letters notifying the other agency when it has a sexual-assault kit related to investigations in other jurisdictions.

"You can always do things better," Froman told the station.

In the Lafayette, Ind., area, police told the Journal & Courier they would review their policies for rape-kit testing.

"As a result of all this coming to light," said Tippecanoe County sheriff's Chief Deputy Steve Hartman, "we're actually having a conversation with the prosecutor now: 'Do we go ahead and send in all these kits?""

"We are now going to submit all of our sexual-assault kits to a lab, if they will take them," West Lafayette Police Department Lt. Troy Harris told the newspaper.

Most states do not have laws setting criteria authorities should use to determine whether certain kits should be tested. Lawmakers in several states said they would look at whether changes are necessary.

South Carolina Senate Judiciary Committee Chairman Larry Martin told TheGreenville News that although there are sometimes valid reasons for not submitting kits for tests, lawmakers should consider whether a policy could help with such decisions.

"Generally speaking, I come down on the side of collecting as much information as we can because it does help law enforcement at a later time if there is a broader DNA base for identification purposes," he told the News, noting he plans to talk to law enforcement officials about the issue and perhaps form a subcommittee to study it.

In Florida, state Rep. Janet Adkins said she is drafting a bill that would require sexual assault kits to be sent for testing within 21 days following a First Coast News report revealing at least 2,000 sexual assault kits have not been tested in the Jacksonville, Fla., area.

"My reaction was one of anger. It was one of disbelief. How could this happen?," Adkins said. "You have the expectation that when a test is done, when a rape test is done, that somebody will do something with it."

In South Dakota, where there are no state laws stipulating when a sexual-assault kit should be tested, officials told the Argus Leader they will consider reviewing the issue.

"I would support anything that considers a victim's request or a case where there's not a known suspect," South Dakota Attorney General Marty Jackley told the newspaper. "But we have to consider whether or not there's a prosecutable case. If a defendant has died or if the statute of limitations has run out, there needs to be prosecutorial discretion."

"I'm still just astounded by the number of kits that are not tested. As time passes, it's pretty easy for things to fall through the cracks. It's something we need to look at to make sure that there are no gaps in the law on this," state Rep. Julie Bartling said.

Mark Mickelson, chair of South Dakota's House Judiciary Committee, was unaware of the issue, but said "new ideas are always welcome."

The state and local reviews, in light of USA TODAY Media Network reports, follow years of work from national groups that advocate for sexual-assault survivors and urge Congress address the nation's backlog of untested sexual assault kits, which may number in the hundreds of thousands across the nation's 18,000 police agencies.

U.S. Rep. Carolyn Maloney, D-N.Y., who authored the Debbie Smith Act in 2004 to provide federal funds for analysis of backlogged DNA samples, said the USA TODAY Media Network reports "should remind everyone that there is still much work to do."

"I take this report very seriously and will be working across the aisle to do whatever is necessary to find every neglected kit, test it, and bring rapists to justice," Maloney said in a statement. "It is completely unacceptable that sexual assault survivors are victimized again by our failure to process DNA kits efficiently, especially when we have the tools to do so."

The accumulation of untested kits at many agencies have persisted despite the success that testing programs have shown in places like Detroit, where a comprehensive kit-testing initiative has identified 2,478 suspects — including 456 serial rapists as of June 30 — and 20 secured convictions.

"We aren't afraid to look in the mirror and see perhaps that we could have done something better," said Wood, the Leon County sheriff, "and there may very well be a piece of evidence here that will help someone that we didn't help when we could have."

Contributing: Leah Durain, 12News; Mark Walker and John Hult, Argus Leader; Katrease Stafford, Detroit Free Press; Clark Fouraker, First Coast News; Tim Smith, The Greenville News; Steven Porter, Journal & Courier; Jennifer Portman, Tallahassee Democrat; Keegan Kyle, Gannett Wisconsin Media

