



Protecting Ohio's Families

OHIO ATTORNEY GENERAL

**SEXUAL ASSAULT
KIT COMMISSION**

*"If a crime was committed,
the kit should be submitted."*



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

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The Attorney General's Recommended Policy on Submission of Sexual Assault Kits

The state should test all sexual assault kits in any case in which a sexual assault occurred, regardless of whether the case is ultimately prosecuted. This presumption in favor of testing ensures that sex offender DNA will be uploaded into state and federal law enforcement databases even if the offender cannot be prosecuted. The only time a kit should not be submitted to a crime lab is if the referring agency cannot conclude that a sexual assault probably occurred. Every day, law enforcement officers in Ohio determine whether crimes probably occurred by looking at factors such as the factual allegations, the circumstances of the case, the credibility of the witnesses, and information they develop on the suspects. **If an officer concludes that a sexual assault probably was committed, the agency should submit the kit to a crime lab for testing.**

This policy will increase the number of kits submitted to the Bureau of Criminal Investigation (BCI), potentially by 200 percent. BCI will meet the challenge of testing as many as 2,000 new kits per year by expanding its DNA capacity.

This recommendation applies equally to any kits in law enforcement possession, regardless of when the kits were collected. Any kit, whether collected 10 days ago or 10 years ago, should be submitted to a crime lab. There is no reliable data on how many of Ohio's sexual assault kits are outstanding because there has never been a centralized way to track kits. They are distributed to private medical facilities, which then may send them to local law enforcement agencies. Those agencies may, but don't always, submit them to crime labs. Without supply-chain tracking, no one knows how many thousands of kits may be sitting on shelves in hospitals or law enforcement agencies.

While we do not know the outstanding balance of cases from prior years, BCI is committed to testing every kit, regardless of when it was collected. BCI will accomplish this by hiring four additional forensic scientists. These dedicated scientists will work solely on pre-2011 kits. This commitment will allow BCI to test 1,500 outstanding cases in the *first* year and 3,000 cases every year after that without adding a single day of delay to current DNA requests.

The presumption that a kit will be tested if a sexual assault occurred is simple, clear to apply, and ensures the greatest protection for Ohioans. We have considered and rejected the "test-everything" approach adopted by other states. But we also have considered and rejected the status quo. This policy represents a balanced, effective approach to the testing of sexual assault kits. Combined with increased capacity and advanced investigative training, it is the best policy for Ohio.

Proposed Standard for Submission of Current Cases

The Attorney General recommends that law enforcement agencies adopt policies that favor the submission and testing of current kits in cases in which a sexual assault probably occurred.

The Attorney General's recommendation can be phrased simply as: If a crime was committed, the kit should be submitted. This recommendation is easy to apply, will continue to enhance the Ohio and Federal Combined DNA Index System (CODIS), and recognizes the changing role of DNA evidence in modern policing. At its core, this policy prevents any probable offender's DNA from getting "lost in the system." The policy ensures a robust and comprehensive database of probable offenders that will enhance law enforcement apprehension efforts.

When a sexual assault kit is collected, the DNA sample it contains can be uploaded to CODIS as long as the submitting agency determines that a crime "probably occurred." That sample may return a match to a known suspect. But even if it does not, the existence of that sample may be relevant in a future criminal investigation. Every sample contained in CODIS increases its effectiveness as a law enforcement tool. That is why law enforcement agencies should submit every kit for testing if they determine a crime probably occurred.

Conversely, if a law enforcement agency cannot determine that a crime probably occurred, no kit should be submitted. This is because the results cannot be uploaded into CODIS unless a crime probably was committed. Whether "a crime probably occurred" is imprecise, but it is functionally identical to a more familiar phrase: whether there is probable cause to believe an offense was committed.

There are various reasons why an agency might be unable to conclude that a crime probably occurred. For example:

- Facts asserted by the victims do not meet the statutory elements of a sexual assault offense.
- A known suspect conclusively establishes an alibi.
- Based on all available witness statements, no objective officer could believe a sexual assault was committed.

It is important to note that this policy recommends submission *independent of the decision to charge or prosecute* a suspect. That is, regardless of whether the suspect is ultimately charged or prosecuted, the law enforcement agency should submit the kit for testing if there is probable cause to believe an offense was committed. This is because — regardless of whether a trial or conviction occurs — it is beneficial to have *all* probable offenders' DNA in CODIS.

BCI: Meeting the Challenge

Sexual assault kits have become part of the landscape of sexual assault investigations, and the state's crime lab needs to increase its capacity to handle the number of kits being generated. That is why BCI is building an infrastructure that will allow it to dramatically increase its testing capacity. This commitment ensures that no DNA test will be delayed because of these new submission standards.

Further, BCI has adopted a specific plan for addressing Ohio's outstanding kits: It will hire four additional forensic scientists whose only role will be to test pre-2011 kits. In the first year of operation, this unit will test up to 1,500 sexual assault kits. And it will test 3,000 kits every year after that until there are no more outstanding kits.

Education Matters: A Multidisciplinary Approach

The physical and personnel investments that BCI is making are only as effective as the participation from local law enforcement agencies. That is why the Attorney General's Sexual Assault Kit Commission encourages local law enforcement agencies to follow consistent, statewide approaches to investigating sexual assault cases and submitting sexual assault kits. The Ohio Attorney General already has trained 900 first responders, law enforcement officers, and prosecutors on advanced topics in sexual assault investigation and is constantly expanding its course availability and offerings.

OPOTA: Leading the Way in Education

The Ohio Peace Officer Training Academy (OPOTA), in conjunction with subject matter experts from BCI and the Sexual Assault Response Training Team, part of the Attorney General's Crime Victim Section, have focused not only on the "how" of sexual assault investigations, but also on the "who." OPOTA's new training courses emphasize law enforcement interaction with victims, victim advocates, and medical personnel in sexual assault investigations.

In the past year, OPOTA has held four one-day regional trainings on sexual assault investigation, reaching more than 500 officers. This training focuses heavily on personal interaction with victims, advocates, and sexual assault nurse examiners (SANEs).

Also, OPOTA and the Crime Victim Section are in the process of producing an online *eOPOTA* course that will make this same victim-focused training available to every law enforcement officer in Ohio. As with all *eOPOTA* courses, the training will be available 24 hours a day and is completely free for any officer. OPOTA's courses also will cover the submission of sexual assault kits and the collection and submission of known subject samples.

Finally, OPOTA is overhauling its intensive three-day Sexual Assault Investigator Training to include two full days devoted to SANE and crime victim advocate interaction and interviewing concerns.

Crime Victim Section: Statewide Reach, Victim Focused

In 2009, the Ohio Attorney General's Crime Victim Section assembled the Sexual Assault Response Training Team (SARTT). Composed of multidisciplinary subject matter experts, SARTT is the only statewide training team focused on sexual assault response. SARTT focuses on training first-responder teams to handle complex sexual assault cases, thus reducing gaps in services to victims. SARTT has trained more than 200 first responders in its two-day Non-Stranger Sexual Assault: Profile of a Case trainings and 100 in its Underserved/Marginalized Victims of Sexual Assault course. It also has trained 70 prosecutors and law enforcement officers in its Prosecuting the Non-Stranger Rapist course. With nearly 400 first responders and law enforcement personnel receiving sophisticated sexual assault victim training, SARTT is equipping Ohio's criminal justice system with the skills necessary to protect some of our most vulnerable victims.

SARTT's experts are available for consultation and are constantly updating and expanding their trainings.

BCI: Clear Standards for Submission

When a sexual assault kit is submitted to BCI for testing, it will be subject to prioritization based on its investigative or prosecutorial urgency. Agencies that deal with a large number of kits should consider adopting policies for internal prioritization. This is the best way to ensure that agencies' kits are processed in a timely manner.

- Immediate Priority: Sexual assault kits in unknown offender cases. Examples: Investigations of violent sexual assaults with an unknown suspect and a known prosecution witness. Active investigations of serial sexual assaults or sexual assaults that fit a pattern.
- High Priority: Sexual assault kits in open cases with known trial dates and cases that involve child, elderly, or developmentally disabled victims.
- Regular Priority: Sexual assault kits in open cases that are worked oldest to newest. Examples: Investigations of sexual assault with a known suspect and a known prosecution witness. Investigation of a sexual assault case with a known suspect who admits the sexual activity but denies lack of consent, recantation cases, and cases that may not be prosecuted regardless of the test results.

Low Priority: Sexual assault kits in closed cases. Cases in which the information is not likely to be probative or informative, such as anonymous witness cases in which the originating party cannot be contacted by law enforcement through any method. Cases deemed not prosecutable, but in which a crime probably occurred.

Contact Information

If you have questions about this policy, please contact:

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