

State of Oklahoma

Guidelines & Procedures for the Collection, Submission and Testing of DNA Evidence Obtained in Connection with an Alleged Sexual Assault

INTRODUCTION

The Oklahoma State Bureau of Investigation, Oklahoma City Police Department, and Tulsa Police Department accredited crime laboratories, through coordination with Oklahoma Sexual Assault Forensic Evidence Task Force, have developed the following guidelines and procedures for the collection, submission and testing of DNA evidence that is obtained in connection with an alleged sexual assault as well as the use of the Oklahoma Sexual Assault Kit Tracking System (OSAKTS). These guidelines and procedures should be disseminated to and utilized by all sexual assault nurse examiners (SANEs), medical providers, law enforcement agencies, forensic laboratories, and other persons or entities having custody or use of any sexual assault evidence collection kit in the state of Oklahoma.

COLLECTION

- Survivors of a sexual assault should undergo a medical-forensic examination as soon as possible following the assault.
- The standardized “State of Oklahoma Sexual Assault Evidence Collection Kit” should be used for collection of biological evidence during the medical-forensic examination.
- All medical-forensic examination sites and providers have access to “State of Oklahoma Sexual Assault Evidence Collection Kits” at no cost and to training on kit components, sample collection, and corresponding documentation. Contact the OSBI Forensic Science Center at 405-330-6724 to request sexual assault evidence collection kits (SAECKs) or training on the collection of biological evidence using the standardized statewide sexual assault evidence collection kit.
- The medical-forensic examination of a survivor should be performed by a health care professional specifically trained in the collection of evidence relating to sexual assault cases, such as sexual assault nurse examiner (SANE) or other appropriately trained medical

professional. Sample collection by medical-forensic examiners should be guided by the survivor’s history of the assault. In the absence of a complete history, examiners should obtain the full complement of samples, assisted by the physical assessment.

- Detailed step-by-step instructions to be followed for evidence collection and documentation during the medical-forensic examination are provided on the “State of Oklahoma Sexual Assault Evidence Collection Kit”.
- Biological evidence should be collected regardless of the survivor’s post-assault activities (e.g. showering, urinating, douching, swimming, sexual activity, eating, or drinking). Sexual assault samples should be collected from any survivor seeking care as soon as possible and up to five (5) days or longer post-assault.
- The following recommended time frames for evidence collection for a medical-forensic examination have been provided by the Sexual Assault Forensic Evidence Reporting (SAFER) Act Working Group:

Type of Assault	Collection Time
Vaginal	Up to 120 hours (5 days)
Anal	Up to 72 hours (3 days)
Oral	Up to 24 hours (1 day)
Bite marks/saliva on skin	Up to 96 hours (4 days)
Unknown	Collect respective samples within the time frames listed above

- In some instances, case-specific circumstances may support sample collection beyond the preceding standardized collection periods. The sexual assault nurse examiner (SANE) or other appropriately trained medical professional performing the medical-forensic examination may elect to collect samples at a time frame exceeding the recommended time frames based upon these case-specific circumstances.
- To recover as much DNA foreign to the survivor as possible during the evidence collection process, measures should be taken to concentrate the foreign material by using the fewest number of swabs necessary for the collection site. Generally, the two swabs provided in each collection envelope within the sexual assault evidence collection kit (SAECK) should be used for each specific site collection; however, in some case-specific circumstances, it may be necessary to collect more or less than two swabs per site. To ensure laboratory efficiency, if multiple swabs are used during the collection, they should be collected concurrently when collected from the same site. It is recommended that when more than one swab is collected from a site that these swabs be collected consistently (i.e. in the same manner, such as either dry or moistened swabs depending upon collection site).

- Major emphasis should be placed on continuing to support the survivor through the evidence collection process, keeping in mind the impact of the assault on the survivor, and balancing it with the potential impact of the forensic evidence that can be collected during the medical-forensic examination.
- The sexual assault nurse examiner (SANE) or medical professional performing the medical-forensic examination of the survivor should complete as much of the paperwork within the sexual assault evidence collection kit (SAECK) as possible, including the “Sexual Assault History Form” and the “Sexual Assault Examination & Observation Form”. The details in the SAECK paperwork contain important information for laboratory staff to perform many different functions which may include prioritization of cases, assessing which items to test, if DNA profiles developed from items are eligible for entry into the Combined DNA Index System (CODIS) database, and/or to accurately interpret and provide statistical weight to the DNA results.
- If, at the time the medical-forensic examination is conducted, a report of the sexual assault is not made to law enforcement or if the survivor requests that the sexual assault evidence kit not be tested, the medical provider shall inform the survivor in writing of his or her right to request the testing of the sexual assault evidence kit at any future time.
- Every precaution should be taken to avoid contamination of potential DNA evidence during the medical-forensic exam while still maintaining a survivor-centered approach.
- Due to increased sensitivity in DNA technologies, masks and gloves should be used by all medical-forensic care providers and others in the collection and packaging of evidence, especially during the collection of intimate samples.
- Creating slides and smears at the medical-forensic exam site from oral and anogenital samples is unnecessary and should be eliminated, since the slides prepared during the medical-forensic exam generally have more epithelial cells, bacteria, and other debris.
- Sexual assault nurse examiners (SANEs) and other medical professionals performing medical-forensic examinations should receive intensive classroom and clinical training, which covers evidence collection, injury detection methods, chain-of-custody requirements, methods to avoid re-traumatizing a survivor during an examination, and other topics related to both prosecutions and meeting the needs of sexual assault survivors.
- See *A National Protocol for Sexual Assault Medical Forensic Examinations* for documentation that is critical for survivor care post sexual assault, as well as, the investigation of the crime.

- Forensic pathologists, coroners, sexual assault nurse examiners (SANEs), and other personnel who provide post-mortem medical-forensic examinations for sexual assault should be forensically trained in normal post-mortem changes.
- Keeping all legal considerations in mind for the collection of evidence, medical-forensic examinations of the suspect should be performed, when appropriate, given the type of sexual assault and the time elapsed since the assault, as a part of the investigative process. When case circumstances dictate collection of biological evidence from a suspect in a sexual assault, the standardized “State of Oklahoma Sexual Assault Evidence Collection Kit” may be utilized. Samples to be collected during the medical-forensic examination of the suspect may include known reference sample (i.e. buccal swabs), penile swabs, finger swabs, or other miscellaneous samples depending upon case-specific circumstances. Suspect sample collection as part of a medical-forensic examination should ideally be completed by a medical-forensic examiner or appropriately trained individual.
- In instances where the alleged perpetrator has been identified but a medical-forensic examination of the suspect will not be conducted, law enforcement personnel should obtain a buccal swab (reference sample) from that individual for DNA comparison purposes. Specific reference samples may be collected from a suspect by law enforcement personnel upon consent of the suspect or in accordance with a lawful court order. The reference sample must be packaged separately from the survivor sexual assault evidence collection kit (SAECK) and be clearly labeled as a suspect reference sample.
- Any individual collecting suspect samples should be mindful of the need to avoid cross-contamination with survivor samples.
- Following the sexual assault medical-forensic examination, any samples collected from the survivor or suspect should be transferred to law enforcement.
- The medical-forensic record includes personal health information; therefore, if released, compliance with all federal and state privacy protections, including the protections of the Health Insurance Portability and Accountability Act (HIPAA), are required.

SUBMISSION

- If a report of sexual assault is made to the law enforcement agency, the sexual assault kit “Submittal Envelope 1”, or other probative DNA evidence if a kit is not collected, shall be submitted to the appropriate accredited forensic laboratory for forensic testing within

twenty (20) days after receipt of the evidence by the law enforcement agency unless the survivor requests that the sexual assault evidence collection kit not be tested.

- An “unreported” sexual assault kit is a sexual assault kit collected from a survivor who has consented to the collection of the sexual assault evidence collection kit (SAECK) but has not consented to participate in the criminal justice process by reporting to law enforcement; these SAECKs should not be submitted to a forensic laboratory for analysis.
- If at any point prior to commencement of testing of the sexual assault evidence collection kit (SAECK), the survivor elects to reconsider and does not want not have his/her SAECK tested; he/she may contact law enforcement and inform them of this choice. Law enforcement should notify the laboratory of this choice as soon as possible to prevent testing from beginning on the SAECK.
- If a survivor who has initially declined testing of a sexual assault evidence collection kit (SAECK) requests testing of the SAECK at a future date, the law enforcement agency shall submit the sexual assault evidence collection kit “Submittal Envelope 1” to the appropriate accredited forensic laboratory for forensic testing within twenty (20) days of survivor’s request. Law enforcement should also have the survivor sign a consent form to allow for testing of the SAECK and release of associated information.
- Efforts should be made by the law enforcement agency to identify, collect, and submit applicable known reference samples (i.e. buccal swabs) to the forensic laboratory with the evidence or as soon as practicable for DNA comparison. Case-specific reference samples may include the suspect, the survivor (if not previously collected during medical-forensic examination), and any consensual sexual partner of the survivor within 120 hours (5 days) prior to alleged sexual assault or between alleged assault and medical-forensic examination. DNA analysis is a comparative process. Without necessary DNA reference samples, meaningful comparisons will not be possible and eligibility for entry into the CODIS database may be affected.
- Law enforcement, working in consultation with forensic laboratory personnel, should consider submitting additional sexual assault evidence for testing if the initial evaluation of the submitted sexual assault evidence collection kit reveals no probative DNA evidence or there are case-specific reasons for further analysis. Based upon case-specific scenarios, the following items or other probative item(s) may be considered for submittal: survivor’s underwear, clothing, condoms, bedding, or weapons/instruments that may have been used in an assault.

- Law enforcement must also take into consideration the resources of the forensic laboratory. Thus, exceptions to the evidence submission policy should be a collaborative effort between the laboratory and the law enforcement agency. Communication between forensic laboratories and law enforcement is key to achieving success.
- Law enforcement or prosecutors should notify the forensic laboratory at the earliest possible date of any pending jury trial date necessitating expedited analysis.
- All sexual assault evidence collection kits, whether tested or untested, must be retained in a secure, environmentally safe manner for not less than fifty (50) years or for the length of the statute of limitations for the alleged crime, whichever is longer. Guidance on the proper storage and preservation of evidence is available in *The Biological Evidence Preservation Handbook: Best Practice for Evidence Handlers*. In general, a temperature (60°F-75°F) and humidity (less than 60% humidity) controlled facility is recommended for non-liquid biological samples such as those contained in the standardized “State of Oklahoma Sexual Assault Evidence Collection Kit”.
- When submitting a sexual assault evidence collection kit to the laboratory, law enforcement should provide the lab with a copy of the sexual assault history forms and a brief description of the incident (including where any evidence was collected from) or a police report/narrative in order to provide the laboratory staff with important information used for various purposes including assessing which items to test and if DNA profiles developed are eligible for entry into the Combined DNA Index System (CODIS) database.

The following locations are available statewide for submission of evidence to the OSBI accredited forensic laboratory system:

OSBI Forensic Science Center

800 East 2nd Street
Edmond, OK 73034
Phone: 405-330-6724
Toll-free: 800-522-8253

OSBI Eastern Regional Laboratory

701 W. Carl Albert Parkway
McAlester, OK 74501
Phone: 918-423-6672

OSBI Northeastern Regional Laboratory

1995 Airport Parkway
Tahlequah, OK 74464
Phone: 918-456-0653

OSBI Northwestern Regional Laboratory

1305 E. Owen K. Garriott Road
Enid, OK 73701
Phone: 580-242-2600

OSBI Southwestern Regional Facility
607 SW E Avenue
Lawton, Oklahoma 73507
Phone: 580-291-8127

The following accredited forensic laboratories are available for submission of evidence by their respective law enforcement agencies:

**Oklahoma City Police Department
Forensic Laboratory**
616 Colcord Drive, Suite 217
Oklahoma City, OK 73102
Phone: (405) 297-1156

**Tulsa Police Department
Forensic Laboratory**
1111 W. 17th Street
Building E, 2nd Floor
Tulsa, OK 74107
Phone: (918) 596-9266

TESTING

General Information

In accordance with the "Forensic Laboratory Accreditation Act" and Oklahoma Statutes (74 OK Stat § 74-150.37), all forensic laboratories operated by the state or any unit of municipal, county, city or other local government that examine physical evidence in criminal matters, including biological/DNA evidence, and provide opinion testimony in a court of law shall be accredited. Consequently, testimony, results, reports, or evidence of forensic analyses produced on behalf of the prosecution in a criminal trial shall be done by an accredited forensic laboratory. The accredited forensic laboratory serving the State of Oklahoma is operated by the Oklahoma State Bureau of Investigation. The accredited forensic laboratories serving the City of Oklahoma City and City of Tulsa are operated by the Oklahoma City Police Department and Tulsa Police Department, respectively.

Any of the previously mentioned accredited forensic laboratories may analyze sexual assault evidence collection kits (SAECKs) and/or other sexual assault evidence, such as underwear, condoms, clothing, bedding, etc., by screening for the presence of body fluid(s) and/or male DNA (for female survivor kits). If either are indicated on an item(s) from the kit the laboratory should proceed with short tandem repeat (STR) nuclear-based DNA testing on the most probative item(s) with the purpose of generating a DNA profile foreign to the survivor that is suitable for comparison and/or Combined DNA Index System (CODIS) entry. In most cases, moving forward with an autosomal DNA amplification typing kit will provide the most relevant information, especially if the suspect is not known and a DNA profile foreign to the survivor is generated, due to the high power of discrimination and utility for searching CODIS that is associated with autosomal DNA. If the laboratory is unable to obtain an autosomal CODIS-eligible DNA profile, the laboratory should evaluate the case to determine if any other DNA-

typing results, such as male-specific DNA, could be used for investigative purposes, such as to establish sexual contact, corroboration, and/or to identify/exclude a suspect.

Procedures

Laboratory practices strive to be effective in obtaining probative evidence in a timely manner for use in the investigation and prosecution of alleged sexual assault cases. Ultimately, it is the responsibility of each laboratory to determine what processes and practices will work effectively in its jurisdiction and adjust accordingly depending on their available resources and current caseloads. Each laboratory may employ a variety of strategies for testing sexual assault evidence collection kits (SAECKs) and/or other sexual assault evidence in the most efficient manner, which may include but are not limited to instituting evidence submission policies, employing high-throughput processing (batching samples, Direct to DNA approach, use of automated methodologies, etc.), and/or seeking additional resources to expand capacity, or outsourcing. Each laboratory determines what processes and practices will work effectively in their laboratory for the analysis of SAECKs and/or other sexual assault evidence, including any technologies and methodologies used. All laboratories will remain independent and neutral when evaluating evidence items to test and what methodologies to use.

All biological screening and DNA analysis of sexual assault evidence collection kits (SAECKs) performed by a laboratory shall be done according to the individual laboratory's current accreditation-compliant analytical methods/procedures and in accordance with the current FBI Quality Assurance Standards for Forensic DNA Testing and Databasing Laboratories (QAS). Examinations performed are based on the type of case submitted and the quality and quantity of biological material present. Successful DNA results are dependent on the amount and condition of the biological material present. Once analysis has been completed, a written report of the findings will be issued by the laboratory in an understandable format so that the submitting law enforcement agency is clear about what is contained in the report and any required follow-up.

Current analytical methods and testing procedures for the Oklahoma State Bureau of Investigation forensic laboratory are located on the internet at <https://osbi.ok.gov/forensic-services/quality-system-overview>. Current analytical methods and testing procedures for the Oklahoma City Police Department and Tulsa Police Department forensic laboratories can be requested by contacting those laboratories directly.

Prioritization

Priority testing shall be given for sexual assault evidence collection kits (SAECKs) that will yield evidentiary value to the investigation and prosecution of the alleged sexual assault. Submitted SAECKs will be tested according to the laboratory's submission policy/protocol(s), which may include individual laboratory-specific prioritization of SAECKs. SAECKs are generally worked in the order in which they are received into the laboratory unless the laboratory is notified of extenuating circumstances, including but not limited to a public safety issue or pending jury trial date necessitating expedited analysis. However, additional criteria may be evaluated by each laboratory to categorize cases into priority levels.

Criteria that may be used by the laboratory for prioritization into the highest tier include the following:

- Cases where the offender is unknown to the survivor
- Cases involving violence or forced involvement of survivor
- Cases where a child is involved
- Cases where the offender is believed to be a potential serial or repeat offender
- Cases where the survivor is a senior citizen or an individual with diminished mental capacity
- Cases with multiple offenders involved
- Cases where criminal charges have been filed or are pending

Criteria that may be used by the laboratory for a second tier priority level include the following:

- Cases where a suspect is known to the survivor or it involves a date rape
- Cases where the district attorney has declined to file charges
- Cases where the survivor is not cooperative with law enforcement
- Cases where there is no accusation of rape or sexual assault
- Cases where both survivor and suspect claim intercourse occurred

For untested or partially tested kits identified by the Oklahoma Sexual Assault Forensic Evidence (SAFE) Task Force, the statute of limitations for the case may also be evaluated for prioritization purposes.

The preceding priority levels and criteria may be used by each forensic laboratory. However, each laboratory may elect to prioritize cases in a different manner based upon the resources available to the laboratory and the needs or priorities of their respective law enforcement customers.

CODIS

The Combined DNA Index System (CODIS) is the system of DNA databases at the national (NDIS), state (SDIS), and local (LDIS) levels for storing and searching DNA records from known individuals and forensic case samples contributed by federal, state, and local forensic laboratories for law enforcement identification purposes. Eligible DNA profiles can be searched against other profiles for the purpose of helping to generate investigative leads. DNA profiles entered into the CODIS database are routinely searched against new DNA profile uploads.

All CODIS eligible DNA profiles generated by a laboratory during the course of analysis will be uploaded to the National (NDIS) and/or State (SDIS) DNA Index System. In the event of a match within the CODIS database, the submitting agency will be notified by the laboratory. It is the submitting agency's responsibility to ensure that a CODIS match is followed up on through further investigation and collection of a known reference sample (i.e. buccal swabs) from the suspect to be submitted to the forensic laboratory.

OKLAHOMA SEXUAL ASSAULT KIT TRACKING SYSTEM (OSAKTS)

The Oklahoma Sexual Assault Kit Tracking System (OSAKTS) is a web based program used to track all Sexual Assault Evidence Collection Kits in Oklahoma (<https://sakt.osbi.ok.gov>). Per 74 O.S. § 150.28a, the Oklahoma State Bureau of Investigation (OSBI) administers this system and all medical providers, law enforcement agencies, or forensic laboratories having custody or use of any sexual assault evidence collection kit in the State of Oklahoma are required to participate as of January 1, 2020.

Oklahoma State Bureau of Investigation (OSBI) provides Sexual Assault Evidence Collection Kits for the collection of sexual assault evidence from survivors of sexual assault. Every kit distributed by OSBI, as of October 1, 2019 shall be labeled with a serial number and be entered in OSAKTS. The tracking will begin with receipt of the kit by OSBI from the manufacturer and will track the kit through destruction. All kits in possession of law enforcement lacking a serial number must have a serial number assigned by OSBI for entry into OSAKTS.

Records entered into the tracking system are confidential. Records relating to an evidence collection kit may be accessed only by either the survivor for whom the evidence collection kit was completed; or an employee of an entity for purposes of updating or tracking the status or location of the evidence collection kit.

Survivors of sexual assault can see the timeline/current status of their kit by utilizing the website listed above and entering their kit serial number.

Delivery of Kit to Medical Provider

- Kit Received by OSBI from manufacturer, created in OSAKTS by OSBI
- Medical Provider or other agency requests kit(s) from OSBI
 - OSBI physically sends kit(s) to requestor
 - OSBI marks each kit as sent in OSAKTS
 - Medical Provider or agency physically receives kit(s)
 - Medical Provider or agency marks each kit as received in OSAKTS

Medical Provider

- Physically receive kit(s) from OSBI
- Mark kit(s) as received in OSAKTS
- Returning unused kit(s) to OSBI
 - Physically return kit(s) to OSBI
 - Mark each kit as sent to OSBI in OSAKTS
- If transferring custody to another medical provider
 - Turn over physical custody to that provider
 - Mark as sent to that provider in OSAKTS
- Kit utilized for purpose other than collecting evidence from a survivor of sexual assault

- Mark kit as repurposed in OSAKTS
- Kit used to collect evidence from a survivor of sexual assault
 - Provide Survivor Notification Form to survivor
 - Complete Medical Data fields in OSAKTS
 - Turn over physical custody of kit to appropriate law enforcement agency
 - Mark kit as sent to the law enforcement agency in OSAKTS

Law Enforcement Agency

- Receive kit from medical provider or other law enforcement agency
- Mark as received in OSAKTS
- If transferring custody to another law enforcement agency
 - Turn over physical custody to that agency
 - Mark as sent to that agency in OSAKTS
- Complete Law Enforcement Data fields in OSAKTS
- Determine if per 74 O.S. § 150.28b the kit must be submitted to the laboratory
- If kit will not be submitted
 - Mark Meets Submission Requirements as No and select Non-Submission Reason from drop down
 - Retain kit for 50 years
- If kit should be submitted
 - Mark Meets Submission Requirements as Yes
 - Physically send the kit to appropriate accredited crime laboratory
 - Mark kit as sent in OSAKTS
- Once laboratory testing is complete and the kit is received back from the laboratory mark kit as received in OSAKTS
- Maintain custody of kit until destruction date per 74 O.S. § 150.28b
 - Mark kit as destroyed in OSAKTS, when kit is destroyed

Laboratory

- Receive kit from law enforcement agency
- Mark kit as received in OSAKTS and enter laboratory case number
- At the completion of laboratory analysis of the kit
 - Enter date report issued to law enforcement in the lab data fields in OSAKTS
- Physically return the kit to the law enforcement agency
- Mark kit as sent to law enforcement agency in OSAKTS

Survivor

- Enter kit number in serial number field on OSAKTS website to view kit timeline and current status
- Contact law enforcement agency handling the investigation if have any questions on the current status of the kit

REFERENCES

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Oklahoma Title 74 O.S. § 150.28a

Oklahoma Title 74 O.S. § 150.28b