



ADAM H. EDELEN, AUDITOR OF PUBLIC ACCOUNTS

A large blue silhouette of the state of Kentucky is centered on the page. Overlaid on the silhouette is the text "#VictimsMatter" in a large, white, sans-serif font.

#VictimsMatter

**A Special Report on
Untested Sexual Assault Kits in the
Commonwealth of Kentucky**

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Foreword



ADAM H. EDELEN
AUDITOR OF PUBLIC ACCOUNTS

September 21, 2015

While the work of my office is often grounded in numbers, it would be tragic to miss the human impact represented by the number of untested sexual assault kits in our country and Commonwealth.

Nationally, there could be as many as 400,000 untested kits. As a result of our investigation, we now know that Kentucky's share is 3,090.

Each kit represents the fragility of a human life. When every instinct of self-preservation surely dictates a retreat to safety and security, volunteering for the examination that populates the kit is a commitment to something more: the pursuit of justice.

The victim's body literally becomes a crime scene, requiring an excruciating and re-traumatizing examination that takes two to six hours. When the kit is processed, the DNA collected is reported to a federal criminal database, matching perpetrators to their crimes. This is significant in a nation where 60 to 90 percent of rapists are serial rapists.

Our effort in the Auditor's Office has been two-fold and focused on finding a Kentucky solution to a national problem.

First, we worked to ascertain a more precise number of the untested kits in order to leverage national non-profit and federal dollars to eliminate the existing backlog. This effort has already borne fruit as the Kentucky State Police, much to its credit, has been awarded a grant to do precisely this from the Manhattan District Attorney's Office in New York City. The net effect is that there are a number of perpetrators who will be brought to justice as a result of these efforts.

Second, and more ambitiously, we have sought to understand the systemic failures that created the backlog in the first place. This undertaking took my office thousands of miles to every corner of the Commonwealth for many hours of conversations with stakeholders. The result of harvesting that collective wisdom and experience can be found in the observations and recommendations of this report.

From a lack of precision and clarity in policy and communication to a dearth of nurses specially trained in this critical effort to a state crime laboratory that is insufficiently resourced and staffed, the contributors to our current state are numerous and evident. The explosion in the demand for forensic evidence, known as the "CSI Effect," at precisely the same time appropriators struggled with the impact of the Great Recession, is a significant contributor to our present woes.



But let me be clear, the challenges are dwarfed by the commitment to justice from victims and their advocates, and from law enforcement and prosecutors. All clearly deserve a system that makes it easier to bring peace to victims and justice to perpetrators. There is much to build upon. The tiny Wilmore Police Department has a model set of policies and procedures for handling sexual assault kits. The Lexington Police Department has an on-staff sexual assault nurse examiner, a vigilant special victims unit and a model evidence logging, tracking and storing process. The commitment of advocates, cops and prosecutors in coordinating efforts, as the voluntary Hardin County Sexual Assault Response Team has done, is as strong of an example of good government as I have ever seen. While frustrations with the speed of analysis by the KSP Crime Lab are regular, the praise for its professionalism and commitment are uniform.

Ohio has undergone an extensive reform effort resulting in a crime lab with a 20-day maximum turnaround time for processing forensic evidence. Louisiana conducted a landmark efficiency review of their system and eliminated wasteful steps in the process, reducing the turnaround time from as high as 400 days to 60 days. Kentucky can learn from these best practices and do the same. Reform is a precondition for building a system that truly works better for victims and those pursuing justice on their behalf.

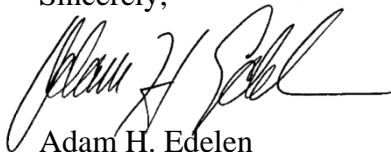
Investment also is a precondition for improving the system. There are too few lab analysts and the salaries for them are staggeringly uncompetitive. Given the foundational nature of public safety to the notion of good government, we cannot continue to expect law enforcement to meet the demands upon them with too scarce resources.

In the digital age, no elected official can claim the mantle of “tough on crime” without adequately funding the state crime lab.

The public outrage from thousands of unprocessed rape kits knows no demographic, no region and no political party. The commitment to reforming and rebuilding this system, for demonstrating that victims matter, should be just as consistent.

We are equal to the task.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam H. Edelen', written in a cursive style.

Adam H. Edelen
Auditor of Public Accounts

“Justice will not be served until those who are unaffected are as outraged as those who are.”
- **Benjamin Franklin**

Background

Background

Sexual assault is a serious crime that is committed at an alarming rate in Kentucky and across the nation, with forcible sex offenses occurring nearly every two hours in Kentucky in 2013. Yet, the majority of sexual assaults are not reported to law enforcement. When they are reported, it is unlikely to lead to an arrest and prosecution. Roughly 98 percent of rapists will never serve a day in prison. Victims may choose not to report an assault because of the societal stigma that continues to surround sexually-based offenses, which causes victims to doubt whether they will be believed. Victims may also make rational choices about the risk of retaliation and safety in light of the slim chance of the rapist being sanctioned by the criminal justice system. Often victims are not believed by society and law enforcement, despite Federal Bureau of Investigation (FBI) estimates that between 92 percent and 98 percent of reports of rape are true. Sexual assault may also be difficult crimes to prosecute because approximately 80 percent of rapes are committed by someone known to the victim. Many jurisdictions across the country and the federal government have begun initiatives to increase reporting of sexual assault and improved investigations and prosecutions of rape.

Yet, in spite of the low rate of arrest and prosecution, law enforcement may not be fully utilizing all available tools to solve these crimes. A 2009 National Institute of Justice (NIJ) funded study surveyed 2,250 law enforcement agencies across the country and estimated that 18 percent of all unsolved rape cases since 2003 contained un-submitted forensic evidence. This evidence, which may be part of a sexual assault kit, may contain Deoxyribonucleic Acid (DNA) that can be vital in identifying unknown suspects, identifying serial offenders and boosting prosecutors' cases against known suspects. Police often doubt the evidentiary value of the kit or that the crime occurred, and may not fully understand the broad crime-solving potential of the national DNA database. Studies in other states have generally found a lack of policies and training to guide the submission of sexual assault kits and the investigation of sexual assaults in general. This is true in Kentucky, as well.

In addition, Kentucky and other states have a backlog of untested kits awaiting analysis at laboratories. These backlogs are largely due to a lack of resources, an increase in the amount of evidence to analyze and the failure by policy makers to make DNA testing a priority. This allows criminals to continue walking the streets, hinders the efficiency of the criminal justice system and delays justice for victims.

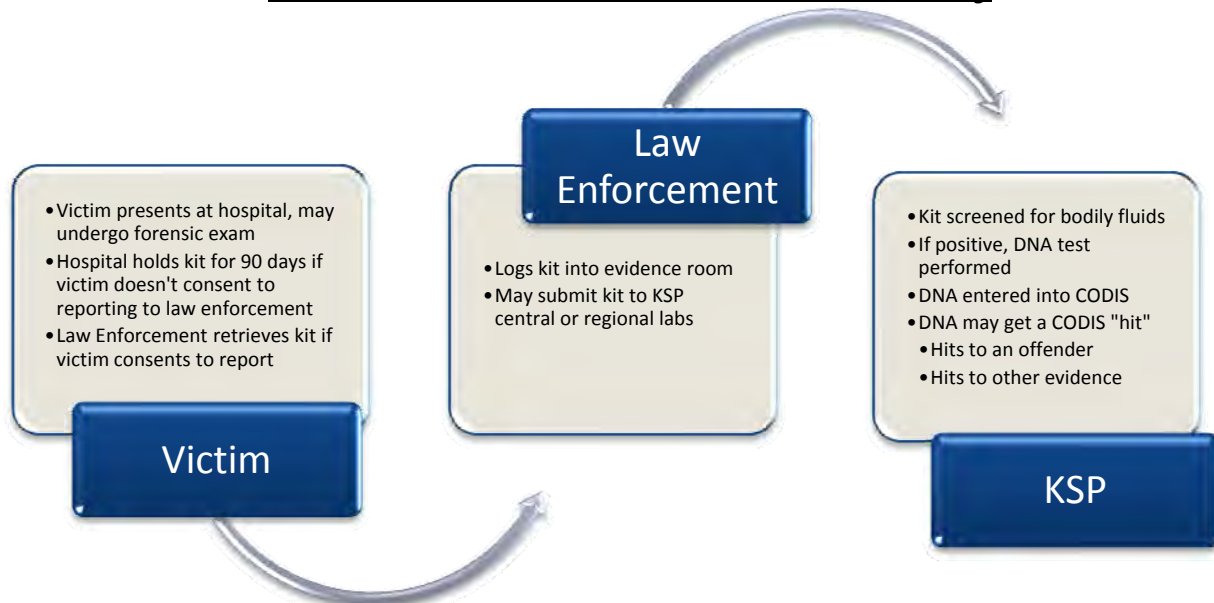
Sexual Assault: By the Numbers

- Nationally, an average of 293,066 victims age 12 or older are sexually assaulted each year.
- Twenty percent of Kentucky women have been raped and 48 percent have experienced sexual violence, according to the Center for Disease Control.
- Nationally, 68 percent of sexual assaults in the last five years were not reported.
- Survivors of sexual assault are:
 - Three times more likely to suffer from depression.
 - Four times more likely to contemplate suicide.
 - Six times more likely to suffer from post-traumatic stress disorder.
 - Thirteen times more likely to abuse alcohol.
 - Twenty-six times more likely to abuse drugs.
- Up to 50 percent of sexual violence victims have to quit or are forced to leave their jobs in the year following their sexual assault.
- Every rape costs society roughly \$151,423, and, at \$127 billion, rape costs the United States more than any other crime annually.

Background

Under Kentucky Revised Statute (KRS) 216B.400, healthcare facilities that offer emergency services in Kentucky are required to provide medical care and forensic medical exams at the request of patients who present with a complaint of rape or sexual assault. As part of this process, victims may have forensic evidence collected in what is referred to as a sexual assault evidence collection kit, sexual assault forensic examination (SAFE) kit, sexual assault kit (SAK) or rape kit. The process includes plucking head and pubic hairs; swabbing the vagina or penis, anus, and, mouth to collect body fluids and/or blood; and obtaining fingernail scrapings. This evidence can be tested for DNA, which may help identify or confirm the attacker's identity and link the attacker to previous crimes. See Appendix I for the sexual assault evidence collection kit instructions.

Sexual Assault Evidence Kit Chain of Custody



Under the Violence Against Women Act, victims of rape can have this exam performed at no cost whether or not they choose to report to law enforcement. After the exam, if a victim chooses to report the crime to a law enforcement agency, the healthcare facility turns the kit over to law enforcement. The kits are usually logged into law enforcement's property evidence room and then may be sent to the Kentucky State Police Forensic Laboratory (forensic laboratory) for testing. There are no statutes or regulations requiring agencies to submit sexual assault kits for analysis. While some law enforcement agencies have policies requiring them to submit all kits, most do not, and practices vary widely across the Commonwealth of Kentucky.

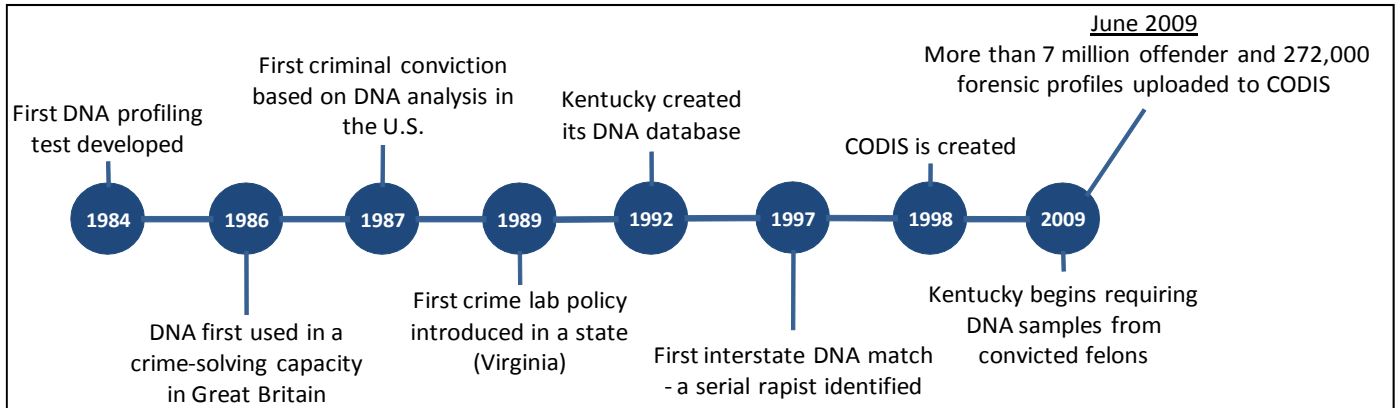
The forensic laboratory tests kits are submitted by law enforcement agencies at no cost to the submitting agency. Law enforcement may submit kits to private labs for analysis, but this is cost-prohibitive and therefore most do not. Law enforcement agencies may submit kits to one of the Kentucky State Police's (KSP) four regional labs or the central laboratory in Frankfort, where the kits are first screened for the presence of bodily fluids, a process known as serology. Those that test positive for serology may then be tested for DNA.

The Combined DNA Index System, or CODIS (see Appendix II for CODIS information), is the FBI's criminal forensic database. Launched in 1998, it has two indexing systems: the offender index, containing the DNA profiles of convicted offenders and, in some states, arrestees, and the forensic index system, containing DNA profiles collected from crime scenes.

Background

Analysts use CODIS to try to match DNA profiles from crime scene evidence, such as the evidence contained in sexual assault kits, to DNA profiles from other crime scene evidence, and from convicted offenders and arrestees. If a DNA profile from a crime scene matches a sample taken from another crime scene, this is known as a forensic hit. If a crime scene profile matches a sample from a convicted offender or arrestee, this is called an offender hit. As of 2009, the FBI reports that there have been 93,000 CODIS hits and more than 91,000 investigations aided nationwide.

DNA Timeline



Scope and Methodology

Senate Joint Resolution (SJR) 20, enacted by the General Assembly and signed by the Governor on March 23, 2015, directed the Kentucky Auditor of Public Accounts (APA) to conduct a count of untested sexual assault kits in the possession of law enforcement in Kentucky. The APA decided that, as part of the count, it also would review underlying reasons why kits are not submitted and why a backlog exists at the forensic laboratory.

The analysis consisted of the following components:

- Survey of Kentucky law enforcement agencies to obtain an initial number of untested kits and understand policies and procedures related to sexual assaults;
- Visits to property evidence rooms at sheriffs' offices and police departments;
- Stakeholder meetings in 14 Kentucky communities to hear from law enforcement, prosecutors, advocates, victims, judges, and elected officials about their concerns and ideas;
- Survey of Kentucky hospitals to understand issues related to Sexual Assault Nurse Examiners (SANE) and sexual assault kits in the possession of hospitals;
- An analysis of best practices and reforms in other states and a review of studies about the rape kit backlog; and
- Interviews with law enforcement, prosecutors and national experts.

Background

Law Enforcement Surveys and Interviews

The APA began the count of untested sexual assault kits by launching a survey to 391 law enforcement agencies in Kentucky on April 17, 2015. Surveys were mailed and emailed to all state and local law enforcement agencies and university police departments. The surveys were to be completed by May 1, 2015. After the initial deadline, there were approximately 240 agencies that had not responded to the survey. Follow-up emails and calls were made and a 100 percent response rate was ultimately obtained. As part of the survey process, the APA had to determine which agencies do not investigate sexual assaults. Out of the 391 total agencies surveyed, 92 agencies (see Appendix III) indicated they would not investigate sexual assaults and generally refer those investigations to other law enforcement agencies. The APA contacted all agencies that reported having untested kits in their possession to verify the number reported in their survey responses. The survey questions are presented in Appendix IV.

The APA contacted every responding agency to conduct more in-depth interviews and visited seven agencies to determine how they counted kits and to understand their policies and procedures. The agencies visited were:

- Lexington Police Department;
- Louisville Metro Police Department;
- Owensboro Police Department;
- Covington Police Department;
- Franklin County Sheriff's Office;
- Wilmore Police Department; and
- Eastern Kentucky University Police Department.

Stakeholder Meetings

In addition to the interviews the APA conducted with law enforcement agencies, the APA heard from representatives of 23 other sheriffs' offices and police departments and four KSP posts at 14 APA stakeholder meetings. Representatives from eight Commonwealth's Attorney offices and one circuit judge attended. In total, approximately 150 people attended the series of meetings held in Owensboro, Paducah, Hebron, Elizabethtown, Corbin, Somerset, Louisville, Bowling Green, Hopkinsville, Lexington, Maysville, Ashland, Prestonsburg and Hazard.

Other Procedures

The APA conducted phone interviews with representatives from the Ohio Attorney General's Office, the Cuyahoga County (Ohio) Prosecutor's Office and Queens County (NYC) District Attorney, and a Michigan State University researcher on the neurobiology of sexual assault. The APA reviewed the 2011 NIJ special report "The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases," The 2015 "Detroit Sexual Assault Action Research Project," the 2015 Connecticut Sexual Assault Crisis Services, Incorporated report "Untested: Eliminating the Backlog of Sexual Assault Evidence Collection Kits in

Background

Connecticut,” and the California State Auditor’s report “Sexual Assault Evidence Kits.” In addition, the APA reviewed statutes from seven states, as well as some city ordinances to form the basis of reform recommendations.

The APA surveyed 112 Kentucky hospitals to understand issues related to SANEs, interviewed two SANE nurses and heard from a dozen SANE nurses at the stakeholder meetings. The APA also met with representatives of the Kentucky Hospital Association (KHA) and spoke with representatives of one of the large hospital chains in Kentucky and two of the Medicaid Managed Care Organizations (MCOs). See the hospital survey in Appendix V.

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Observations and Recommendations

Observations and Recommendations

Observation 1: The Commonwealth of Kentucky Has 3,090 Untested Sexual Assault Kits

Auditors identified 1,859 untested kits in the possession of 87 police departments and sheriffs' offices. There are an additional 1,231 untested kits at the forensic laboratory. Of the 3,090 untested kits in total, Louisville Metro Police Department (LMPD), Lexington Police Department, and Newport Police Department have the most untested sexual assault kits (see Table 1). The number of untested sexual assault kits by law enforcement agency is presented in Appendix VI.

Table 1 - Untested Sexual Assault Kits - Top 20 Law Enforcement Agencies

Law Enforcement Agency	Number of Untested Kits		
	Agency Evidence Room	Submitted to KSP Laboratory	Total
1 Louisville Metro Police Department	923	397	1,320
2 Lexington Police Department	0	315	315
3 Newport Police Department	158	5	163
4 Frankfort Police Department	4	85	89
5 Bowling Green Police Department	24	45	69
6 Henderson Police Department	5	43	48
7 Nicholasville Police Department	46	1	47
8 Boone County Sheriff's Office	35	11	46
9 Radcliff Police Department	34	9	43
10 Richmond Police Department	2	41	43
11 McCracken County Sheriff's Office	36	1	37
12 Bardstown Police Department	34	2	36
13 Owensboro Police Department	29	5	34
14 Murray Police Department	32	1	33
15 Shepherdsville Police Department	30	1	31
16 Hopkinsville Police Department	27	2	29
17 Nelson County Sheriff's Office	29	0	29
18 Campbellsville Police Department	23	1	24
19 Maysville Police Department	22	2	24
20 Paducah Police Department	21	3	24

Source: Law Enforcement Survey Responses and KSP Forensic Laboratory Data as of August 18, 2015

Auditors analyzed survey responses of agencies that indicated they investigate sexual assaults. These agencies initially reported a much larger total number of sexual assault kits in their possession. However, auditors discovered that the survey question was misunderstood by some law enforcement agencies, who mistakenly included a count of both tested and untested sexual assault kits in their possession, or included uncollected/unused kits.

Observations and Recommendations

Observation 1: (Continued)

To overcome the potential for skewed results, verification procedures were performed through on-site visits of law enforcement agencies and telephone interviews with individuals at law enforcement agencies that actually performed the counts. Auditors were able to verify 86 percent of the reported untested kits in this manner.

Verification procedures were the most effective with local law enforcement agencies. Auditors attempted to perform verification procedures with KSP posts across the state, but were unable to perform procedures sufficient to gain confidence in the numbers reported. When initially responding to the survey, KSP reported having 452 untested sexual assault kits in its possession at various posts around the state. However, as one of the agencies that reported a count of both tested and untested kits, a revised count was necessary. KSP reported no untested kits were in its possession at its posts when presenting the revised count.

In discussions with KSP, it was determined the likely reason no untested kits were at the posts because all posts were directed to submit untested kits to the forensic laboratory after the APA count began. However, based on data received from the forensic laboratory, only 59 untested kits were submitted by KSP posts during the period under review. The confusion regarding the inconsistencies in the KSP count led auditors to attempt to perform more detailed verification procedures directly with the KSP posts, similar to procedures performed for local law enforcement agencies. However, individuals at the posts stated that KSP management in Frankfort, which provided both the initial and subsequent count, was handling the counts. Therefore, sufficient procedures could not be performed at each KSP post to confirm the reported amounts.

KSP is not the only agency that reported submitting their untested kits on hand to the KSP forensic laboratory after the official count began during this initiative. As the legislature began deliberating over SJR 20 in early 2015 and the issue of untested kits began garnering media attention, law enforcement agencies began submitting untested kits to the forensic laboratory. Information obtained from the KSP forensic laboratory indicated 482 kits were submitted to the forensic laboratory between January 1, 2015 and April 23, 2015, compared to 199 over that same time period in 2014.

Also, problems were detected by some law enforcement agencies when they began the process of identifying and counting their untested kits. LMPD reported that it is still sorting out problems accounting for kits associated with its merger (Jefferson County and the City of Louisville) in 2003. Pre-merger, the two agencies had different systems to track evidence, and a new system for tracking was introduced after the merger. In addition, forensic evidence wasn't classified by crime, making it difficult to separate sexual assault kits from forensic evidence for other crimes. Further, not all sexual assault kits were stored in the evidence room. In 2013, LMPD found 300 kits that should have been submitted in 2011 and 2012 but were not. The forensic laboratory started testing some of those kits, but that effort has been put on hold due to the forensic laboratory's backlog. For the APA initiative, LMPD reported conducting a hand count and found 923 untested kits from 1970 through 2015. LMPD staff is in the process of pulling individual case files from those kits to determine the disposition of the cases and why the kits were not tested.

Observations and Recommendations

Observation 1: (Continued)

The 3,090 untested sexual assault kits identified in Kentucky through this count is comparable to KSP's initial estimate that between 2,000 and 5,000 untested kits were in the possession of law enforcement agencies. Nationally, there could be as many as 400,000 untested kits. A recent USA Today project attempted to count untested kits and found at least 70,000 kits at over 1,000 police agencies. As of August 2015, Kentucky is one of 13 states (see Table 2) that have counted its untested kits, with at least five other states in the process of conducting a count, according to End the Backlog, a program of the national non-profit organization, Joyful Heart Foundation.

Table 2 - States Conducting Counts of Untested Sexual Assault Evidence Kits

State	Untested Kits
Colorado	6,283
Connecticut	879
Illinois	3,770
Louisiana	1,133
Ohio	10,134
Oregon	5,207
Tennessee	9,062
Texas	20,000
Utah	2,700
Virginia	2,369
Washington	6,000
Wisconsin	6,006

Source: Endthebacklog.org

Colorado, Connecticut, Ohio and Texas are among the states in the process of testing their untested sexual assault kits. Illinois has cleared its backlog resulting in 927 matches in the national DNA database.

Some of the country's major metropolitan cities are further ahead of the states in counting and testing sexual assault kits. Two dozen cities have conducted counts and almost a dozen have begun testing thousands of previously untested sexual assault kits, getting CODIS matches, launching new investigations, and identifying serial rapists. Among these include:

- Detroit, which has tested 2,000 out of 11,000 kits identified in a count, resulting in 750 CODIS matches and identifying 188 suspected serial rapists;
- Houston, which has started testing 6,600 kits, resulting in 850 CODIS matches;
- New York City, which has begun testing 16,000 kits, resulting in 2,000 CODIS matches and 200 active investigations, arrests or prosecutions;
- Fort Worth, which began clearing its backlog of 960 untested kits in 2003, resulting in 200 CODIS matches, 47 arrests, 36 felony convictions and the apprehension of five serial rapists; and

Observations and Recommendations

Observation 1: (Continued)

- Memphis, whose efforts to conquer its backlog of more than 12,000 kits has already produced 162 new investigations, 22 indictments and identified 16 individuals previously convicted of rape.

Cuyahoga County, Ohio: Case Study

Cuyahoga County, Ohio, which encompasses the City of Cleveland, has become a national model for tackling untested sexual assault kits. It has tested 3,827 kits and hopes to finish testing the remaining 1,000 untested kits in the fall of 2015, according to the Special Investigations Chief (Chief) at the Cuyahoga County Prosecutor's Office.

The impetus for reform was a gruesome case in which five women went missing after police failed to test a sexual assault kit that matched the killer's DNA. Their bodies were eventually found at the home of a serial killer in 2009, in addition to the bodies of six other women. The Chief told auditors that after this case, it was found that police were closing many sexual assault cases when victims, who were often addicts, prostitutes or homeless, didn't show up for police interviews. In response to the public scrutiny, the Ohio Attorney General ordered all kits from 1993-2009, tested or untested, to be "fork lifted" from the police department to the Attorney General's forensic laboratory.

To clear the backlog, the Attorney General invested \$5 million to purchase equipment and hire and train 28 new forensic laboratory analysts. Since beginning the testing in 2011, 319 individuals have been indicted and 82 have been convicted. Ninety-one percent of the defendants identified, or 230 defendants, are serial rapists. Most of those defendants assaulted at least two victims, while three assaulted a dozen or more victims. The Attorney General expects that 60 percent of all the kits submitted would result in a DNA profile that should be investigated.

Recommendations

We recommend law enforcement agencies and the KSP forensic laboratory work together to ensure all kits that were collected prior to this initiative, and were the subject of a criminal investigation at the time of collection, be submitted to the forensic laboratory by January 1, 2016.

We also recommend KSP submit a plan for analyzing sexual assault evidence for these cases to the Governor, APA, Attorney General, and both chambers of the General Assembly. The plan should include: a timeline for completion of analysis, a summary of the inventory received, requests for funding and resources necessary to meet the timeline.

Additionally, per KRS 17.147, which requires KSP to collect and analyze crime data from law enforcement, prosecutors and other agencies, KSP should begin collecting data on reported rapes, kits submitted, kits tested, sexual assault charges, prosecutions and convictions.

Observations and Recommendations

Observation 2: The Kentucky State Police Forensic Laboratory's Average Turnaround Time To Analyze Sexual Assault Evidence Submitted In 2014 Is Currently Eight Months And Data Indicates The Turnaround Time Is Increasing

KSP considers turnaround time to be from the date sexual assault evidence is submitted to one of the forensic laboratories to the time the analysis report is completed. Between 2008 and 2012, it took KSP an average of six to nine months to complete DNA testing of sexual assault evidence. However, auditors analyzed data provided by KSP for its sexual assault evidence submissions, and found that for calendar years 2013 and 2014, the time it takes to complete processing is increasing.

In order to fully assess turnaround time concerns, not only was the turnaround time for completed cases analyzed, cases submitted but not yet complete were also considered. For example, data provided for 2013 identified that KSP forensic laboratory had 744 submissions of sexual assault evidence. Of this number, the analysis of 498 submissions was completed, with more than 51 percent of these taking longer than six months to complete. Additionally, the remaining 246 submissions from 2013, or more than one-third of the total submissions for the year, were still not complete as of August 18, 2015. Therefore, in total, more than 67 percent of the total 744 submissions were not tested within six months. Some improvement was noted in 2014; however, more than 60 percent of all submissions were still not tested within six months, and 19 percent of the total submissions were still incomplete as of August 18, 2015. Refer to Table 3.

Table 3 - Analysis of Turnaround Time for DNA Testing of Sexual Assault Evidence - Calendar Years 2013 and 2014

Calendar Year 2013 744 Sexual Assault Evidence Submissions					
Closed Cases as of 08/18/15			Open Cases as of 08/18/15		
Turnaround Time	Cases	% Closed	Time Since Submission	Cases	% Open
0-3 Months	96	19%	0-3 Months	-	-
3-6 Months	146	29%	3-6 Months	-	-
6-9 Months	109	22%	6-9 Months	-	-
9-12 Months	69	14%	9-12 Months	-	-
12+ Months	78	16%	12+ Months	246	100%
Total Cases	498		Total Cases	246	
Average Turnaround Time - 8 Months			Average Time Still Open - 27 Months		

Calendar Year 2014 517 Sexual Assault Evidence Submissions					
Closed Cases as of 08/18/15			Open Cases as of 08/18/15		
Turnaround Time	Cases	% Closed	Time Since Submission	Cases	% Open
0-3 Months	106	28%	0-3 Months	-	-
3-6 Months	97	26%	3-6 Months	-	-
6-9 Months	105	28%	6-9 Months	45	32%
9-12 Months	49	13%	9-12 Months	47	33%
12+ Months	18	5%	12+ Months	50	35%
Total Cases	375		Total Cases	142	
Average Turnaround Time - 6 Months			Average Time Still Open - 12 Months		

Source: KSP Forensic Laboratory Data

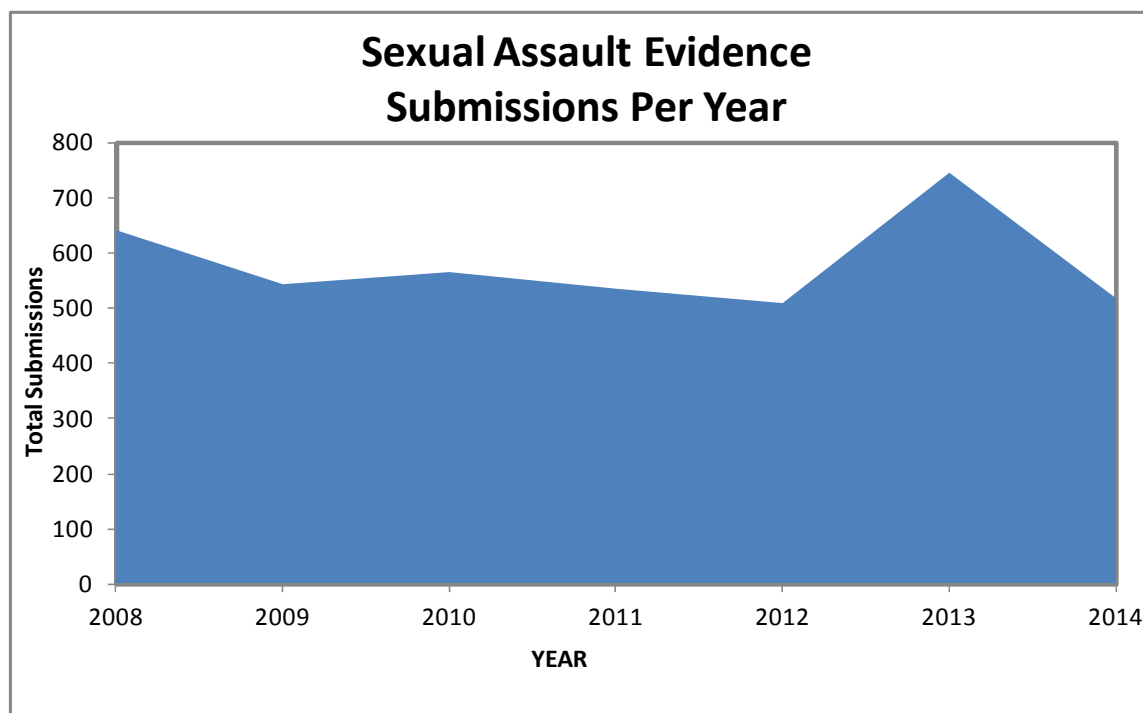
Observations and Recommendations

Observation 2: (Continued)

As depicted in Table 3, KSP forensic laboratory data suggests that completed cases in 2014 were completed on average within six months. However, as previously discussed, given that 19 percent of the total submissions are still open, the actual average turnaround time will be much longer. Taking into consideration the combination of both open and closed cases, the 2014 average turnaround time is approximately eight months as of August 18, 2015. However, that average will continue to increase until all submissions are complete.

In discussing the turnaround time to analyze the sexual assault kits, KSP explained that the forensic laboratory lost five employees at the same time in 2013. Additionally, a review of submissions logged by KSP from 2008 through 2014 identified that the number of submissions in 2013 was unusually large, having increased more than 40 percent from the prior year (see Chart 1). Also, it should be noted that KSP explained that certain delays in closing a case may be due to subsequent evidence submissions by law enforcement related to the same case. This holds up the forensic laboratory's ability to close the case, and therefore could extend the turnaround time reported. In reviewing the number of evidence submissions in the data analyzed, the frequency of this happening is not enough to significantly skew the averages noted above.

Chart 1 - Sexual Assault Evidence Submissions Per Year



Source: KSP Forensic Laboratory Data

An additional explanation provided by KSP's forensic laboratory director indicated that the large volume of incomplete cases from 2013 and 2014 stems from an initiative that KSP started to obtain older cases from police departments that were not previously submitted to the forensic laboratory.

Observations and Recommendations

Observation 2: (Continued)

The director stated that KSP intended to apply for grant funds to work these cases without impacting the current cases being investigated or prosecuted. Therefore, many of the cases received were intentionally not worked while waiting for this additional funding. The director indicated that 239 cases in 2013 and 70 cases in 2014 were part of that initiative.

During stakeholder meetings held by the APA across the state, law enforcement agencies maintained that it now takes about 12 to 14 months for the forensic laboratory to analyze sexual assault evidence, as well as some evidence from other crimes that it submits, further suggesting turnaround times are increasing. One investigator told auditors that a year or two ago he could put a rush on a homicide with a rape and get the analysis report in two to three weeks. Now, a rush is at least one month to a few months.

A national average turnaround time for analyzing sexual assault kits has not been studied; however, the APA found at least 11 states have self-reported much shorter average turnaround times than Kentucky, with the shortest being 20-30 days and the longest still being less than six months.

Limited resources, state budget cuts, and recruitment and retention issues at the KSP forensic laboratories are significant factors contributing to the lengthy turnaround times as discussed in Observation 3. In addition, the KSP forensic laboratory has experienced an increase in the amount of forensic evidence it is expected to process. Law enforcement and prosecutors frequently lamented that victims, juries, and the general public expect DNA evidence to be gathered in most crimes and for it to be analyzed in a matter of hours or days, based on what they see on popular fictional crime scene television shows. This is known as the “CSI Effect” and is occurring not only in Kentucky but across the country. The KSP forensic laboratory reports a 35 percent increase in cases for which forensic evidence was submitted between 2008 and 2012.

Not testing kits in a timely manner denies victims justice, creates a threat to public safety, and slows the judicial process. These consequences of not testing kits expeditiously were reiterated throughout the APA’s 14 stakeholder meetings. Real public safety concerns were raised. One prosecutor, for example, recalled a case in which a woman was drugged and raped and could not identify her assailants. The sexual assault kits were submitted to the forensic laboratory in June 2006, but the analysis was not completed until January 2007. The analysis matched the profiles of three men who remained in the community while the kits were waiting to be tested.

Another law enforcement investigator recalled a case in which evidence from the sexual assault of a woman with physical and intellectual disabilities was first submitted to the forensic laboratory in November of 2013. The investigator told auditors the lab contacted him in June of 2014 - approximately eight months later - and told him they needed additional swabs to be submitted to confirm the victim’s identity. Once the additional swabs were submitted, the investigator said it took an additional six months to complete the analysis on the case. The perpetrator was ordered to stay away from the victim, but he was released from jail 60 days after the crime. Incidentally, he has been sentenced to five years in prison, but as of September 18, 2015, he was not yet incarcerated.

Observations and Recommendations

Observation 2: (Continued)

This case demonstrates additional problems associated with the long turnaround times. If there is an issue with the evidence that was submitted, or there is otherwise a need to collect and analyze additional forensic evidence - which is not uncommon - the total time to get a final analysis report on the case is delayed even further.

Prosecutors and law enforcement also pointed out judges get impatient with the long turnaround times and release perpetrators from jail while awaiting forensic laboratory results. This can re-victimize the victims and potentially lead to additional crimes committed by the offenders. Prosecutors reported contacting the forensic laboratory to request that a representative explain to a judge why there was such a delay.

In general, law enforcement suggested the long turnaround time at the forensic laboratory has the effect of the investigators losing focus on these cases as they move on to other crimes committed. The effect on victims is difficult to measure but palpable to the advocates and law enforcement. Advocates suggest that if the kit was not tested and has not moved forward within three to six months of the assault, victims often lose faith in the process and decide not to continue participating in the investigation. Victims may feel that they were not believed and are not important. In some instances, victims may have undergone clinical therapy to try to move forward with their lives. "The longer the delay, the greater the risk for recantation," said one sheriff.

No policies or statutes exist in Kentucky to require the forensic laboratory to complete testing within a specified timeframe. The forensic laboratory's Quality Assurance Manual instructs analysts to prioritize service requests, including urgency of case, seriousness of crime and perishable nature of evidence. The KSP Forensic Biology Analytical Protocol Manual states that priority will be given to current cases involving a violent crime, such as murder, sexual assault, assault, and robbery, followed by cold cases.

Some states have begun requiring kits be tested within a specified time frame. California passed a law, effective in January 2015, requiring sexual assault evidence to be processed no later than 120 days after receiving it, while Illinois now requires all sexual assault evidence to be analyzed within six months of receipt if sufficient staffing and resources are available at the forensic laboratory. Additionally, the City of San Francisco requires testing to be completed within 14 days.

The Ohio Attorney General's office began measuring turnaround time for analyzing sexual assault kits four years ago because it believed it was a public safety issue, according to the Superintendent of the Ohio Bureau of Criminal Investigations (BCI), the division of the Attorney General's office that conducts forensic evidence analysis. In addition to hiring additional forensic laboratory analysts and buying more equipment, the office brought in outside experts to conduct an efficiency study and was able to streamline the analysis process and reduce turnaround time from 125 days to no more than 20 days. The office was able to decrease both the number of processing and testing steps from 183 to 87, handoffs among forensic laboratory personnel from 52 to 26, and decision points from 43 to eight.

The Louisiana State Police Crime Laboratory completed a similar efficiency review with NIJ grant funds in 2011 and met its goals of reducing turnaround time to 60 days from as high as 400 days in 2008

Observations and Recommendations

Observation 2: (Continued)

and 200 days in 2010. Among the improvements to make the process more efficient was rearranging the forensic laboratory equipment to reduce the number of steps sexual assault kits traveled in the hands of analysts around the forensic laboratory building.

KSP indicated it previously considered undergoing a similar efficiency study but did not go through with it. KSP cited the \$80,000 to \$150,000 expense of such a study, although KSP had not considered a cost-benefit analysis to determine whether the potential reduction of procedural steps and time would be more cost effective, possibly even covering the cost of such a study.

Ohio's BCI also is working to streamline the tests it performs on forensic evidence to speed up the process and improve results. For example, it has minimized serology screening on older cases, which involves the use of chemicals to determine if bodily fluids are present. Ohio's BCI is in the process of validating a new process that would eliminate serology screening for some new evidence and would instead involve the use of a DNA quantitation method. This involves extracting DNA and running a test to determine whether there is male-only or female-only DNA present. If the gender-type DNA that law enforcement is searching for is not present, the analysis does not proceed. The KSP forensic laboratory director reported that the forensic laboratory also is moving toward a different type of initial screening.

The Cuyahoga County Prosecutor's Office stated that reducing the amount of serology screening done on older kits has garnered a 20 percent higher rate of developing a suspect profile. Serologically-detected bodily fluids may not contain DNA, as is the case with many seminal fluid samples, and sometimes bodily fluids are not located where DNA material may be present (under a victim's fingernails, for example).

KSP screens all forensic evidence for serology before testing for DNA. If the screening does not identify bodily fluids, it does not conduct the DNA test. Based on the experiences in Cuyahoga County, this could be resulting in some evidence not being tested for DNA even though a suspect's DNA may actually be present.

Although the forensic laboratory in Frankfort is currently the only KSP forensic laboratory that performs DNA testing, the serology screening occurs at the KSP central forensic laboratory in Frankfort, as well as at three regional KSP forensic laboratories in Louisville (Jefferson), Madisonville (Western), and Cold Springs (Northern). Another concern related to serological screening is the added time it takes to analyze. According to data provided by KSP, as of July 30, 2015, the average time for serology screening for sexual assault evidence is 120 days at the Western forensic laboratory, 106 days at the Jefferson forensic laboratory and 109 days at the Northern forensic laboratory. These times comprise half the total turnaround time for analysis, according to KSP's data. In cases where victims stop cooperating, the three to four month serology screening process itself may be to blame. The KSP forensic laboratory director stated that with optimum resources at the regional labs, serology could be completed in two days.

Another concern related to the serology screening is that if and when kits test positive for DNA, the forensic laboratory will contact the submitting agency to ask whether it still needs the DNA analysis,

Observations and Recommendations

Observation 2: (Continued)

according to many law enforcement officers. If the case was adjudicated or the victim declined to cooperate, the forensic laboratory does not test the kit. The failure to conduct a DNA analysis after a kit has tested positive during the serology screening misses potential opportunities to exonerate wrongly-identified assailants and the possibility that there was more than one attacker. In addition, not testing kits solely because law enforcement reports that the victim is not cooperating raises concerns that offenders are not being identified and entered into CODIS. Lack of cooperation by victims does not preclude the suspect DNA from being entered into CODIS to potentially match to the offender database or other forensic evidence.

Victimless investigation and prosecution, though difficult, may still be possible, and is in the interests of public safety since the rapist may still pose a threat to others. KSP was unable to document the number of kits that test positive for serology but are not tested for DNA.

A key aspect of Ohio's and Louisiana's abilities to reduce and control turnaround time while maintaining quality is measuring and monitoring forensic laboratory performance. Ohio's BCI sends the Attorney General a monthly report documenting turnaround times and other performance measures and sends out monthly press releases reporting the status of the sexual assault kit initiative. Louisiana State Police began utilizing an electronic dashboard in the forensic laboratory to track daily, weekly and monthly performance measurements. These performance reports bring accountability to the forensic laboratories and allow policymakers to evaluate the level of resources needed to maintain low turnaround times.

KSP reported to auditors that it used to produce a monthly forensic laboratory case report but stopped producing it in recent years. Supervisors access the data in real time to perform employee evaluations and the forensic laboratory director reviews the data weekly or twice weekly. Nobody within KSP leadership reviews forensic laboratory performance data.

Recommendations

We recommend the General Assembly dedicate significant additional resources to the forensic laboratory to reduce the turnaround time and to sustain a short turnaround time going forward. To ensure it achieves reform for its investment, the Legislature should consider revising Kentucky Revised Statutes to require the KSP forensic laboratory, by January 1, 2018, to process sexual assault evidence kits from all felony sexual offenses, create DNA profiles when able and upload qualifying DNA profiles into CODIS and other DNA databases as soon as possible, but no later than 90 days after the submission of the kit. An exception should be provided for the mandatory submission of kits from felony offenses if there has been an official recant by the victim. Issues related to resources will be further addressed in Observation 3 of this report.

We further recommend KSP contract with outside consultants to conduct an efficiency study of the forensic analysis processes. The cost benefit has been demonstrated in other states. Given the continuing demand to analyze more forensic evidence and limited resources for the lab, it is imperative the lab consider ways to increase efficiency and possibly even improve quality of results in the process. As part of that study, KSP should evaluate technologies and methods to expedite testing that may be on the forensic evidence horizon.

Observations and Recommendations

Observation 2: (Continued)

Recommendations (Continued)

We strongly recommend KSP leadership closely review performance reports to be submitted by the forensic laboratory. KSP leadership must pay close attention to the turnaround times as the amount of evidence submitted for DNA analysis continues to grow. Management must have a way to evaluate whether lab resources need to be adjusted based on lab analyst departures or other events that could affect the turnaround time. Although forensic lab representatives noted in interviews that KSP management is responsive to requests for additional resources, we believe it is important for executive leadership to be more engaged in monitoring laboratory performance. We suggest that seeing the instances of CODIS matches and other similar metrics would underscore the importance of having an efficient forensic laboratory on solving crimes.

Observations and Recommendations

Observation 3: Kentucky State Police Has Not Placed Sufficient Priority On Improving Turnaround Times For DNA Analysis Or To Manage The Increased Workload Of Forensic Evidence Submissions

As noted in Observation 2, the turnaround time to obtain DNA test results from the KSP Forensic Laboratory is currently estimated to be an average of eight months. KSP addressed media questions regarding the backlog of sexual assault kits by indicating additional funding was needed to improve its turnaround time of DNA analysis. Auditors analyzed KSP's preliminary cost estimates to improve the turnaround time to conduct forensic analysis, as well as the agency's expenditure history and, capital budget priorities. KSP did apply for and receive grant funding in past years to pay for training and overtime for DNA analysts. However, the results of this analysis indicated that overall KSP did not take broad action to address the underlying problems that led to increased turnaround times. It was not clear what processes were in place to make KSP leadership aware of the increasing turnaround times, if any.

Auditors considered whether actions taken by KSP were prudent under the circumstances as it relates to improving forensic evidence testing timeframes. It is understandable that state government budget cuts made decisions regarding funding priorities difficult. Also, KSP is an organization with an expansive law enforcement mission, and the forensic laboratory director acknowledged that the forensic testing is only one of many important objectives she oversees. However, it is important to understand how priorities are established and managed during a period when budget cuts, personnel retention concerns, and increased demand significantly affect the operations of one part of the agency that has such a critical impact on the public safety of all Kentucky citizens, and nearly one in five Kentucky women.

When managing a government agency, priorities are generally reinforced in the agency through budgetary measures. KSP indicates that more funding is needed to resolve the current backlog of sexual assault kits and to add staff and equipment to maintain lower turnaround times. Yet, the forensic laboratory had requested no additional state funding for equipment and personnel to expand its capacity to address the backlog, long turnaround times or higher volume of evidence expected in the future. Inquiries within KSP identified that when funding is short in one area of the department, resources are shifted from another area so needs are met throughout the agency. In fact, KSP stated that the forensic laboratory often is able to expend more than originally budgeted due to resources being pulled from other areas, and the forensic laboratory director indicated that when she requests staffing it is authorized. These explanations describe how the agency attempts to maintain the status quo, but does not identify necessary strategic planning to handle the growing volume of forensic evidence submitted or significantly reduce turnaround times for the current evidence load.

In discussing the underlying causes of the increasing timeframe for DNA testing with KSP and forensic laboratory management, the most significant factor identified was a staff shortage at the forensic laboratories. Forensic laboratory management indicated that it has had approximately five vacancies over the past two years. After these vacancies occurred, it took more than six months to analyze almost 70 percent of sexual assault forensic evidence, including more than 12 months to analyze 44 percent of the evidence submitted.

Observations and Recommendations

Observation 3: (Continued)

Having five vacancies at one time made it difficult for the forensic laboratory to sustain a more reasonable timeframe for various reasons. As new employees were hired, the forensic laboratory experienced other resignations, which means the same level of vacancies persisted over an extended period of time. The forensic laboratory director indicated the most significant reason for its reoccurring turnover is that although educational requirements and training for DNA forensic laboratory staff are arduous, beginning salaries for the employees are not competitive. The employees must have at least a bachelor's degree in biology or related field, as depicted in the job specifications in Appendix VII, and complete approximately 12 to 18 months of on-the-job training before they are functioning at full capacity. The starting salary for biologists, evidence technicians, and forensic laboratory technicians in the forensic section is approximately \$32,000 per year, which the forensic laboratory director indicates is well below beginning salaries in private forensic laboratories and even surrounding state forensic laboratories. In Ohio, forensic laboratory analysts at the Attorney General's BCI start at \$45,000 a year. According to the U.S. Bureau of Forensic Statistics Occupational Outlook Handbook, the median annual wage for forensic science technicians was \$52,840 in 2012. The lowest 10 percent earned less than \$32,200 and the top 10 percent earned more than \$85,210.

Although the forensic laboratory recognizes that beginning salaries for analysts aren't competitive, a review of a plan provided to the APA by KSP to improve and maintain reasonable turnaround times does not include any increases in the starting salaries. This plan would add a total of 16 additional employees, such as biologists, evidence and forensic laboratory analysts and two forensic laboratory assistants (see Table 4). Because the forensic laboratory is experiencing a serious recruitment and retention problem, it is questionable whether the forensic laboratory could feasibly add 16 additional staff at the current salary structure. The forensic laboratory director acknowledged that it is difficult to hire employees at that salary, but that a formal salary study or inquiries with the Kentucky Personnel Cabinet to discuss mechanisms for increasing salaries had not been undertaken by KSP. Auditors asked the forensic laboratory director whether she could provide a revision of cost estimates that would include funding amounts necessary to realistically improve recruitment of new staff, and retention of current staff; but, a detailed revision was not provided to the APA. However, the lab director did indicate she is working on a plan to submit to the Personnel Cabinet with increased entry salary levels for the forensic biologist I position.

Table 4 - Excerpt of the KSP Plan Related to the Expansion of Laboratory Staff

<u>Title</u>	<u>Quantity</u>	<u>Pay Grade</u>	<u>Annual Salary</u>	<u>Annual Salary With Benefits</u>	<u>Annual Total</u>
Forensic Biologist I	10	13	\$ 32,042	\$ 49,429	\$ 494,290
Create new classification	2	13	32,042	49,429	98,858
Laboratory Scientist I	2	13	32,042	49,429	98,858
Laboratory Aid	2	6	16,448	28,961	57,922
					\$ 749,928

Source: KSP Forensic Laboratory

Observations and Recommendations

Observation 3: (Continued)

KSP's initial estimate indicated that implementing its entire plan would take approximately \$2.9 million in the first year, and \$1.3 million thereafter. In addition to the expanded staffing levels indicated in Table 4, the plan also details additional equipment, supplies, furniture, storage, and work space needed.

An analysis of forensic laboratory spending and requests for funding, as well as other statements by KSP indicated a lack of prioritization of forensic evidence analysis. Auditors requested the KSP's capital planning worksheet for the last biennial budget, 2014 - 2016, as well as its capital planning worksheet for the upcoming 2016 - 2018 biennium. These worksheets are used in the budget process to identify requests for capital projects, and list the department's and the cabinet's priority for each item requested. Neither the capital planning worksheet for 2014 - 2016, nor for 2016 - 2018, included capital items for equipment that would aid in expanding forensic laboratory services to address the untested sexual assault kit backlog. The forensic laboratory director indicated the only equipment requested and purchased in recent years was to replace existing equipment that was on the verge of failure.

As noted in Observation 2, it took KSP an average of eight months to analyze sexual assault evidence in 2014. This is much higher than the average time it takes in several other states. KSP indicated that its goal is to process high-priority forensic evidence in 90 days. Although 90 days would be a significant improvement, KSP would still lag behind other states, such as Ohio, which has found innovative ways to reduce turnaround times to 10 to 30 days. Observation 2 noted that the forensic laboratory has not undergone an efficiency or performance improvement study to look for ways to speed up the analysis process while maintaining quality results.

KSP also told auditors that management has had discussions about scaling down the amount of forensic evidence the forensic laboratory would analyze by not accepting certain types of cases. This may be another indicator that KSP management is not placing a high priority on the forensic laboratory's role in solving cases. We recognize the forensic laboratory may be frustrated by what they perceive as a burdensome amount of evidence submitted by some law enforcement agencies in a single case, or that they are asked to analyze evidence for certain non-violent offenses. Additional training, which will be discussed in Observation 10, may be useful to address some of these issues. However, as the technology to test DNA evidence more rapidly emerges, a strategic shift away from forensic evidence's ability to solve crimes and exonerate the innocent does not seem prudent.

Recommendations

We recommend KSP management communicate a strong management tone at the top of the organization that its priorities include improving processes that help expedite information used in criminal prosecutions, such as DNA testing.

We recommend KSP conduct a salary study, which should include an analysis of salaries for similar forensic laboratory positions in surrounding states, in states with similar demographics, and for private sector positions with organizations that attract KSP forensic laboratory employees. Additionally, the study should consider not only entry level salaries, but also

Observations and Recommendations

Observation 3: (Continued)

Recommendations (Continued)

mid-career and late-career salaries, in order to address retention concerns. KSP should then work with the Kentucky Personnel Cabinet to determine an approach to improve recruitment and retention concerns given the results of the study. The agency should then establish budget priorities to help implement the portions of the plan that are economically and administratively viable. KSP management indicated this was discussed but not performed.

We recommend the General Assembly increase the level of resources available to the forensic laboratories due to its effect on public safety, justice for victims and the judicial process. KSP should include additional budget requests in the upcoming biennial budget process to fund its forensic laboratory expansion plan to meet more aggressive turnaround times this report recommends the Legislature require. Further, the Legislature should specify that at least a portion of any additional funding provided to KSP is directly used for the forensic laboratory.

As recommended in Observation 2, KSP should strongly consider having an efficiency study completed on forensic laboratory functions related to DNA testing. Reducing redundant steps may also provide budgetary relief by eliminating wasteful procedures and allowing the forensic laboratory to test more evidence utilizing fewer resources.

Observations and Recommendations

Observation 4: Communications And Policies From The Forensic Laboratory Regarding Sexual Assault Kits Were Inconsistent And Confusing, Resulting In Fewer Kits Submitted

At the outset of this initiative, KSP indicated to auditors that it was emphasizing an effort called “Submit the Kit” to educate law enforcement agencies in Kentucky that submit forensic evidence. KSP stated that it believes the best practice is to submit every kit to the forensic laboratory to be tested. Yet, auditors found that written and verbal communication to agencies was inconsistent, confusing, and prone to misinterpretation by law enforcement.

Auditors reviewed the Physical Evidence Collection Guide, dated September 9, 2013, that the KSP Forensic Laboratory disseminates to law enforcement to “aid in the collection and preservation of evidence prior to its submission to a forensic laboratory for analysis.” Page seven outlines the “Nature and Value of Physical Evidence” and states, in part:

Since all forensic laboratory locations have more case work than analytical time, the submitting officer can aid the examiner by fully relaying the facts of the case. Information given to the forensic laboratory will establish the direction of the analysis and may help to determine the worthiness of the evidence. Many forensic laboratory examinations are lengthy and expensive. The efficiency of the forensic laboratory is directly related to keeping the analyst well informed as to the facts of the case, submitting relevant evidence, and not overloading the system.

The statement advises law enforcement not to overload the system; rather, to carefully decide which pieces of evidence it deems relevant. This may be viewed as contrary to statements by KSP that it wants law enforcement to submit all sexual assault kits for analysis.

In interviews and stakeholder meetings, prosecutors and law enforcement repeatedly stated that because of direct or indirect communication with the forensic laboratory, they were using a triage system to determine which evidence to submit because they were aware of the backlog and did not want to delay testing on evidence they deemed a higher priority, such as homicide evidence.

One prosecutor stated, “I don’t want to wait six months for one (evidence analysis report) I need because I’m submitting kits I don’t need.” A Sheriff’s deputy said, “We’ve been trained: Don’t send what you don’t need.”

A special crimes investigator said the forensic laboratory would tell him to submit all kits but would then describe the backlog. “The forensic laboratory tries to put out the message that if you don’t need something (for prosecution), don’t send it.” A sheriff’s deputy stated that the forensic laboratory told him that it would not test the kit if the case wasn’t going to be prosecuted.

These statements appear to reflect a priority on testing evidence to support a prosecution, which is one purpose for testing evidence but not the sole purpose. The Physical Evidence Collection Guide states:

Observations and Recommendations

Observation 4: (Continued)

Physical evidence can aid in solving the case by developing modi operandi (M.O.'s), by developing suspects, by proving or disproving alibis, by eliminating suspects or connecting suspects to the crime, by identifying the source of stolen materials, and by providing investigative leads. Physical evidence is often necessary to prove that a crime had been committed.

By not testing kits from cases that law enforcement and Commonwealth's Attorneys have decided not to prosecute, the forensic laboratory may miss opportunities to provide investigative leads and connect suspects to additional crimes they may have committed. That information may alter a decision to not prosecute. For example, if a suspect does not deny having sexual contact with a victim and tells law enforcement it was consensual, prosecutors may decide not to pursue prosecution and therefore, law enforcement does not submit the kit for analysis. However, if the sexual assault kit was tested and that DNA matched the DNA in kits from other sexual assault victims, it may bolster the victim's story and case for prosecution, as well as lead to charges in the previously unsolved sexual assaults. The purpose of submitting sexual assault kits also is to attempt to solve other crimes - not just the crime from which the kit was collected - since several studies found that the majority of rapists are serial rapists and serial criminals in general.

As further demonstration of the inconsistent communications by KSP to law enforcement, auditors found that KSP had instructed law enforcement not to submit certain kits without a suspect standard, which is a forensic sample containing DNA obtained from a suspect.

Obviously if law enforcement does not have a suspect, a suspect standard cannot be obtained. This standard is often provided voluntarily by known suspects, but also may be obtained by law enforcement seeking a search warrant from a judge. In some instances, law enforcement is not granted permission to obtain the suspect standard, or is otherwise prevented from doing so, when they cannot locate a suspect. One prosecutor reported that there may be some confusion among judges who are asked to grant a search warrant to obtain a suspect standard from a convicted felon. They may be denying those search warrants because they believe investigators and the forensic laboratory already have the suspect's DNA. Under federal law, a standard still must be collected from a suspect - even if the suspect's DNA is already in the convicted felon database - to prosecute the case.

A suspect standard is required in a jury trial as evidence that the suspect's DNA is a direct match to the DNA discovered in the sexual assault kit. However, a suspect standard is not required in order for suspect DNA from a sexual assault kit to be uploaded into CODIS for the purposes described above.

Observations and Recommendations

Observation 4: (Continued)

Written communication from KSP indicates that it required law enforcement to submit a suspect standard with the sexual assault kit, with certain exceptions. According to the Physical Evidence Collection Guide:

The appropriate DNA reference standards are required prior to the starting of DNA analysis, generally from both victim(s) and suspect(s). Cases for which there is no suspect, when a suspect has fled, or when an investigating officer has attempted, but cannot obtain a warrant for the collection of a suspect's standard may be exempt from this requirement. This information should be provided by the investigating officer at the time of submission. If this status changes, the investigating officer should notify the forensic laboratory and submit any attainable standards.

The KSP forensic laboratory director told auditors that the reason for this KSP rule, which was suspended since this review commenced, was to eliminate the need for forensic laboratory analysts to constantly contact law enforcement to ask for suspect standards. The rule has been in effect since at least 2001, but KSP may have begun strictly enforcing it upon overhauling laboratory policies in 2009, according to the forensic laboratory director. Prior to the rule law enforcement "rarely" submitted the suspect standard. Often law enforcement would want to see whether there was semen present in a female victim's sexual assault kit before pursuing a suspect standard. That led to cases going to court without a suspect standard, resulting in complaints from judges that the forensic laboratory had not completed a case. Alternatively, prosecutors would call the forensic laboratory a week before a trial and beg the forensic laboratory to turn a suspect standard analysis around quickly. According to the forensic laboratory director, "we were doubling our work and taking the blame in court. We couldn't keep a workflow going because we had to constantly put down the cases we were working to go back and do a rush comparison for court."

The forensic laboratory director stated that after the rule was implemented, the forensic laboratory was able to work more efficiently and received more, not fewer sexual assault kits to be tested. The forensic laboratory director stated that it was never the intention of the forensic laboratory to not fully utilize the CODIS database. Further, she fears that by suspending the rule the forensic laboratory will enter more profiles into the database but fewer cases will be solved and/or adjudicated because the suspect standard won't be obtained.

The problem with the communication regarding the suspect standard requirement is that it was not always clearly conveyed with its exceptions to law enforcement.

A July 2013 KSP newsletter from the forensic laboratory stated, "a reference standard must be submitted for a case prior to DNA analysis, even if an offender sample has been collected from the same suspect for the database. Offender samples are not evidentiary and are not intended for use at trial."

KSP may have attempted to clarify the rules regarding the use of convicted felon DNA that Kentucky began collecting in 2009. This statement in the newsletter, however, doesn't outline the exceptions for the suspect standard requirement.

Observations and Recommendations

Observation 4: (Continued)

An April 2014 forensic laboratory newsletter also contained potentially confusing guidance about the suspect standard requirement:

Q: Do reference standards need to be submitted for a case prior to DNA analysis, if an offender sample is present in the DNA database?

A: Yes, if probable cause exists, a standard should be obtained. Offender samples are not evidentiary and are not intended for use in court.

Q: Can evidence be submitted for serological analysis to the forensic biology casework section without reference standards?

A: Yes, but submission of reference standards is required prior to the evidence being forwarded for DNA analysis.

The information provided in the Questions and Answers (Q and A) informs law enforcement that it is permitted to submit evidence for serological screening without the suspect standard but requires the standard to be submitted before the evidence is sent for DNA analysis. The Q and A does not describe the exceptions to the rule and, again, is contrary to the requirements for uploading DNA evidence into CODIS.

Law enforcement reported being confused by the directions from the forensic laboratory. One large law enforcement agency said it was told by the forensic laboratory that if a victim provides a suspect's name and police are not able to obtain the suspect standard; the evidence from the sexual assault kit would not meet the standard for CODIS.

This KSP policy, which was intended to reduce the amount of time KSP spends tracking down standards, was not clearly understood by at least one agency and has discouraged the submission of certain sexual assault kits. The KSP forensic laboratory director told auditors that the rule was suspended due to the "perception that this rule has caused confusion" and that there is a lot of confusion among law enforcement as to the purpose of the database. This additional confusion will be further discussed in Observation 7.

Recommendations

KSP should continue accepting all submitted sexual assault kits, regardless of whether the submitting agency obtains a suspect standard. However, law enforcement should submit suspect standards at the time they submit sexual assault kits when available. If not available, an explanation should be provided on the KSP laboratory submission form detailing the reason why a suspect standard could not be submitted, or contact KSP for further guidance.

The lab should work with law enforcement and associations representing circuit court judges and prosecutors to increase education regarding the submission of evidence to the lab. Additional laboratory training will be discussed in Observation 9. The lab should ensure that written and verbal communications regarding the laboratory's evidence acceptance policies are clear and consistent.

Observations and Recommendations

Observation 5: More Than Half Of Law Enforcement Agencies Surveyed Reported That They Submit All Sexual Assault Kits, And Most Interviewed Indicate They Would Prefer To Be Required To Submit All Kits

Of the respondents, 59 percent reported they request a forensic laboratory analysis of all sexual assault kits they receive, while 41 percent do not request a forensic laboratory analysis for all kits they receive.

Agencies that do not request an analysis of all kits were asked to indicate the primary reasons for not submitting kits to the forensic laboratory. Respondents could select multiple reasons for not submitting kits (see Table 5).

Table 5 - Survey Question 7 and Responses

<u>Survey Question 7 and Responses</u>	
7. What are the primary reasons your agency does not request a crime lab test of each sexual assault evidence kit it receives? Check all that apply.	
Victim informed police the crime did not occur	62%
Victim declined to file a complaint	57%
Other	41%
Prosecutor advised it was not necessary	31%
Investigators suspected the act was consensual	21%
DNA evidence was not needed to convict	18%
Investigators had no suspects	11%
Victim filed complaint against spouse or former spouse	4%
Delivering to KSP lab is cost prohibitive or creates logistical issues	1%

Source: Law Enforcement Survey Responses

As illustrated in Table 5, the majority of agencies that withheld some kits from the forensic laboratory did so because the victim informed police that a crime did not occur. The FBI requires that forensic evidence submitted to the national database “originate from and/or be associated with a crime scene.” So if a victim recants without coercion, meaning that he or she notifies law enforcement that the reported crime did not occur, the forensic evidence collected in the kit is not eligible to be uploaded to the DNA database. An official recant would be a reason not to submit a kit; however, concerns have been raised in studies such as the one conducted in Detroit that law enforcement may be determining their own definitions of recant, such as when they have difficulty locating a victim or they deem the victim not cooperative. More study may be needed to understand the circumstances under which victims inform police that the sexual assault did not occur.

Observations and Recommendations

Observation 5: (Continued)

However, 57 percent of responding agencies indicated that they did not submit kits in cases that the victim declined to file a complaint. This reason does not preclude law enforcement from submitting kits to the forensic laboratory or the forensic laboratory from analyzing the evidence and adding the perpetrator's DNA to CODIS to try to identify an unknown suspect or match it with evidence submitted from other crimes. In these instances, victims did not say that the crime didn't occur; rather, for various reasons, they have decided not to participate in the pursuit of criminal charges.

Similarly, one-third of agencies responded that the "prosecutor advised it was not necessary" as a primary reason for not submitting kits. In a 2011 NIJ special report on unanalyzed sexual assault evidence, 15 percent of law enforcement surveyed across the country said they did not submit evidence because analysis had not been requested by a prosecutor. The rationale behind prosecutors' guidance varies. In some instances, Commonwealth's Attorneys decided not to prosecute because victims declined to participate, or because victims were not fully cooperative. Contrary to popular belief that a victim can "press charges," Commonwealth's Attorneys are not precluded from prosecuting a case in the absence of a victim's willingness to participate or cooperate. However, prosecutors say they would not proceed out of fear of re-traumatizing the victim. Advocates for testing all kits say that kits from these types of cases should still be analyzed because, as stated above, running the DNA through CODIS could identify an unknown suspect or match to evidence submitted in other crimes. These revelations, advocates say, could actually change victims' and/or Commonwealth's Attorneys' minds about pursuing prosecution.

In addition, prosecutors often do not recommend submitting kits for cases in which a suspect told investigators that the contact was consensual. Indeed, 21 percent of survey respondents cited "investigators suspected the act was consensual" as a primary reason they chose not to submit certain kits. Law enforcement and Commonwealth's Attorneys say those cases are often not prosecuted because it is difficult to prove lack of consent. Again, without plans to prosecute, many investigators do not submit kits for analysis.

Surprisingly, 11 percent of survey respondents cited "investigators had no suspects" as a primary reason for not submitting kits. In the 2007 NIJ survey, 44 percent of law enforcement agencies said having no suspects was one of the reasons they did not submit kits for analysis. This and other reasons cited by law enforcement and prosecutors for not submitting kits suggest that they may not fully understand the potential value of forensic evidence in developing new leads in their investigations, or in matching suspects to unsolved crimes. Rather, there appears to be a focus on testing evidence for the purposes of supporting a case in court. On submitting consensual kits, one Commonwealth's Attorney said, "I have to try to help the forensic laboratory also and not send it. I don't want to wait six months for one I need because I'm submitting kits I don't need (for prosecution)."

One special crimes investigator suggested that when CODIS came online in Kentucky in the mid-1990s, there was not an emphasis to educate law enforcement in Kentucky about the goals and objectives of CODIS or to encourage law enforcement to submit all kits and help populate the database. In Queens County, part of New York City, on the other hand, an Assistant District Attorney from the Queens County District Attorney's office stated that when CODIS became available for forensic laboratories there in 1999, old kits were immediately tested and a local ordinance was passed requiring all new kits to be tested. As a result, a backlog of untested kits never developed.

Observations and Recommendations

Observation 5: (Continued)

Prosecutors and law enforcement report not submitting kits for cases in which they decide to prosecute but don't need DNA evidence to get a conviction. Of the survey respondents, 18 percent said they did not submit kits because "DNA evidence was not needed to convict." Other evidence, such as eye witnesses or video, may be sufficient to confirm a suspect's identity and convince a jury that a crime occurred. However, due to the "CSI effect" that law enforcement and forensic laboratory personnel frequently cite, juries have come to expect DNA evidence in violent, personal crimes and may hesitate to find a suspect guilty if the kits were not submitted and analyzed.

Similarly, for certain cases in which kits are not submitted, prosecutors may have negotiated a guilty plea from a suspect. In those instances, the individual would have to submit a DNA sample under Kentucky's requirements that DNA samples be collected from convicted felons in violent crimes and be maintained in a convicted felon database. That database is compared to the national database to match convicted felons with evidence from unsolved crimes. However, KSP reports that there is a one-year delay in getting all convicted felon DNA uploaded to the database. In addition, as stated in Observation 4, failing to test these kits miss potential opportunities to exonerate a wrongly-accused assailant or to identify multiple attackers. Victims' advocates also make a compelling argument that victims who underwent a lengthy and unpleasant sexual assault examination deserve to have their kits tested and their cases fully investigated.

Of the survey respondents, 41 percent selected "other" as the primary reason for not submitting sexual assault kits for analysis. One respondent explained that testing the kits "would add no value to the investigation, such as when the presence of biological evidence would not prove or disprove a crime (only question is of consent)." Another stated that kits are not submitted if "it was determined through investigation that the victim was untruthful." Another agency said that kits are collected "as a precautionary measure in case it is needed later on in the investigation." Still another responded that kits are not submitted if they are "unable to locate victim after the collection of kit - therefore unable to prosecute without the victim."

Disturbingly, 4 percent of respondents answered that the primary reason for not submitting kits is that a "victim filed a complaint against spouse or former spouse." This suggests that these agencies may not take seriously allegations of sexual assault against a spouse or former spouse, or that they may not understand that those kits could match kits submitted in unknown suspect sexual assault cases.

During interviews and stakeholder meetings, representatives of law enforcement agencies often expressed confusion about determining which kits to submit and said they would welcome a requirement that they just submit all kits. "What do I do with a kit if a victim doesn't want to proceed?" one police chief asked. No law enforcement agencies voiced opposition when asked if they would oppose a mandate to submit all kits.

One sheriff who contacted the APA via email stated that, "I do not have a problem with making a law that all sexual assault kits will be submitted to the Kentucky State Police Crime Lab regardless of whether you have a sexual assault or not." He also stated, "I have no problem submitting every case in our evidence room, but by viewing them I do not believe we will have any successful

Observations and Recommendations

Observation 5: (Continued)

prosecutions.” He also indicated that the reason for submitting kits is to provide evidence for court that a crime was committed. As discussed previously, this ignores the potential to connect perpetrators to other crimes.

The sheriff seemed to suggest a belief that victims often aren’t truthful, saying “you must be very careful about the expense involved in performing unnecessary work at the cost of the tax payer.” Further, he stated, “The seriousness of these crimes has caused innocent people to plea bargain to crimes they did not commit.” That statement also ignores the ability of forensic analysis to potentially exonerate innocent individuals who accept guilty pleas. He also suggested the effort to count untested kits was a “show” to generate money for victims’ advocates.

These attitudes were not expressed to auditors by others in law enforcement, though it is likely that they exist. Requiring law enforcement to submit all kits would take similar biases and attitudes out of the process for determining which kits are submitted, although it would not guarantee that such biases and attitudes don’t negatively affect other aspects of sexual assault investigations. Greater availability of victim-centered, evidence-based training, which will be discussed in Observation 10, also is needed.

In places like Ohio and Detroit, a test-all-kits approach is demonstrating its value in identifying serial rapists and connecting suspects who claimed sexual contact in one case was consensual to evidence from kits in other sexual assaults. As noted in Observation 1, a Cuyahoga County Prosecutor’s Office representative said their effort identified 230 serial rapists to date.

Testing unanalyzed kits in both Cuyahoga County and Detroit resulted in kits from non-stranger assaults matching to other sexual assault kits, helping to put aside a common notion among law enforcement that testing kits in known-suspect cases is without merit. In Cuyahoga County, 42 of the first 180 kits from assaults in which the suspects claimed the contact was consensual matched to cases when the assailant was a stranger. “A lot of our rapists who are on stranger rape cases would also do it to an acquaintance or partner,” the representative said. In Detroit, kits from stranger and non-stranger assaults did not differ significantly in their CODIS hit rates. As one Detroit stakeholder stated, “it changes things from a ‘he-said, she-said’ case to a ‘he-said, she-said, she-said’ case ... that takes away a lot of doubt in the minds of the jury (to know) that this wasn’t a one-time thing or miscommunication or whatever the defense tries to argue.”

A report commissioned by the Cuyahoga County Prosecutor’s Office identified the benefits of providing additional resources to investigate and prosecute sexually motivated offenders. It referenced Bureau of Justice Statistics (BJS) findings that demonstrate the damage and fear these offenders cause to communities. Violent offenders tend to be prolific, repeat offenders and a significant percentage of rapists start young, according to a BJS study of violent felons in large urban counties between 1990 and 2002. An estimated 53 percent of convicted rapists had been previously arrested, 10 percent had 10 or more prior arrest charges and 40 percent had a felony arrest record. “It is evident that a small core of violent offenders is responsible for a large percentage of the violent crime committed in our communities, way out of proportion to their actual number,” the Cuyahoga County report stated.

Observations and Recommendations

Observation 5: (Continued)

The Cuyahoga County Prosecutor's Office went even further to demonstrate the real benefits of aggressively analyzing untested sexual assault kits, calculating the tangible and intangible costs of the crimes committed by rapists before, including, and after those sexual assaults. As of May 2015, 267 defendants cost the public \$149 million, and six defendants alone cost the public more than \$10 million each. Of that \$149 million, those defendants cost the public \$78.5 million after rape kits went untested and they committed additional crimes. One defendant alone cost the public \$1.3 million in tangible costs and \$8.6 million in intangible costs from all the crimes he committed after a sexual assault in which the sexual assault kit went untested. That man murdered a Cleveland police officer in 2000, 14 years after he raped and kidnapped a woman and that sexual assault kit wasn't tested.

The Cuyahoga County Prosecutor said in a February 2014 statement to the media:

(His) latest serial rape conviction provides all of us in the criminal justice system another opportunity to recognize the vital importance of prompt DNA testing. Had the rape kits been submitted and tested earlier, the police and the general public would have known this serial rapist was on the loose in that immediate area years before he shot and killed (a police officer). There would have been, at the very least, profiles and alerts to police and potential black female victims living in that inner east side neighborhood of this predator, his appearance, and his methods of attack.

The DNA Cold Case Task Force results have proven that there are many other active serial rapists on the east side of Cleveland that no one realized existed. Police had the reports of the rape victims, but no one realized that many were being committed by the same serial rapists.

The lesson to us in the criminal justice system is that the sooner we complete the testing of the thousands of rape kits that sat on the shelves of police property rooms for up to 20 years, the sooner we can identify and arrest the other active serial rapists in Cleveland and thereby prevent other unnecessary rape victims or murdered police officers.

In other words, the longer we take to test these untested rape kits, the longer the serial rapists remain on the streets and more women will be attacked.....or police killed.

In a broader sense, those associated with efforts to test all kits, also known as the forklift approach, report that it eliminates inherent biases in law enforcement and has positively affected law enforcement attitudes and responses to allegations of sexual assault. That, in turn, makes victims feel that they are believed and that law enforcement takes their crimes seriously. In time, experts hope this will result in more victims coming forward to report rape and sexual assaults. "Hunches are worthless on anyone's part," said a representative from the Queens County (New York) District Attorney's office. "These should be data-driven decisions, not magic. DNA helps keep us very grounded."

Observations and Recommendations

Observation 5: (Continued)

Recommendations

We recommend the General Assembly enact a law to require law enforcement agencies to submit sexual assault kits from all felony sexual offenses to the KSP forensic laboratory within 10 days after the kit is first booked into evidence. The lab should be required to process or outsource the evidence to a private laboratory for processing, as is recommended in Observation 2.

We recommend the Legislature require hospitals and other facilities that perform forensic medical examinations and collect evidence for sexual assault evidence kits to notify law enforcement within 24 hours after obtaining consent from the victim to release the kit to law enforcement. Any sexual assault kit that is not released to a law enforcement agency due to the victim's desire not to report should be stored for a minimum of one year before it is destroyed, and this process should be explained to the victim. After receiving notice from a hospital or other facility, the law enforcement agency should be required to take possession of the kit within five days. If they determine they do not have jurisdiction to investigate the sexual assault, they should notify the law enforcement agency that has jurisdiction within five days, and that agency must take possession within five days of receiving notice.

A multidisciplinary team that is already being assembled by KSP, which will include the Commonwealth's Attorney Association, Kentucky Association of Sexual Assault Programs (KASAP), KSP, a Circuit Court judge and others, should consider working with the University of Kentucky's Center for Research on Violence Against Women to study the costs associated with the crimes committed by individuals identified in the backlog effort and report to the Legislature. This data would inform the Legislature of the economic impact of not appropriately funding the laboratory so that it has the capacity to quickly test all sexual assault evidence kits.

Observations and Recommendations

Observation 6: There Are Not Enough Sexual Assault Nurse Examiners Practicing In Kentucky, Resulting In Troubling Experiences For Victims At Some Hospitals That May Negatively Impact The Victims' Willingness To Cooperate In An Investigation

The primary focus of this initiative was to count the number of untested sexual assault kits in Kentucky and examine underlying reasons why kits are not being submitted and tested in a timely manner. To be clear, auditors did not find that hospitals are part of the problem of kits not getting tested. During the APA's 14 stakeholder meetings across Kentucky, victims' advocates and SANE nurses repeatedly raised concerns about the lack of trained nurses to perform sexual assault examinations and the resulting care, or lack of care, in hospitals that do not have SANE nurses. As is evident in the description of the examination process in Appendix I, undergoing a sexual assault examination is time consuming, unpleasant and can re-traumatize victims. If victims have the courage to go to a hospital to have a sexual assault examination performed, they should be treated with compassion and respect and it be acknowledged that the victim's emotional and physical trauma is important to providers. Any challenges they face at an emergency room can deter a victim from cooperating in an investigation or even going through with the examination and collection of the kit, and thereby further jeopardize public safety.

As of October 2014, the Kentucky Board of Nursing (KBN) reported that 249 certified SANE nurses held SANE credentials in Kentucky. Many of these nurses are not practicing. In addition, there are 112 emergency rooms in Kentucky, according to KHA. The APA surveyed hospitals and found that 61 percent of those responding do not have a SANE nurse on staff.

SANEs undergo 40 hours of didactic training in a classroom setting, and an additional 60 hours of field and hands-on, training before they may apply to the KBN for their SANE credential. The training is voluntary and hospitals are not required to have SANE nurses on staff. Hospitals do not get credit toward any accreditations for having SANE nurses; therefore, there is little incentive for hospitals to pay for the training or allow nurses time off to attend training to ensure they have SANEs on staff. Training opportunities in Kentucky are limited, as are resources to support training. However, research has found that having SANEs has many benefits to victims, hospitals, emergency room physicians, and non-SANE nurses.

Auditors did not seek a formal count of hospitals that pay for nurses to receive the training but heard in stakeholder meetings that some - usually the larger hospitals - do help subsidize the cost of training. Smaller, rural hospitals are less likely to be able to afford to pay for the training or to allow nurses time off to attend the training. One nurse stated that including lost wages, training and travel, becoming a SANE nurse probably cost her approximately \$1,500.

Although hospitals are not required by law to have SANEs, hospitals that provide emergency services are required to perform sexual assault forensic examinations if a victim presents to that hospital, according to KRS 216B.400. Hospitals without SANEs may inform victims of nearby hospitals that have SANEs, but they cannot refuse to perform the exam or collect the kit.

The APA heard accounts of hospitals without SANEs refusing to perform a sexual assault examination and telling victims they must travel to another hospital to have the exam and kit collected. One hospital without a SANE told a victim she had to travel 45 minutes away to a hospital with a SANE nurse. Another hospital tried to turn away a victim who had been waiting for six hours, and was preparing to send the victim via ambulance to a hospital without a SANE nurse, until a victims'

Observations and Recommendations

Observation 6: (Continued)

advocate arrived and informed the hospital of its legal requirements. A SANE coordinator told auditors about a victim who sat in an emergency room for several hours who had nothing to eat or drink because she feared it would compromise the evidence.

Advocates state that a victim who may have been reluctant to go to a hospital after an assault may not follow through or report to a different hospital if he or she is turned away or is not treated in a reasonable timeframe.

It is important to note that the physical collection of the ‘kit’ is only one element of the sexual assault forensic exam. There are other aspects of the examination that may be equally critical to the care of the victim, such as discussing the risk of pregnancy and sexually transmitted infections and the treatment options available to the victim as well as follow up recommendations. A SANE that has been trained to provide victim-centered and trauma-informed care, may lessen the re-traumatization that the victim may experience and can ensure that the forensic exam meets the needs of each individual victim. The APA heard a few cases of hospitals and emergency room physicians not following requirements, including a doctor trying to insist a victim must have evidence collected for a kit in order to have other aspects of an exam performed, such as sexually transmitted disease testing. The federal Violence Against Women Act provides that states may not “require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursed for charges on account of such an exam, or both.”

In addition, auditors heard that some isolated instances of hospitals not following the requirements that the rape crisis center’s victims’ advocates be notified that a victim has presented to the hospital. According to Kentucky Administration Regulation, 502 KAR 12:010, Section 2(1)(a), prior to performing a forensic examination, the examination facility is required to contact the rape crisis center to inform the on-call advocate that a patient has arrived at the health care facility for an examination.

Advocates state that lack of education, especially among emergency room physicians, many of whom rotate among hospitals in a number of states, is to blame. Further, emergency room physicians and non-SANE emergency room nurses, particularly in small hospitals, may not want to perform the exams and collect the kits. The process is time consuming and they feel that the exams take them away from other patients for an extended period of time. They also fear they may have to testify in court. Additionally, a perception may exist among some emergency room personnel that a sexual assault victim who did not show other physical injuries may not be a priority compared to other traumas that present to emergency rooms.

Other concerns were raised during stakeholder meetings, including doctors and nurses not believing victims, particularly those with mental illnesses.

Not surprisingly, rural hospitals struggle the most in training SANEs given their small staff, high turnover rates, and financial constraints that prohibit them from paying for nurses to become SANE certified. Violence and abuse constitute nearly 40 percent of health care costs in this country, costing about \$750 billion annually, according to a 2009 study by the non-profit Academy on Violence & Abuse. National studies have found that sexual assault victims are more likely to struggle with

Observations and Recommendations

Observation 6: (Continued)

depression, suicide, Post Traumatic Stress Disorder and alcohol and drug abuse. Providing victims with compassionate care and treatment after an assault could help reduce the prevalence of health problems many survivors encounter. At least one of Kentucky's Medicaid Managed Care Organization (MCO) has begun paying for nurses to receive SANE training. MCOs were established in Kentucky to manage the state's Medicaid program with the goal of reducing health care costs by promoting wellness and management of chronic illnesses. More support by the MCOs in Kentucky could help hospitals, particularly those struggling in rural Kentucky, access more SANE nurses and provide better care to sexual assault victims.

Recommendations

We recommend KHA implement a best practices standard of care at Kentucky hospitals that provide emergency services, and require hospital and emergency room staff education regarding the protocols for sexual assault kit examinations and the need for compassionate and respectful treatment of victims. KHA should consider creating a webinar or other mechanism to educate physicians, particularly contracted physicians. KHA should educate hospital chief executive officers and physician organizations about their legal requirements.

We recommend training on state laws and regulations pertaining to sexual assault examinations be standardized for hospital employees working in emergency rooms and that SANE education be incorporated into credentialing requirements for Emergency Department physicians and nursing staff.

We recommend the Legislature consider establishing a new designation for "SANE-ready" hospitals, similar to the stroke-ready designation some hospitals receive. To receive the SANE-ready designation, hospitals would have to demonstrate they have access to SANE nurses.

Further, we recommend MCOs establish a fund to incentivize hospitals to seek the SANE-ready designation, or at least to incentivize hospitals to pay for nurses to receive the SANE training.

Observations and Recommendations

Observation 7: Most Law Enforcement Agencies Lack Clear, Written Policies For Handling Sexual Assault Evidence Kits

The APA found that most agencies lack clear policies for handling sexual assault kits and communicating with victims; however, most agencies expressed a desire for clearer policies and some were unsure how to obtain model policies. At least a dozen agencies started the process of researching, drafting and implementing policies for sexual assault investigations, including Kentucky's two largest city police departments. "We are revisiting everything," one agency stated.

Of the survey respondents, more than 56 percent indicated they have no policies and procedures identifying specific criteria for submitting sexual assault evidence kits to KSP for analysis. Approximately 32 percent indicated they have informal policies and procedures and 12 percent have written policies and procedures.

The APA also asked more specific questions related to policies and procedures for sexual assault kits. Of the respondents, 65 percent indicated they have no policies and procedures that specify timelines within which the agency should send sexual assault kits to the forensic laboratory. Approximately 28 percent have informal policies and procedures and seven percent responded they have written policies and procedures for specifying timelines for submission to the forensic laboratory.

Law enforcement agencies were asked if they have established policies for notifying victims when a kit is submitted, or if it is not submitted for analysis. Of the respondents, 85 percent do not have policies and procedures for notifying victims if and when kits have been submitted to the forensic laboratory. Approximately 14 percent have informal policies and one percent have written policies.

Most law enforcement agencies in Kentucky already have extensive policy manuals covering a range of topics pertaining to officer conduct, procedures for investigating cases and handling evidence and more. Most accrediting entities require agencies to adopt written policies and may provide model policies. Written policies provide agencies with clear guidance to ensure practices are consistent and that applicable laws and regulations are followed. A lack of clear, written policies for handling sexual assault kits has resulted in varying practices across and within Kentucky's police departments and sheriffs' offices and broad confusion among patrol officers, detectives, commanders, police chiefs and sheriffs. It creates different standards of justice for victims and may result in fewer sexual offenders being caught and prosecuted.

Of the agencies with written policies, one example from a sheriff's office explains:

The Sexual Assault Evidence Collection Kit should be administered as soon as possible and submitted immediately to the forensic laboratory for forensic analysis. Chain of evidence protocol should be followed, and the Sheriff or Chief Deputy must approve any evidence that is not submitted immediately and placed in temporary storage. If the kit is not submitted, the investigator must document and justify the reason why, and it must be approved by the Sheriff or Chief Deputy.

Observations and Recommendations

Observation 7: (Continued)

Sexual Assault Investigation Model Policy

While not related to sexual assault kits specifically, Wilmore Police Department, in Jessamine County, Kentucky, provided the APA with the most comprehensive, victim-centered policy for investigating sexual assault. See Appendix VIII.

The policy states, “Because of the seriousness of these offenses and the delicate nature of the investigations involved, it is important for the department to undertake diligent investigations in order to increase the reporting of these crimes. Reducing recidivism through the apprehension and prosecution of the assailants is a department priority.”

The policy explains that “the crime of sexual assault is, at times, misunderstood. In order to deal effectively with those who have survived a sexual assault and educate others about the crime, law enforcement must understand that rape and other sexual assaults are not crimes of passion, but acts of criminal aggression, most of them violent. The offender, not the victim, is responsible for the sexual assault.”

The policy explains that victims may be calm and composed rather than “the stereotype of a hysterical woman.” It goes on to give officers detailed guidelines for conducting the investigation, contacting advocates, communicating with victims and more. The policy even instructs “the patrol officer to arrange for transportation or transport the victim for a sexual assault examination, if appropriate (if the assault occurred within the last 72 hours)” and states that officers may provide transportation back home following the exam.

Through both law enforcement surveys and interviews, some of the agencies indicated they had formal or informal policies that referred to general evidence guidelines but did not specify policies for handling sexual assault kits. Some of the agencies indicated they leave the decision to submit the kit to the discretion of the investigating officer, and they may or may not require a supervisor to sign off on the decision if a kit isn’t submitted. One agency stated that it leaves it to the discretion of the evidence room custodian to ensure kits are submitted to the forensic laboratory. Another responded that it “will hold kits until a suspect has been identified and send suspect kits to forensic laboratory as soon as possible.”

Compounding problems associated with a lack of policies for submitting kits is that most respondents, 61 percent, indicated they do not require investigators to document reasons why certain kits are not submitted for analysis. Given the widely-reported biases and attitudes some law enforcement have regarding sexual assault cases, as well as varying levels of training to properly investigate sexual assaults, documenting the reasons why kits are not submitted is necessary to ensure accountability and consistency.

Observations and Recommendations

Observation 7: (Continued)

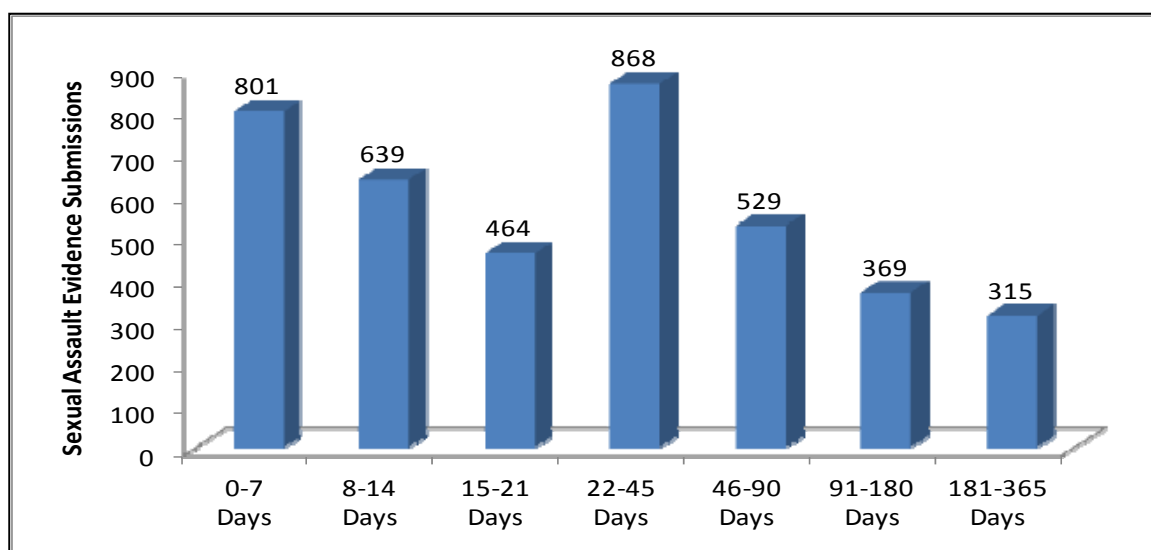
Although having written policies does not ensure compliance, the general lack of policies for determining whether kits are submitted has resulted in fewer kits being tested and widespread confusion and frustration among law enforcement on how to make such decisions.

Auditors learned through the APA stakeholder meetings that one action that resulted in better investigatory and prosecutorial decisions when dealing with sexual assaults was the formation of regional Sexual Assault Response Teams (SARTs). In Elizabethtown, for example, police and sheriff's deputies, prosecutors, and advocates meet regularly to discuss cases. It was clear from the stakeholder meeting in Elizabethtown that the team members have close relationships built on trust and mutual respect. These types of teams may improve overall community response to sexual violence, increase the accountability of each community partner, and ensure that victims are aware of the services available to them. Law enforcement and prosecutors may be less likely to determine a report does not warrant further investigation if they discuss the decision with other team members. Rape crisis centers may serve well as the liaisons because they already serve a regional population.

Agencies that indicated they have informal or written policies that specify timelines for submitting kits for analysis reported vague or widely varying timeframes, such as "promptly," "when completed," "timely" and "immediately." Others reported submitting kits within 48 or 72 hours, "next day," "one to two days after incident," or when the evidence custodian makes "his/her next scheduled transport to the forensic laboratory (approximately every 2-4 weeks)."

Auditors reviewed data provided by KSP to analyze the number of days that lapsed between the reported incidents and delivery of sexual assault evidence to the forensic laboratory. Of the 4,815 evidence submissions between 2008 and August 2015, 2,772, or 58 percent arrived at the forensic laboratory within 45 days of the incident. Of those 2,772 cases, approximately 29 percent were delivered within seven days of the incident. (See Chart 2).

Chart 2 - Timeliness of Sexual Assault Evidence Submissions Between 2008 and August 2015



Source: KSP Forensic Laboratory Data

Observations and Recommendations

Observation 7: (Continued)

A SANE coordinator told auditors that it is a serious problem that some law enforcement agencies don't pick up kits from hospitals in a timely manner. "It is not fair to victims for (the hospital) to have to harass law enforcement to get the kits ... in some cases for three months. We call them to pick up the kits weekly." Auditors did not find wide-spread reports of law enforcement not picking up kits from hospitals in a timely manner. In our survey of hospitals, seven percent of respondents indicated they had sexual assault kits in which evidence had been collected and that victims consented to share with law enforcement, but that law enforcement had not retrieved within a week of notification.

California's newly-enacted sexual assault kit reform legislation requires law enforcement to submit sexual assault evidence to the forensic laboratory within 20 days after it is booked into the agency's evidence room. Illinois, Michigan and Texas give law enforcement agencies 10, 14, and 30 days, respectively, to submit sexual assault evidence for analysis.

The lack of clear policies specifying timelines within which kits should be submitted to the forensic laboratory has resulted in long delays for certain kits to be put in the queue at the forensic laboratory, and created further delays in getting test results. It also makes it difficult for the forensic laboratory to prioritize evidence testing and to plan and manage resources based on historical submission trends.

The APA also asked law enforcement agencies if they have policies for notifying victims when a kit is submitted to the forensic laboratory, or if it is not submitted for analysis. Of the survey respondents, 85 percent do not have policies and procedures for notifying victims, 14 percent have informal policies and one percent have written policies. One agency responded that victims "know when (the kit) is taken, it will be sent to the forensic laboratory." Another stated that "victims advised by case officer that a sexual assault kit will be sent to the forensic laboratory the date the kit is collected." Another wrote that "case investigator usually keeps in regular contact with the victim to give updates on the case, which includes notification of testing and submission."

Some of Kentucky's larger agencies told auditors that they employ victims' advocates to maintain contact with victims of sexual assaults. In addition, all Commonwealth's Attorneys have positions within their agencies to serve as advocates to victims. National research has concluded that maintaining good communications with victims can improve the likelihood that victims continue cooperating with investigators. The APA did not conduct in-depth research to determine best practices for balancing victims' rights to stay informed with their right to privacy and to be left alone, if they desire. A national expert on the neurobiology of sexual assault victims told the APA that multi-disciplinary teams should help law enforcement carefully develop a victim-centered approach to maintaining communication with victims. One victim asked, "how am I supposed to heal if I don't know what is going on?" Another victim told the APA that the detective assigned to her case was compassionate and called her often to give updates and check on her. The victim said that frequent contact kept her engaged when she had doubts about continuing to participate in the prosecution of her rapist.

Observations and Recommendations

Observation 7: (Continued)

California's new sexual assault reform law gives victims the right to request from law enforcement the status of the testing of evidence, and law enforcement can respond with oral or written communication. It also lists the following rights of sexual assault victims, subject to sufficient resources to respond to these requests: the right to be informed whether or not a DNA profile of the assailant was obtained; the right to be informed whether or not the DNA profile of the assailant has been entered into a database; and the right to be informed whether or not there is a match between the DNA profile and the database. All of this information can be provided to a designated victim advocate, if the victim so chooses.

Michigan's Sexual Assault Victim's Access to Justice Act requires, among other things, law enforcement to give victims notice of the right to request the following information if its forensic laboratory and its disclosure would not impede or compromise the investigation; when the sexual assault evidence kit was submitted to the forensic laboratory; whether a DNA profile of a suspect was obtained from the processing of evidence; whether a DNA profile of a suspect has been entered into any data bank designed or intended to be used for the retention or comparison of case evidence; and whether there is a match between the DNA profile of a suspect obtained in the sexual assault case to any DNA profile contained in any such data bank. If a sexual assault victim is provided with information about forensic testing results, he or she must be provided with a copy of, or access to, an informational handout for sexual assault victims that explains the meaning of possible forensic testing results.

Recommendations

We recommend the Legislature require all Kentucky law enforcement agencies to adopt policies related to handling sexual assault kits and investigating sexual assaults with a victim-centered, evidence-based approach. The multidisciplinary team should review model policies and compile and disseminate those it deems appropriate for Kentucky police departments and sheriffs' offices to adopt. The team also should create and execute an implementation plan for the new policies.

We recommend the Legislature establish regional SARTs to investigate sexual assault of adults, similar to the multidisciplinary teams that investigate child sexual abuse per KRS 620.040. These teams would ensure that victims are aware of the services available to them, improve overall community response to sexual violence and increase the accountability of each community partner.

The Legislature should amend Kentucky's Victim's Bill of Rights to give the victim, guardian of a victim, or surviving family member of a deceased victim, upon request, the following rights:

- To be provided with a free copy of the initial incident report; and
- To be informed regarding the status of any analysis being performed on any evidence that was collected during the investigation of the offense including:

Observations and Recommendations

Observation 7: (Continued)

Recommendations (Continued)

- The date a request is submitted to a forensic laboratory to process and analyze any evidence that was collected during the investigation of the offense;
- Whether a DNA profile of the assailant was obtained from that analysis and the date of completion of this analysis; and
- The results of the comparison to the DNA profile to the DNA database.

The Legislature also should give victims the right to be informed by law enforcement if the agency elects not to analyze DNA evidence within time frames established by law or if the sexual assault kit or other crime scene evidence from an unsolved sexual assault case will be destroyed or disposed of. Notice should be provided 60 days prior to such destruction or disposal and should include information about how to challenge the decision. If a sexual assault victim has requested notice, the investigating law enforcement agency should provide timely notice to a victim of any final decision not to seek criminal prosecution of a person accused of committing a sexual assault against the victim.

The multidisciplinary team assembled by KSP should develop recommendations for communicating with victims in cases analyzed as part of the initiative to clear the backlog.

Observations and Recommendations

Observation 8: Policies For Destroying Untested And Tested Sexual Assault Kits Are Varied And The Statute Is Vague, And As A Result, Some Kits May Have Been Inappropriately Destroyed

KRS 524.140 (See Appendix IX) sets forth the requirements for disposal of evidence that may be subject to DNA testing to confirm the guilt or innocence of a criminal defendant already charged with a crime. According to KRS 524.140(2):

No item of evidence gathered by law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant shall be disposed of prior to trial of a criminal defendant unless:

- (a) The prosecution has determined that the defendant will not be tried for the criminal offense;
- (b) The prosecution has made a motion before the court in which the case would have been tried to destroy the evidence; and
- (c) The court has, following an adversarial proceeding in which the prosecution and the defendant were heard, authorized the destruction of the evidence by court order.

Based on interviews with law enforcement and forensic laboratory personnel, the section that states, “the prosecution has determined that the defendant will not be tried for the criminal offense,” is vague and may have led law enforcement to inappropriately destroy certain kits. One large police department told auditors that it destroys tested and untested kits after one year in cases closed due to the victim not cooperating in an investigation or prosecution. The agency may be destroying some of those kits without first consulting with the Commonwealth’s Attorney or other prosecutorial authority, to determine whether the agency’s destruction of kits would be in violation of KRS 524.140(2).

The APA was unable to determine how many sexual assault kits may have been improperly destroyed by law enforcement. Law enforcement reported discarding 53 kits received in 2014 due to various reasons, including the individual recanting. The APA did not attempt to verify the specific number due to uncertainty that law enforcement could ensure more were not destroyed, and because the lack of clarity in the statute would prevent the APA from attempting to determine possible violations of the law.

Some law enforcement and prosecutors interviewed stated that they rarely, if ever, destroy sexual assault kits, even those from cases in which the victim has recanted. Many interviewed suggest they keep all kits unless they have a court order stating that the case has been fully adjudicated, as KRS 542.140(2) requires. At APA stakeholder meetings, some in law enforcement expressed confusion about what to do with certain kits, particularly those in recanted cases, and asked for clarification. One police chief asked, “what do I do with a kit if the victim doesn’t want to proceed?” Another investigator sought guidance on when to destroy certain kits and raised concerns about lacking adequate storage for evidence.

Observations and Recommendations

Observation 8: (Continued)

The forensic laboratory director pointed to another concern associated with evidence disposal. The director said the forensic laboratory is concerned that some agencies may be destroying tested kits that did not hit to the databases upon testing, but may hit at a later date. According to the forensic laboratory director:

The problem we are having with kits being destroyed is when there isn't a suspect and they submit the kit, we work the evidence and upload a DNA profile into CODIS, 5 years later there is a hit. When we go back to the agency and tell them that they have a hit, we find out that they have already destroyed the evidence. That is the no-no. There is a statute that says if you are going to prosecute someone that you can't destroy the evidence.

This demonstrates the confusion surrounding the interpretation of KRS 524.140. The statute prohibits agencies from destroying or disposing of evidence, that may be subject to DNA testing prior to trial unless all three of these elements have occurred: (a) the prosecution has determined the defendant will not be tried, (b) the prosecution has asked the court, by motion filed with the court, that the evidence be destroyed, and (c) the court has, after an adversarial hearing with the prosecution and the defendant, entered a court order authorizing the evidence's destruction. The problem is that these actions could be occurring prematurely if new evidence comes to light in the future, or, as the forensic laboratory director pointed out, if the DNA profile hits to the database at a later time.

One possible point of confusion is that law enforcement may assume that as long as they have the forensic laboratory analysis report they do not need the actual kit for court. The forensic laboratory director said they also may not realize the forensic laboratory is behind in uploading convicted felon samples into the database. That means law enforcement may destroy kits that could eventually match to a convicted felon.

The forensic laboratory has attempted to instruct law enforcement not to destroy evidence. An October 2014 newsletter stated, "we have just one word for you on the destruction of DNA evidence - DON'T. The destruction of DNA evidence is a Class D felony."

During the APA stakeholder meetings, a victim contacted the APA and wanted assistance finding out what happened to a sexual assault kit collected from her after an assault by an unknown suspect in the early 1980s. The victim stated that at the time of the assault she did not know the assailant but now believes she knows who the assailant was and that testing her kit could provide confirmation. The APA learned that the victim's kit was destroyed two years after the assault.

Kentucky has no requirements for notifying victims if law enforcement intends to destroy evidence. California and Michigan require law enforcement to notify sexual assault victims in writing if they intend to destroy or dispose of evidence from an unsolved sexual assault case at least 60 days prior to destruction or disposal.

Observations and Recommendations

Observation 8: (Continued)

Recommendations

We recommend the Legislature clarify the law with respect to the retention and destruction or disposal of sexual assault kits to prohibit the destruction or disposal of such kits unless authorized by law. The legislation should also prohibit the destruction of all other forensic evidence if a DNA profile is generated and could match to the databases at a future date.

The Legislature also should require law enforcement to notify sexual assault victims in writing if it intends to destroy or dispose of evidence, as outlined in Observation 8.

Observations and Recommendations

Observation 9: Most Law Enforcement Agencies Lack Specific Policies For Logging, Tracking, And Storing Sexual Assault Kits, Resulting In Varying Processes Across Kentucky

Of the survey respondents, most law enforcement agencies (60 percent) have informal or written policies for logging, tracking, and storing sexual assault kits. Forty percent of the respondents do not have any policies and procedures for logging, tracking and storing kits. After conducting follow-up interviews and requesting copies of written policies, the APA found that most of the policies did not specifically reference sexual assault kits but instead cover general procedures for logging, tracking and storing evidence.

The APA visited law enforcement agencies and found that practices and procedures for logging, tracking and storing kits vary greatly. Generally, many small agencies use paper logs or basic spreadsheets to track evidence. Medium and large agencies tend to use tracking software and may utilize barcode scanners. While small agencies expressed a desire to have more sophisticated tracking technology, it doesn't appear that the lack of such tools prevents agencies from being able to track evidence. A 2007 NIJ survey found that 43 percent of the nation's law enforcement agencies do not have a computerized system for tracking forensic evidence.

Auditors did note that one large police department does not appear to utilize a barcode tracking software program as efficiently as another large police department that has the same software program. One agency has established a code to categorize all sexual assault kits so that the evidence custodian can search by that code and easily identify and locate all the sexual assault kits in the property room. The other agency, however, does not utilize a consistent code but instead allows investigators to categorize the kits using any description, such as rape kit, sexual assault kit, SAK, SAFE kit and SAEK. This prevented the evidence custodian from being able to easily search for all the kits in the possession of the department. The evidence custodian demonstrated to auditors by typing in the word "kit" and having to exclude evidence not related to sexual assault kits that contained those letters, such as kitchen knives and Makita tools. The evidence custodian reported that she hand-counted all the kits in the evidence room to ensure she gleaned an accurate count.

The Wayne County (Detroit) prosecutor teamed up with a national logistics company to develop a system to bring better tracking and accountability across the chain of custody for sexual assault kits. The tracking system is being piloted there to determine whether kits can be tracked with barcodes and barcode scanners as they move from the sexual assault forensic examiners to police departments to the forensic laboratory and back to the police department after analysis. The system captures the time and date when there is a change in custody and sends alerts to appropriate stakeholders if a kit was not advanced to the next step within the required time frame. For example, the police department has 90 days to deliver a kit to the forensic laboratory, so if that does not happen, an email alert is sent to the appropriate parties. Other solutions are currently being developed for cities and states to better track sexual assault kits.

Practices for storing sexual assault kits, and evidence in general, also varied greatly among agencies auditors visited. One large law enforcement agency had what could potentially be a model for setting up and managing property evidence rooms. Like most agencies, it stores guns, drugs, and cash in separate, more secure areas.

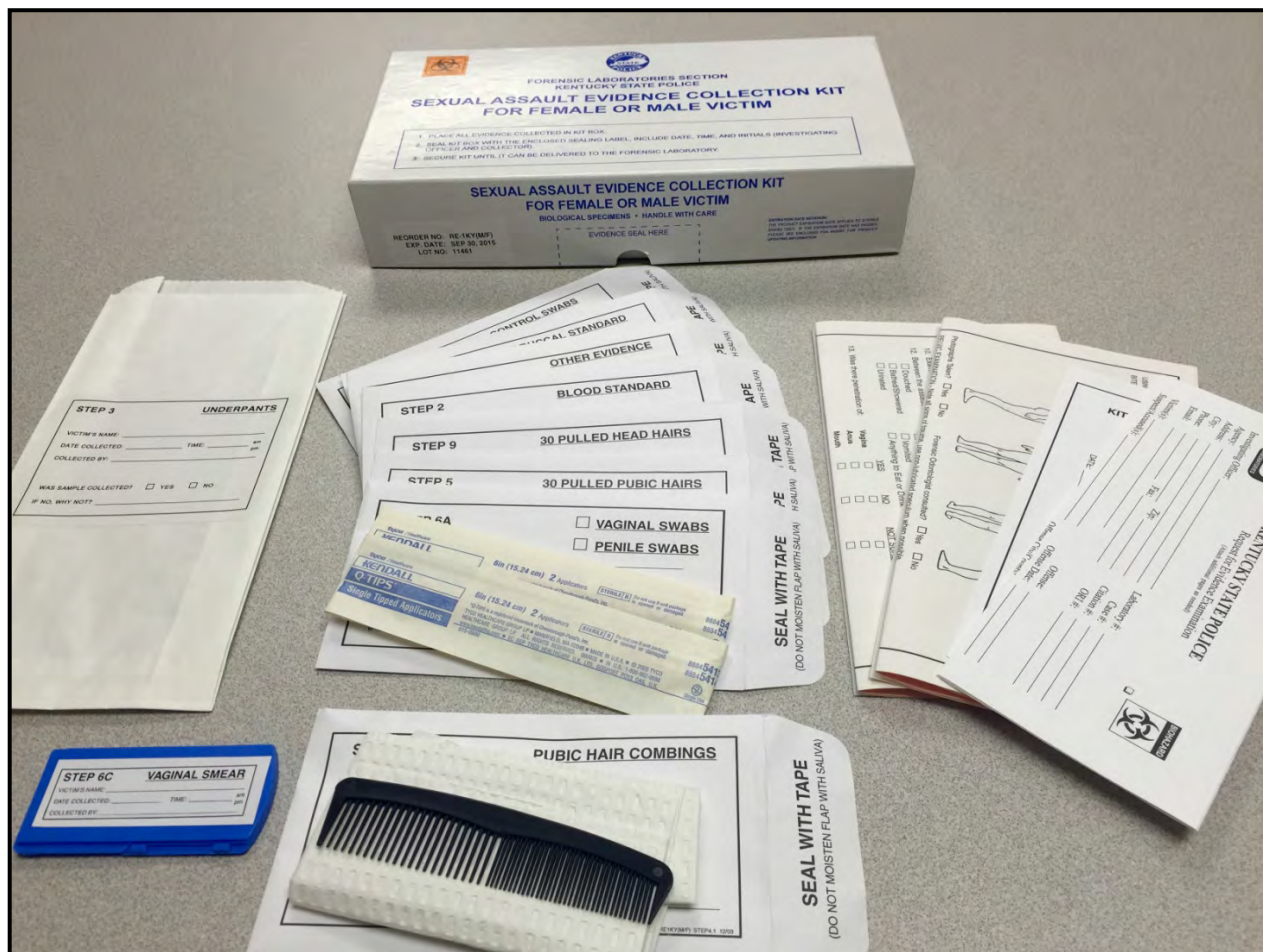
Observations and Recommendations

Observation 9: (Continued)

In addition, the agency has separate storage areas for computers, hard drives, and other electronics for which data could potentially be compromised if the evidence came into contact with magnets. It stores all sexual assault kits, tested and untested, together on shelves. One noticeable difference between this and other evidence rooms was the use of specific boxes and envelopes to provide uniform treatment of evidence of the same size. The custodian states that this technique minimizes the risk that small items get lost in the shuffle because of the packaging.

This agency does not put sexual assault kits in any packaging, making it easier for custodians to be able to identify kits, which are already in uniform boxes. This is different from other agencies that package kits in envelopes, sometimes with samples obtained from suspects. One agency in particular demonstrated to auditors that in counting sexual assault kits it had to open envelopes to determine whether victim kits were inside the envelope. Further, the agency stores tested and untested kits together, so it was difficult to readily identify and count only untested kits inside packaging without opening the envelopes. This agency reported that it is revisiting its policies on labeling and storing kits. The agency also recently established a separate room to store sexual assault evidence.

Kentucky State Police Sexual Assault Evidence Collection Kit



Observations and Recommendations

Observation 9: (Continued)

Another agency showed auditors its method for storing evidence, which entails using bankers' boxes to store evidence by the month the crime occurred. For example, all evidence from crimes committed in January 2000 is stored with evidence from crimes committed in January 2014. Biological evidence is stored by month next to the general evidence boxes. This method made it difficult for evidence custodians to identify untested sexual assault kits for this initiative, requiring them to go through all the boxes of biological evidence.

Recommendations

Given the varying systems used by law enforcement to log and track evidence and the varying resources available to agencies to upgrade tracking systems, it would not be practical for agencies to adopt identical policies and practices for logging, tracking, and storing kits. Rather, we recommend agencies review their practices and implement policies related to logging, tracking and storing sexual assault kits, similar to existing policies that outline procedures for handling guns, drugs and cash. These policies should ensure kits are stored in cool, dry places and, if space permits, kits should be stored together and not placed inside envelopes or boxes or packaged with other evidence. These policies also should set forth procedures for specifically categorizing sexual assault kits in the various tracking systems. These procedures could help agencies account for kits more readily in the future.

We recommend the creation of a statewide action team to include various stakeholders such as law enforcement, prosecutors, SANEs, forensic lab employees, and victim advocates to study the feasibility of a statewide barcode tracking system for sexual assault evidence kits. Such a system would allow policymakers and stakeholders the ability to not only determine the number of sexual assault evidence kits in the hands of law enforcement, but also to monitor and enforce recommended timeframes for kits to move from hospitals to law enforcement, law enforcement to the forensic laboratory and for the analysis to be completed. The action team should recommend sources of public and private funding to implement such a system and recommend any changes to statute or policy that may be needed.

We further recommend the creation of a rape reporting form similar to the form (JC-3 form) currently used for documenting domestic violence/child abuse cases. This form shall be completed any time a victim alleges a sexual crime. This will allow for collection of data on the number of rapes reported to law enforcement, and will establish a way to document reports of rape and track the number of sexual assault evidence kits collected annually. The form should include a tear-off section at the bottom that includes notification to victims of their right to seek a sexual assault protective order (under newly created law, codified in KRS Chapter 456) and the rape crisis hotline at 1-800-656-HOPE.

Observations and Recommendations

Observation 10: Law Enforcement Training Is Wide-Ranging, Resulting In Some Officers Being Better Equipped Than Others To Process Sexual Assault Kits

In Kentucky, all peace officers except sheriffs must undergo basic training at a school certified or recognized by the Kentucky Law Enforcement Council (KLEC), which is an independent administrative body of state government. The Department of Criminal Justice Training (DOCJT) trains all peace officers except those employed by KSP, LMPD, and Lexington Police Department. Those three entities have their own academies that are approved by KLEC. KLEC prescribes standards for the training academies and certifies peace officers who meet training requirements.

To be certified by DOCJT, recruits must complete 888 hours of basic training, plus 40 hours continuing education annually. Certain deputies and sheriffs are exempt. The KSP Academy is a 23-week program. The Louisville Academy provides more than 1,000 hours of instruction over a 24-week training period. The Lexington Academy is approximately 33 weeks.

The DOCJT Academy includes two hours for officers to demonstrate knowledge of the penal code for sexual offenses, to determine whether an offender has committed as sexual offense, as well as two hours for demonstrating an ability to initially respond to and investigate sexual assault calls; identifying dynamics and different motivational factors for sexual assault; identifying potential effects of sexual assault on victims; and identifying community services and available resources for sexual assault victims.

The KSP Academy includes a two-hour evidence collection block of time during which cadets learn to identify contents of a sexual assault kit, identify the directions and other paperwork contained in a kit and identify the procedures pertaining to sexual assault kits as set forth in the KSP Evidence Collection Handbook. During a one-hour rape crisis center block of time, cadets learn to identify the importance and purpose of the kit, identify the value of sexual assault evidence and identify medical personnel involved in the collection of evidence for the sexual assault kit. Cadets also receives forensic laboratory training that covers types of biological analyses offered, offense types accepted, evidence collection, packaging and submission, rape kit components, an overview of CODIS, case acceptance policies, case examples and more.

Louisville's Academy includes a four-hour block on responding to a sexual assault, taught by a member of the LMPD Sex Crimes Unit.

Lexington's Academy includes a 30-hour block of classes related to sexual assault and crimes against children that are related to and support each other. The block includes three hours of adult sexual assault investigations, three hours of case preparation and court testimony, six hours of crimes against children instruction and eight hours of search and seizure.

DOCJT, in collaboration with KASAP, offers a 40-hour sexual assault response team (SART) training in conjunction with the SANE course. According to DOCJT, "the learning outcomes for this course will be for the student to identify the roles of the sexual assault nurse examiner, the advocate and law enforcement officer as members of the sexual assault response team, as well as, the need for a multidisciplinary response to sexual abuse crimes, the types of sexual assaults and the types of offenders. The course will also identify different interviewing techniques, the process of evidence collection and documentation of injuries and Kentucky laws as they relate to sex crimes."

Observations and Recommendations

Observation 10: (Continued)

The course is available to investigators as well as any other officers who wish to take the course for continuing education requirements. It is a partnership between KASAP and KSP to train SANE nurses and law enforcement. The class is only offered three times a year and DOCJT only allows 15 officers to sign up for each class.

Louisville Metro detectives receive specialized sexual assault investigations training from the Southern Police Institute (SPI) at the University of Louisville or DOCJT's sexual assault training, whichever course is more readily available. According to SPI, such topics for its sex crimes investigations course include: myths and stereotyping of sexual assault cases; legal and ethical aspects of sexual assault investigations; rape trauma syndrome and emotional first aid; initial response; physical evidence; interviewing; and false allegations of rape. LMPD Sex Crimes Unit detectives are expected to attend the nearest 40-hour sex crimes course available.

During interviews and stakeholder meetings, law enforcement expressed a need for more sexual assault response training, particularly for patrol officers who may be a victim's first point of contact with law enforcement. Officers are not permitted to repeat a continuing education course within three years of completion, but law enforcement reported to the APA that there is not enough incentive to ever take a sexual assault investigations course, such as the SART training offered by DOCJT and KASAP. Due to the uncomfortable nature of the topic and alternative courses that are more appealing, many do not.

A detective who formerly worked at a rape crisis center stated that the training of frontline officers is an area that needs improvement. The detective stated that the initial response and collection of evidence by frontline officers is crucial and that more training, particularly on how to communicate with victims, would make them more comfortable in those situations. These opinions were expressed by others in law enforcement as well.

Nationally, work is underway to improve the sexual assault training to law enforcement by applying scientific knowledge regarding the ways victims respond after being traumatized. The International Association of Chiefs of Police, for example, is utilizing a federal Violence Against Women grant to develop "Trauma Informed Sexual Assault Investigation" training to "better equip law enforcement to understand the complexities of sexual assault through training centered on the neurobiological impact of trauma, the influence of societal myths and stereotypes, understanding perpetrator behavior, and conducting effective investigations." Law enforcement may expect victims to react a certain way after an assault and may not believe the victim if his or her reaction does not fit the stereotype of a hysterical victim. The training seeks to teach law enforcement to "employ strategies that postpone judgment regarding the validity of a case until a thorough investigation is completed."

Auditors also heard from evidence custodians, many of whom are civilian employees and therefore do not undergo basic training. They reported a lack of training opportunities in Kentucky for managing evidence rooms. DOCJT does not offer any such training. The lack of training in Kentucky likely explains the variations in how agencies manage evidence rooms as described in Observation 9.

Observations and Recommendations

Observation 10: (Continued)

NIJ recommends training police on the benefits and use of forensic evidence, including protocols for sending cases to the forensic laboratory. The KSP forensic laboratory has resumed conducting such trainings for Louisville and Lexington police departments. The forensic laboratory training is provided to KSP cadets during the academy. The KSP forensic laboratory director stated that the forensic laboratory has offered to conduct a similar training for DOCJT's academies, but DOCJT has declined. DOCJT's training with KASAP covers some of the basics of laboratory analysis, but officers may be better served by directly receiving the training from the laboratory biologists. The forensic laboratory director stated that starting in October 2015 the forensic laboratory will offer free training to law enforcement, prosecutors and the Department of Public Advocacy. If successful, the training will be repeated at least quarterly. She stated that such trainings were held around the state prior to the backlog of untested forensic evidence developing a few years ago. The training had to be suspended because it required biologists to be away from the forensic laboratory to conduct the training.

Recommendations

We recommend KLEC review all sexual assault investigation trainings provided at the academies in Kentucky and determine whether the training is victim-centered, evidence-based, and trauma-informed. Victims should not feel like they have to convince law enforcement that they are telling the truth, but should feel supported and treated with compassion for the trauma they have gone through. In addition to the trauma of the actual crime, the victim's body was the location of the crime scene and, was examined to collect evidence.

KLEC should require all of Kentucky's approved law enforcement academies to make improvements to their sexual assault investigation training courses as it deems appropriate after reviewing the courses and model courses available nationally. KLEC should ensure frontline officers receive sexual assault training.

We recommend the Legislature incentivize law enforcement agencies to have specialized sexual assault investigators on staff. Law enforcement officers are eligible to receive compensation for completing their continuing education annually from an established fund. Monies left in this fund could be used to establish incentives for more sexual assault investigators. We recommend DOCJT expand the SART training to be available to more officers, especially detectives.

We also recommend DOCJT work to establish a training course for evidence custodians to understand best practices for managing evidence property rooms and learn about techniques for efficient logging and tracking of evidence.

We recommend DOCJT work with KSP to establish forensic laboratory training so that law enforcement officers understand proper procedures for the collection, packaging, and submission of biological evidence and understand CODIS. We recommend law enforcement take advantage of expanded, free training opportunities that the forensic laboratory is beginning to provide.

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Appendices

Appendices

Appendix I - Sexual Assault Evidence Collection Kit Instructions

KENTUCKY STATE POLICE SEXUAL ASSAULT EVIDENCE COLLECTION KIT INSTRUCTIONS (FOR FEMALE OR MALE VICTIM)	
<p>This kit has been designed to assist the examining physician, nurse or technician in the collection and preservation of physical evidence from a victim of sexual assault for analysis by the Kentucky State Police Forensic Laboratory.</p> <p>Hospital personnel are not requested or encouraged to analyze any of the specimens/evidence collected in this kit. Any specimens required by the hospital are to be collected with hospital supplies.</p>	
STEP 1	<u>VICTIM'S MEDICAL HISTORY AND ASSAULT INFORMATION FORM</u> Fill out all information requested on form and have examining physician sign and date where indicated.
STEP 2	<u>BLOOD STANDARD</u> <div style="border: 1px solid black; padding: 2px;"> Note: Blood Stain Collection Card must be prepared in all cases. </div> <p>Using a 7 ml lavender stoppered (EDTA) blood collection tube from hospital stock and following normal hospital procedures, draw specimen from victim allowing tube to fill to maximum volume.</p> <p>Using the Blood Stain Collection Card provided, place one to two drops of blood on each of the five (5) printed circles on the card.</p> <p>Allow blood stains to thoroughly air dry. Write victim's name on front of the Blood Stain Collection Card holder and on the front of the Blood Stain Collection Card along with the date. Return card to the Blood Standard Envelope. Seal and fill out all information requested on envelope. Do not place empty blood tube in Step 2 envelope or in kit.</p> <p>If toxicology or blood alcohol analysis is indicated, please collect additional blood samples in a separate Kentucky State Police blood/urine kit.</p>
STEP 3	<u>UNDERPANTS BAG</u> (For spermatozoa and foreign debris) <div style="border: 1px solid black; padding: 2px;"> Note: 1. If victim is not wearing the underpants worn immediately after the alleged assault, inform investigating officer in charge so that those underpants can be collected by police personnel. 2. Do not shake out underpants or microscopic evidence will be lost. 3. Do not cut through any existing holes, rips or stains in victim's underpants. </div> <p>Collect victim's underpants and place in Underpants bag. Seal bag with tape, then fill out all information requested on bag label.</p>
STEP 4	<u>PUBIC HAIR COMBING</u> (To obtain pubic hairs shed by the assailant during the assault) <p>Remove paper towel and comb provided in Pubic Hair Combing envelope. Place towel under victim's buttocks. Using comb provided, comb (or have victim comb) pubic hair in downward strokes so that any loose hairs and/or debris will fall onto paper towel. Fold towel in manner to retain both comb and any evidence present. Return to Pubic Hair Combing envelope. Seal and fill out all information requested on envelope.</p>
STEP 5	<u>PULLED PUBIC HAIRS</u> (For comparison with hairs found at crime scene or on assailant's body) <p>Pull (or have victim pull), do not cut, a minimum of 30 full-length hairs from various locations and place in Pulled Pubic Hairs envelope. Seal and fill out all information requested on envelope.</p>
STEP 6A & 6C	<u>VAGINAL SWABS AND SMEAR</u> (Collect if vaginal assault occurred) <div style="border: 1px solid black; padding: 2px;"> Note: 1. Do not stain or chemically fix smear. Do not moisten swabs prior to sample collection. 2. After completing the following procedure, if any additional fluid is present in the vaginal vault, collect fluid using hospital supplied swabs. Allow swabs to air dry, then return them to their original wrapper. Mark wrapper "Additional Vaginal" and place the swabs in the Step 6A envelope. </div> <p>Using two swabs simultaneously, carefully swab the vaginal vault, then prepare a smear using these swabs.</p> <p>Using the additional swabs provided, repeat the swabbing procedure. Allow swabs (4) and smear (1) to air dry. Return smear to slide holder and fill out all information requested on slide holder. Return swabs to Vaginal Swabs envelope. Seal and fill out all information requested on envelope.</p>
STEP 6B	<u>PENILE SWABS</u> <div style="border: 1px solid black; padding: 2px;"> Note: Swabs used in this procedure should be lightly moistened with distilled water prior to swabbing. </div> <p>Using the swabs provided, thoroughly swab the glans and shaft of the victim's penis. Allow swabs (4) to air dry. Return swabs to Penile Swabs envelope. Seal and fill out all information requested on envelope.</p>

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Appendices

Appendix I - Sexual Assault Evidence Collection Kit Instructions (Continued)

STEP 7	OTHER EVIDENCE ENVELOPES <div style="border: 1px solid black; padding: 5px;"> <p>Note: These envelopes are provided for the collection of the various specimens listed. If more than two of the following procedures are required, please use additional swabs from hospital stock. If hospital stock swabs are used, allow swabs to air dry, place in an additional envelope and mark the envelope accordingly (example: "Oral Swabs, Victim's Name, Date and Time Collected, and Collected By"). Do not put swabs from different sources in the same envelope.</p> </div> <p>7A ANAL SWABS (Collect if anal assault occurred) Using two swabs simultaneously, carefully swab the anal cavity. Using the two additional swabs provided, repeat the swabbing procedure. Allow swabs to air dry, then return them to the Other Evidence envelope. Seal and fill out all information requested on envelope, then check off "Anal Swabs" on the envelope.</p> <p>7B ORAL SWABS (Collect if oral-genital assault occurred) Using two swabs simultaneously, carefully swab the buccal area and the gum line. Allow swabs to air dry, then return them to the Other Evidence envelope. Seal and fill out all information requested on envelope, then check off "Oral Swabs" on the envelope.</p> <p>7C DRIED SECRETIONS SWABS (For dried blood, semen or saliva found on victim's body) Moisten two swabs with distilled water, then thoroughly swab the suspected area on the victim's body. Allow swabs to air dry, then return them to the Other Evidence envelope. Seal and fill out all information requested on envelope, then check off "Dried Secretions" on the envelope and note location where collected on anatomical drawings.</p> <p>7D FEMALE EXTERNAL GENITALIA SWABS Moisten two swabs with distilled water, then thoroughly swab the external genitalia. Allow swabs to air dry, then return them to the Other Evidence envelope. Seal and fill out all information requested on envelope, then check off "Female External Genitalia" on the envelope.</p> <p>7E FOR ADDITIONAL SITES Moisten two swabs with distilled water, then thoroughly swab the area. Allow swabs to air dry, then return to the Other Evidence envelope. Seal and fill out all information requested, including checking the "Other" box and adding a description of the evidence.</p>
STEP 8	CONTROL SWABS If swabs used in any Step collection were moistened with water or saline, moisten the two control swabs with the same fluid and then allow them to air dry. Return the swabs to Control Swabs envelope, seal and fill out all information requested on envelope.
STEP 9	PULLED HEAD HAIRS (For comparison with hairs found at crime scene or on assailant's body) Pull (or have victim pull), do not cut, a minimum of 30 full-length head hairs, 6 from each of the following scalp locations: center, front, back, left side and right side and place in Pulled Head Hairs envelope. Seal and fill out all information requested on envelope.
STEP 10	KNOWN BUCCAL STANDARD <div style="border: 1px solid black; padding: 5px;"> <p>Note: The victim should not have anything to drink, eat or smoke for a minimum of 15 minutes prior to Known Buccal Standard collection.</p> </div> Using two swabs simultaneously, vigorously swab the right side of the victim's cheek for 5 to 10 seconds. Using the other two swabs, repeat same procedure on left side of victim's cheek. Allow both swabs to air dry. Return swabs to Known Buccal Standard envelope, seal and fill out all information requested on envelope.
STEP 11	ANATOMICAL DRAWINGS Using the appropriate set of anatomical drawings, note findings on form, then sign and date form where indicated.
STEP 12	REQUEST FOR EXAMINATION FORM Instruct investigating officer to fill out all information requested on form and return completed form to the kit.

FINAL INSTRUCTIONS
<ol style="list-style-type: none"> 1) Make sure all information requested on all forms and specimen containers has been filled out completely. 2) Return all yellow copies of forms and specimen containers to kit box. 3) Seal kit box with the Kit Box Seal provided. Fill out all information requested on seal, then collector and investigating officer should initial seal where indicated. 4) Hand sealed kit and all pink copies of forms to investigating officer. <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Note: If investigating officer is not present at this time, place sealed kit in a secure area. Hold for pickup by investigating officer or his representative.</p> </div>

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Source: KSP Sexual Assault Evidence Collection Kit

Appendices

Appendix II - Combined DNA Index System

- I. CODIS: history, standards, etc.
 - A. The DNA Identification Act of 1994 (42 U.S.C. §14132) authorized the establishment of a National DNA Index (NDIS). The DNA Act specifies the categories of data that may be maintained in NDIS (convicted offenders, arrestees, legal, detainees, forensic, unidentified human remains, missing persons and relatives of missing persons), as well as requirements for participating laboratories relating to quality assurance, privacy, and expungement.
 - B. The DNA Identification Act requires the following:
 - 1. laboratories participating in the National DNA Index comply with the Quality Assurance Standards issued by the FBI Director;
 - 2. laboratories submitting the DNA records are accredited by a nonprofit professional association of persons actively engaged in forensic science that is nationally recognized within the forensic science community;
 - 3. laboratories submitting the DNA record undergoes an external audit every two years to demonstrate compliance with the Quality Assurance Standards;
 - 4. laboratory is a federal, state, or local criminal justice agency; and
 - 5. access to the DNA samples and records is limited in accordance with federal law.
 - C. The DNA Identification Act, §14132(b)(3), allows disclosure of stored DNA samples and DNA analyses only:
 - 1. to criminal justice agencies for law enforcement identification purposes;
 - 2. in judicial proceedings, if otherwise admissible ;
 - 3. for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or
 - 4. if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.
 - D. States seeking to participate in the NDIS sign a Memorandum of Understanding with the FBI laboratory documenting their agreement to abide by the DNA Identification Act requirements as well as record-keeping and other operational procedures governing the uploading of DNA data, expungements, CODIS users, audits, etc.
 - E. NDIS was implemented in October 1998.

Appendices

Appendix II - Combined DNA Index System (Continued)

F. Requirements for the DNA data submitted to NDIS:

1. Must be generated in accordance with the FBI Director's Quality Assurance Standards;
2. Must be generated by a laboratory that is accredited by an approved accrediting agency;
3. Must be generated by a laboratory that undergoes an external audit every two years;
4. Must be one of the categories of data acceptable at NDIS, such as convicted offender, arrestee, detainee, legal, forensic, unidentified human remains, missing person or a relative of missing person;
5. Must meet minimum CODIS Core Loci requirements for the specimen category;
6. Must be generated using Polymerase Chain Reaction (PCR) accepted kits; and
7. Participating laboratories must have and follow expungement procedures in accordance with federal law.

Source: All information compiled from <http://www.fbi.gov/about-us/forensic-laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet>.

Appendices

Appendix III - Agencies That Refer To Other Law Enforcement Agencies To Investigate Sexual Assaults

Law Enforcement Agency	Refers To:
1 Adair County Sheriff	Kentucky State Police
2 Bardwell Police Department	Kentucky State Police
3 Benham Police Department	Kentucky State Police
4 Bloomfield Police Department	Sheriff's Office
5 Bourbon County Sheriff	Unreported
6 Bracken County Sheriff	Kentucky State Police
7 Brandenburg Police Department	Kentucky State Police
8 Breathitt County Sheriff	Kentucky State Police
9 Brooksville Police Department	Kentucky State Police
10 Butler Police Department	Kentucky State Police
11 Caldwell County Sheriff	Unreported
12 Campbellsburg Police Department	Kentucky State Police
13 Clark County Schools Police Department	Winchester Police Department or Sheriff's Office
14 Clarkson Police Department	Kentucky State Police
15 Clinton County Schools Police Department	Kentucky State Police
16 Clinton County Sheriff	Kentucky State Police
17 Clinton Police Department	Kentucky State Police
18 Commercial Vehicle Enforcement	Kentucky State Police
19 Dawson Springs Police Department	Kentucky State Police
20 Eddyville Police Department	Kentucky State Police
21 Edmonson County Sheriff	Kentucky State Police
22 Elkton Police Department	Kentucky State Police
23 Elliott County Sheriff	Kentucky State Police
24 Fayette County Sheriff	Lexington Police Department
25 Fountain Run Police Department	Kentucky State Police
26 Graymoor/Devondale Police Department	Louisville Metro Police Department
27 Hartford Police Department	Kentucky State Police
28 Hindman Police Department	Kentucky State Police or Sheriff's Office
29 Hollow Creek Police Department	Unreported
30 Horse Cave Police Department	Kentucky State Police
31 Hurstbourne Acres Police Department	Louisville Metro Police Department
32 Hustonville Police Department	Kentucky State Police
33 Irvington Police Department	Kentucky State Police
34 Jackson County Sheriff	Kentucky State Police
35 Jamestown Police Department	Kentucky State Police
36 Jefferson County Schools Police Department	Louisville Metro Police Department
37 Jefferson County Sheriff	Louisville Metro Police Department
38 Knott County Sheriff	Kentucky State Police
39 Lawrence County Sheriff	Kentucky State Police
40 Lee County Sheriff	Kentucky State Police
41 Leslie County Sheriff	Kentucky State Police
42 Lincoln County Sheriff	Kentucky State Police
43 Loyall Police Department	Kentucky State Police
44 Lynch Police Department	Kentucky State Police
45 Lynnview Police Department	Louisville Metro Police Department
46 Lyon County Sheriff	Kentucky State Police
47 Magoffin County Sheriff	Kentucky State Police
48 Martin County Sheriff	Kentucky State Police
49 McCracken County Public Schools Police Department	Sheriff's Office

Appendices

Appendix III - Agencies That Refer To Other Law Enforcement Agencies To Investigate Sexual Assaults (Continued)

Law Enforcement Agency	Refers To:
50 McCreary County Sheriff	Kentucky State Police
51 Meade County Sheriff	Kentucky State Police
52 Meadow Vale Police Department	Louisville Metro Police Department
53 Menifee County Sheriff	Kentucky State Police
54 Monroe County Sheriff	Kentucky State Police
55 Montgomery County School District Police	Kentucky State Police
56 Morgan County Sheriff	Kentucky State Police
57 Nicholas County Sheriff	Kentucky State Police
58 Northfield Police Department	Louisville Metro Police Department
59 Ohio County Board of Education	Sheriff's Office
60 Oldham County Sheriff	Oldham County Police Department
61 Olive Hill Police Department	Kentucky State Police
62 Owen County Sheriff	Kentucky State Police
63 Owsley County Sheriff	Kentucky State Police
64 Paducah Public Schools Police Department	Paducah Police Department or Kentucky State Police
65 Perry County Sheriff	Kentucky State Police
66 Pewee Valley Police Department	Unreported
67 Pioneer Village Police Department	Bullitt County Sheriff's Office
68 Powell County Sheriff	Kentucky State Police
69 Prospect Police Department	Louisville Metro Police Department
70 Ravenna Police Department	Kentucky State Police
71 Robertson County Sheriff	Kentucky State Police
72 Rockcastle County Sheriff	Kentucky State Police
73 Salyersville Police Department	Kentucky State Police
74 Sebree Police Department	Kentucky State Police
75 Simpsonville Police Department	Kentucky State Police or Sheriff's office
76 Strathmoor Village Police Department	Louisville Metro Police Department
77 Tompkinsville Police Department	Kentucky State Police
78 Trimble County Sheriff	Kentucky State Police
79 Warsaw Police Department	Kentucky State Police
80 Warsaw Police Department	Kentucky State Police
81 Washington County Sheriff	Kentucky State Police
82 Wayland Police Department	Kentucky State Police
83 West Buechel Police Department	Louisville Metro Police Department
84 Wheelwright Police Department	Kentucky State Police
85 Whitley County Police Department	Corbin Police Department, Williamsburg Police Department or Kentucky State Police
86 Whitley County Sheriff	Kentucky State Police
87 Williamstown Police Department	Kentucky State Police
88 Wingo Police Department	Kentucky State Police
89 Wolfe County Sheriff	Kentucky State Police
90 Woodburn Police Department	Sheriff's Office or Kentucky State Police
91 Woodlawn Park Police Department	Louisville Metro Police Department
92 Wurtland Police Department	Raceland Police Department

Source: Law Enforcement Surveys

Appendices

Appendix IV - Sexual Assault Evidence Kit Survey - Law Enforcement Agencies

Law Enforcement Agency Name _____

Date of Response _____

1. Does your agency have policies and procedures that list specific criteria for submitting sexual assault evidence kits to the Kentucky State Police Forensic Laboratory for testing?
 - ☐ Yes, Written (If so, please provide)
 - ☐ Yes, Informal (If so, please explain)
 - ☐ No
2. Does your agency have policies and procedures that specify timelines within which your agency should send sexual assault evidence kits to the Kentucky State Police Forensic Laboratory for testing?
 - ☐ Yes, Written (If so, please provide)
 - ☐ Yes, Informal (If so, please explain)
 - ☐ No
3. Does your agency have policies and procedures for notifying victims when a sexual assault evidence kit is submitted to the Kentucky State Police Forensic Laboratory, and if it is not submitted to the Kentucky State Police Forensic Laboratory?
 - ☐ Yes, Written (If so, please provide)
 - ☐ Yes, Informal (If so, please explain)
 - ☐ No
4. Does your agency have policies and procedures for logging, tracking and storing sexual assault evidence kits?
 - ☐ Yes, Written (If so, please provide)
 - ☐ Yes, Informal (If so, please explain)
 - ☐ No
5. Does your agency use any other crime labs besides the Kentucky State Police Forensic Laboratory to analyze evidence in sexual assault evidence kits?
 - ☐ Yes (If so, please specify)
 - ☐ No

Appendices

Appendix IV - Sexual Assault Evidence Kit Survey - Law Enforcement Agencies (Continued)

6. Does your agency request a lab analysis of all sexual assault evidence kits it receives?
- ☐ Yes
 - ☐ No
7. If the answer to Question 6 was *no*, please answer the following: What are the primary reasons your agency does not request a crime lab test of each sexual assault evidence kit it receives? Check all that apply.
- ☐ Victim declined to file a complaint
 - ☐ Victim informed police the crime did not occur
 - ☐ DNA evidence was not needed to convict
 - ☐ Investigator had no suspects
 - ☐ Investigator suspected the act was consensual
 - ☐ Victim filed complaint against spouse or former spouse
 - ☐ Prosecutor advised it was not necessary
 - ☐ Delivering to the KSP lab is cost prohibitive or creates logistical issues
 - ☐ Other (please explain)
8. Does your agency require investigators to document reasons why certain sexual assault evidence kits are not submitted to the Kentucky State Police Forensic Laboratory?
- ☐ Yes (If so, please explain)
 - ☐ No
9. How many sexual assault evidence kits does your agency currently possess in total?
10. Of the total number reported in Question 9, how many sexual assault evidence kits are likely to be submitted to the Kentucky State Police Forensic Laboratory?
11. How many sexual assault evidence kits does your agency have in *its possession* that were received in the **last 12 months** (5/1/2014 through 5/1/2015)?
12. How many sexual assault evidence kits does your agency have in *its possession* that were received **more than 12 months ago** (Prior to 5/1/2014)?
13. How many sexual assault evidence kits does your agency have in *its possession* that were received prior to the year 2000?

Appendices

Appendix IV - Sexual Assault Evidence Kit Survey - Law Enforcement Agencies (Continued)

14. How many sexual assault evidence kits did your agency *receive* in total from hospitals, rape crisis centers or other related facilities during calendar year 2014?
15. Of the sexual assault evidence kits received in **Question 14**, how many of those sexual assault evidence kits did your agency submit to the Kentucky State Police Forensic Laboratory for analysis?
16. Of the sexual assault evidence kits received in **Question 14**, how many of those sexual assault evidence kits did your agency discard due to recant by the victim or any other reason?
17. How many sexual assault evidence kits has your agency submitted to the Kentucky State Police Forensic Laboratory since January 1, 2015?
18. Of all the sexual assault evidence kits that your agency has submitted to the Kentucky State Police Forensic Laboratory for analysis, for how many are investigators currently awaiting results?
19. In your estimation, approximately how long does it take to receive results from an analysis at the Kentucky State Police Forensic Laboratory?
- ☐ 0-4 weeks
 - ☐ 1-2 months
 - ☐ 3-5 months
 - ☐ 6-9 months
 - ☐ 10-12 months
 - ☐ 12+ months

If you have additional information or comments, please provide them below:

Law Enforcement Agency Representative Name and Title

Law Enforcement Agency Representative Signature

Date

Appendices

Appendix V - Sexual Assault Evidence Kit Survey - Hospitals

1. Do you have a Sexual Assault Nurse Examiner (SANE) on staff?
2. Do you have sexual assault evidence kits - in which evidence has been collected and that victims have consented to share with law enforcement - but that law enforcement has not retrieved from the hospital within a week of notifying the agency?
3. How many sexual assault evidence kits do you have that have not been retrieved by law enforcement within a week of notifying the agency?
4. How long has the hospital been waiting for those kits to be retrieved by law enforcement (please estimate the time the oldest kit has been awaiting retrieval)?
5. What agency(s) have you contacted to retrieve sexual assault evidence kits that have been awaiting retrieval for more than a week?
6. Do you have any additional information on this matter (such as why the sexual assault evidence kits may not have been retrieved in a timely manner)?
7. Do you maintain a log of sexual assault evidence kits that have been collected?
8. Would you like to be contacted by the Auditor's office to further discuss these issues?

Appendices

Appendix VI - Number of Untested Sexual Assault Kits By Agency

Law Enforcement Agency	Number of Untested Kits		
	Agency Evidence Room	Submitted to KSP Laboratory	Total
Allen County Sheriff's Office	5	0	5
Ashland Police Department	0	9	9
Barbourville Police Department	0	1	1
Bardstown Police Department	34	2	36
Barren County Sheriff's Office	0	1	1
Beattyville Police Department	1	0	1
Bell County Sheriff's Office	5	1	6
Bellevue Police Department	13	1	14
Benton Police Department	11	0	11
Berea Police Department	0	3	3
Boone County Sheriff's Office	35	11	46
Bowling Green Police Department	24	45	69
Boyd County Sheriff's Office	0	1	1
Breckinridge County Sheriff's Office	0	1	1
Brownsville Police Department	1	0	1
Bullitt County Sheriff's Office	0	4	4
Burkesville Police Department	0	1	1
Calloway County Sheriff's Office	6	0	6
Campbell County Detention Center	0	1	1
Campbell County Police Department	0	2	2
Campbellsville Police Department	23	1	24
Carrollton Police Department	4	0	4
Central City Police Department	2	1	3
Christian County Sheriff's Office	7	0	7
Clark County Sheriff's Office	0	1	1
Cloverport Police Department	9	0	9
Cold Spring Police Department	0	1	1
Columbia Police Department	0	1	1
Corbin Police Department	13	1	14
Covington Police Department	5	15	20
Cynthiana Police Department	1	0	1
Danville Police Department	14	2	16
Daviess County Sheriff's Office	0	1	1
Dayton Kentucky Police Department	18	2	20
Eastern Kentucky University Police Department	15	0	15
Elizabethtown Police Department	14	4	18
Elsmere Police Department	0	6	6
Erlanger Police Department	4	0	4
Eubank Police Department	5	0	5
Falmouth Police Department.	2	0	2
Federal Bureau of Prisons - Pine Knot	0	1	1
Florence Police Department	2	4	6

Appendices

Appendix VI - Number of Untested Sexual Assault Kits By Agency (Continued)

Law Enforcement Agency	Number of Untested Kits		
	Agency Evidence Room	Submitted to KSP Laboratory	Total
Fort Mitchell Police Department	6	6	12
Fort Thomas Police Department	3	0	3
Fort Wright Police Department	3	0	3
Frankfort Police Department	4	85	89
Franklin County Sheriff's Office	0	2	2
Franklin Police Department	0	1	1
Gallatin County Sheriff's Office	1	0	1
Georgetown Police Department	2	2	4
Glasgow Police Department	2	0	2
Graves County Sheriff's Office	0	1	1
Greenville Police Department	1	0	1
Hardinsburg Police Department	1	0	1
Harrodsburg Police Department	0	1	1
Hart County Sheriff's Office	0	1	1
Hazard Police Department	2	1	3
Henderson Police Department	5	43	48
Highland Heights Police Department	9	2	11
Hillview Police Department	1	1	2
Hopkinsville Police Department	27	2	29
Independence Police Department	1	2	3
Jackson Police Department	0	1	1
Jamestown Police Department	0	1	1
Jeffersontown Police Department	0	3	3
Jessamine County Sheriff's Office	2	0	2
Kenton County Police Department	4	1	5
Kentucky State Police Post 1	0	8	8
Kentucky State Police Post 2	0	1	1
Kentucky State Police Post 3	0	6	6
Kentucky State Police Post 4	0	7	7
Kentucky State Police Post 5	0	2	2
Kentucky State Police Post 6	0	16	16
Kentucky State Police Post 7	0	9	9
Kentucky State Police Post 8	0	10	10
Kentucky State Police Post 9	0	17	17
Kentucky State Police Post 10	0	7	7
Kentucky State Police Post 11	0	4	4
Kentucky State Police Post 12	0	4	4
Kentucky State Police Post 13	0	6	6
Kentucky State Police Post 14	0	3	3
Kentucky State Police Post 15	0	5	5
LaGrange Police Department	1	0	1
Lakeside Park/Crestview Hills Police Department	0	1	1

Appendices

Appendix VI - Number of Untested Sexual Assault Kits By Agency (Continued)

Law Enforcement Agency	Number of Untested Kits		
	Agency Evidence Room	Submitted to KSP Laboratory	Total
Laurel County Sheriff's Office	0	1	1
Lawrenceburg Police Department	2	1	3
Lebanon Police Department	0	1	1
Lexington Police Department	0	315	315
Logan County Sheriff's Office	8	1	9
London Police Department	1	1	2
Louisville Metro Police Department	923	397	1320
Ludlow Police Department	0	8	8
Madison County Sheriff's Office	8	0	8
Madisonville Police Department	17	1	18
Marion Police Department	0	1	1
Marshall County Sheriff's Office	10	0	10
Mason County Sheriff's Office	0	3	3
Mayfield Police Department	0	3	3
Maysville Police Department	22	2	24
McCracken County Sheriff's Office	36	1	37
McClean County Sheriff's Office	0	1	1
Middlesboro Police Department	3	0	3
Montgomery County Sheriff's Office	2	0	2
Morehead Police Department	3	0	3
Morehead State University Police Department	2	0	2
Mount Vernon Police Department	1	0	1
Mount Washington Police Department	10	0	10
Muhlenberg County Sheriff's Office	2	0	2
Murray Police Department	32	1	33
Murray State University Police Department	0	1	1
Nelson County Sheriff's Office	29	0	29
Newport Police Department	158	5	163
Nicholasville Police Department	46	1	47
Northern Kentucky University Police	1	0	1
Ohio County Sheriff's Office	0	1	1
Oldham County Police Department	3	0	3
Owensboro Police Department	29	5	34
Paducah Police Department	21	3	24
Paris Police Department	0	2	2
Park Hills Police Department	0	1	1
Pikeville Police Department	1	0	1
Powderly Police Department	4	0	4
Prestonsburg Police Department	7	0	7
Princeton Police Department	0	1	1
Providence Police Department	3	0	3

Appendices

Appendix VI - Number of Untested Sexual Assault Kits By Agency (Continued)

Law Enforcement Agency	Number of Untested Kits		
	Agency Evidence Room	Submitted to KSP Laboratory	Total
Pulaski County Sheriff's Office	5	2	7
Radcliff Police Department	34	9	43
Richmond Police Department	2	41	43
Russell County Sheriff's Office	4	0	4
Russellville Police Department	0	2	2
Scott County Sheriff's Office	0	1	1
Scottsville Police Department	1	2	3
Shelby County Sheriff's Office	13	1	14
Shelbyville Police Department	6	6	12
Shepherdsville Police Department	30	1	31
Shively Police Department	0	1	1
Somerset Police Department	8	2	10
Southgate Police Department	1	0	1
Taylorsville Police Department	0	1	1
Trigg County Sheriff's Office	0	1	1
Union County Sheriff's Office	2	0	2
U.S. Forest Service	0	1	1
University of Kentucky Police Department	0	1	1
University of Louisville Police Department	2	0	2
Versailles Police Department	0	1	1
Villa Hills Police Department	0	2	2
Warren County Sheriff's Office	8	3	11
Wayne County Sheriff's Office	0	1	1
Webster County Sheriff's Office	0	1	1
West Liberty Police Department	0	1	1
Western Kentucky University Police Department	0	1	1
Whitesburg Police Department	10	0	10
Williamsburg Police Department	1	0	1
Winchester Police Department	0	4	4
TOTAL	1,859	1,231	3,090

Source: Law Enforcement Surveys and KSP Forensic Laboratory Data as of August 18, 2015

Appendices

Appendix VII - Forensic Biologist I Job Specifications

COMMONWEALTH OF KENTUCKY JOB SPECIFICATION

JOB TITLE: FORENSIC BIOLOGIST I	
JOB CODE: 40610V000101 SYSTEM ID: 20000943	GROUP: 4000 - HEALTH SCIENCE AND LABORATORY
SELECTION METHOD: QUALIFYING REV.: 02-05 EXAM NO.: NONE NO. OF TEST QUESTION: NONE	SALARY (MIN-MID): \$2,670.20 - \$3,554.70 GRADE: 13 SPECIAL ENTRANCE RATE: NONE
EXTENDED INITIAL PROBATIONARY PERIOD: This job has an extended initial probationary period of 12 months. For additional information refer to: http://www.lrc.ky.gov/kar/101/001/325.htm	

CHARACTERISTICS OF THE JOB: CHARACTERISTICS OF A JOB ARE GENERAL STATEMENTS INDICATING THE LEVEL OF RESPONSIBILITY AND DISCRETION OF POSITIONS IN THAT JOB CLASSIFICATION.

Participates in an agency training program in forensic biology and performs supervised biology or DNA databasing duties in a forensic laboratory; and performs other duties as required.

MINIMUM REQUIREMENTS: MINIMUM REQUIREMENTS ARE COMPREHENSIVE STATEMENTS OF THE MINIMUM BACKGROUND AS TO EDUCATION, EXPERIENCE, AND OTHER QUALIFICATIONS WHICH WILL BE REQUIRED IN ALL CASES AS EVIDENCE OF AN APPOINTEE'S ABILITY TO PERFORM THE WORK PROPERLY.

EDUCATION: Graduate of a college or university with a bachelor's degree in biology, microbiology, molecular biology, recombinant genetics, biochemistry, medical technology OR forensic science with a concentration or emphasis in biology (transcript review must indicate a #concentration in biology# or an #emphasis in biology#).

EXPERIENCE: NONE

SUBSTITUTION CLAUSE:

EDUCATION: NONE

EXPERIENCE: NONE

SPECIAL REQUIREMENTS: (AGE, LICENSURE, REGULATION, ETC.)
NONE

PRE-EMPLOYMENT REQUIREMENTS: EMPLOYEES IN THIS JOB WILL BE REQUIRED TO OBTAIN CREDENTIALS OUTLINED BELOW BEFORE BEGINNING EMPLOYMENT IN THIS JOB CLASSIFICATION. IT IS THE SOLE RESPONSIBILITY OF THE EMPLOYING AGENCY TO VERIFY THE ATTAINMENT OF THESE CREDENTIALS BEFORE THE EMPLOYEE BEGINS EMPLOYMENT IN THIS JOB CLASSIFICATION. COPIES OF THE CREDENTIALS OUTLINED BELOW MUST BE SUBMITTED TO THE PERSONNEL CABINET WITH APPOINTMENT PAPERWORK FOR REVIEW AND INCLUSION IN EMPLOYEE PERSONNEL FILE.

NONE

Appendices

Appendix VII - Forensic Biologist I Job Specifications (Continued)

POST-EMPLOYMENT REQUIREMENTS: EMPLOYEES IN THIS JOB WILL BE REQUIRED TO OBTAIN CREDENTIALS OUTLINED BELOW WITHIN A REASONABLE TIME, OR IF EMPLOYEES POSSESS SUCH CREDENTIALS AT THE TIME OF HIRE THEY WILL BE REQUIRED TO MAINTAIN THOSE CREDENTIALS SO LONG AS THEY ARE EMPLOYED IN THIS CAPACITY. IT IS THE RESPONSIBILITY OF THE EMPLOYING AGENCY TO VERIFY THE ATTAINMENT AND/OR MAINTENANCE OF THESE CREDENTIALS, TO REMOVE FROM THIS CLASS ANY EMPLOYEE WHO DOES NOT ATTAIN OR MAINTAIN THESE CREDENTIALS, AND TO ASSURE THAT ANY EMPLOYEE WHO PERFORMS THESE FUNCTIONS, WITHOUT REGARD TO THE CLASS THEY ARE IN, HAVE THE APPROPRIATE CREDENTIALS.

NONE

EXAMPLES OF DUTIES OR RESPONSIBILITIES OF THE JOB CLASSIFICATION: EXAMPLES OF DUTIES OR RESPONSIBILITIES ARE NOT TO BE CONSTRUED AS DESCRIBING WHAT THE DUTIES OR RESPONSIBILITIES OF ANY POSITION SHALL BE AND ARE NOT TO BE CONSTRUED AS LIMITING THE APPOINTING AUTHORITY'S ABILITY TO ADD TO, OR OTHERWISE ALTER THE DUTIES AND RESPONSIBILITIES OF A POSITION. THE USE OF AN INDIVIDUAL EXPRESSION OR ILLUSTRATION AS TO DUTIES OR RESPONSIBILITIES SHALL NOT BE REGARDED AS EXCLUDING ASSIGNMENT OF OTHERS NOT MENTIONED WHICH ARE OF SIMILAR KIND OR QUALITY.

Participates in an agency training program in forensic biology. Receives training in the identification and characterization of blood and other physiological fluids. Examines and identifies hair and performs related examinations by microscopy. Performs the various techniques used in the collection, preservation, receipt and examination of physical evidence. Identifies blood and determines whether human or animal origin. Prepares serological and chemical reagents and assists in maintenance of quality control. Performs supervised genetic identification of biological specimens. Prepares reports of examinations and experiments performed. Reviews books, journals, periodicals and notes relative to the duties of the position. Assists in the preparation of evidence for presentation in court proceedings and testifies in court regarding examination results. Presence may be required at crime scenes to assist with evidence gathering and processing.

TYPICAL WORKING CONDITIONS AND UNIQUE PHYSICAL REQUIREMENTS: INCUMBENTS IN THIS JOB WILL TYPICALLY PERFORM THEIR PRIMARY JOB DUTIES UNDER THESE CONDITIONS, HOWEVER, THESE CONDITIONS MAY CHANGE ON OCCASION IN PERFORMING THE DUTIES OF AN INDIVIDUAL POSITION.

Incumbents in this classification will typically perform their job duties in a forensic laboratory setting. The work requires standing for long periods of time and possibly assisting in lifting dead bodies. May have some contact with contagious diseases and/or body fluids. Regular handling of sharp surgical instruments. Regular exposure to noxious odors, chemicals substances and biohazardous compounds.

ADDITIONAL REQUIREMENTS:

"Upon appointment, employees in this class may be required to maintain a valid driver's license and required to drive a licensed vehicle. This status may be necessary for the length of time in this class. If this is necessary it will be listed in the specific position description for that position. Applicants and employees in this job title may be required to submit to a drug screening test and background check. Applicants and employees in positions which perform job duties that may require contact with offenders in the custody or supervision of the Department of Corrections or with youth in the care, custody, or supervision of the

Appendices

Appendix VII - Forensic Biologist I Job Specifications (Continued)

Department of Juvenile Justice must meet qualifications pursuant to the federal Prison Rape Elimination Act, 28 C.F.R.115.17 and 115.317."

JOB ESTABLISHED: 06/16/1982	LAST REVISION: 04/16/2007
THE COMMONWEALTH OF KENTUCKY DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, DISABILITY, SEXUAL ORIENTATION, GENDER IDENTITY, GENETIC INFORMATION OR VETERAN STATUS. REASONABLE ACCOMMODATIONS ARE PROVIDED UPON REQUEST.	

Source: Kentucky Personnel Cabinet

Appendices

Appendix VIII - City of Wilmore, Kentucky - Sexual Assault Policy

WILMORE POLICE DEPARTMENT GENERAL ORDERS	
SUBJECT: Sexual Assault	NUMBER: 2-31
EFFECTIVE DATE: June 15, 2003	REVIEWED/REVISED: March 01, 2012
AMENDS /SUPERSEDES:	APPROVED: Chief William E. Craig
KACP STANDARDS:	

NOTE:

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

I. POLICY

The department recognizes the fact that sexual assaults (rape, forcible sodomy, sexual battery, object penetration, incest, child molestation, exploitation of children, and attempts thereof) are personal violent crimes that have great psychological and physical effects on the victims. It is the policy of the department to assist sexual assault victims in a supportive manner, using appropriate crisis intervention skills (see Appendices to WPD GO 2-28). Because of the seriousness of these offenses and the delicate nature of the investigations involved, it is important for the department to undertake diligent investigations in order to increase the reporting of these crimes. Reducing recidivism through the apprehension and prosecution of the assailants is a department priority.

NOTE CONCERNING GENERAL ORDER 2-31, SEXUAL ASSAULT

Sexual assault is a humiliating and often terrifying and brutal crime. It can happen to a man as well as a woman and to a child as well as an elderly person. It includes any sexual conduct which a person is forced into without his or her consent (KRS 510.010 thru 510.320). Each victim requires strong support from medical, legal, law enforcement, victim/witness, and social service personnel.

The crime of sexual assault is, at times, misunderstood. In order to deal effectively with those who have survived a sexual assault and educate others about the crime, law enforcement must understand that rape and other sexual assaults are not crimes of passion, but acts of criminal aggression, most of them violent. The offender, not the victim, is responsible for the sexual assault.

Victims react to an attack in a variety of ways. The stereotype of a hysterical woman calling the police is just that--a stereotype. Many victims are calm and composed. The emotional state of the victim immediately following the assault is one of intense emotional shock. That shock may be expressed as hysteria, anger, fear, or as outward calm. But the disbelief and shock are usually the

Appendices

Appendix VIII - City of Wilmore, Kentucky - Sexual Assault Policy (Continued)

underlying feelings.

Reporting the crime is often difficult for victims. The FBI estimates that a large percentage of sexual assaults are not reported. Victims of sexual assault may have difficulty deciding what to do after the crime. Official reports have many uses. Once the report is taken, it can be kept on file for future use. As rapists are recidivists (repeaters), law-enforcement officers, with the aid of several written reports, can often identify the person based on his similar mode of operation and description.

Officers who first come into contact with a sexual assault victim may be the most important people the psychologically and physically violated victim will see. It is important to remember that a rape undermines the victim's sense of control. She (or he) must be allowed to regain a feeling of control by making decisions and by being listened to in a supportive, nonjudgmental way.

Most officers understand the technical aspects of evidence collection necessary for the case. Their difficulty is handling their discomfort when interviewing a victim. Many officers report that this feeling makes the evidence collection and the technical investigation more difficult. Regardless of the result of the police investigation, the establishment of rapport between the officer and the victim is always a plus. Being able to respond to sexual assault victims in a constructive way is a benefit to the officer and enhances the department's image in the community.

II. PURPOSE

To outline a protocol for coordinated preliminary and follow-up investigations of sexual assault and other related offenses.

III. PROCEDURES

A. General responsibilities

1. "Sexual assault" means those offenses involving sexual penetration/contact with any person by force or threat of force, fear, or intimidation, or any attempts to force sexual penetration/contact on any person.
2. Department personnel shall be aware of community services available to victims of sexual assault. Jessamine County Victims Advocate 101 North Main Street, Nicholasville, Kentucky 40356. Tel Nr (859) 885-9112.
3. Department personnel shall be trained and knowledgeable about sexual assault investigation and its impact on victims. (See Appendix A to this order.)
4. Department personnel shall use appropriate communication skills when interacting with sexual assault victims. (See Appendices to WPD GO 2-28.)

B. Patrol responsibilities

1. The patrol officer has certain immediate responsibilities, as follows.
 - a. The primary concern is the victim's physical well-being. Give attention to the victim's emergency medical needs. Ensure safety.
 - b. Preserve the crime scene. Call the detective/investigator.

Appendices

Appendix VIII - City of Wilmore, Kentucky - Sexual Assault Policy (Continued)

- c. The officer shall be alert to any suspect in the vicinity. Give crime broadcast, if applicable.
 - d. The officer shall explain his or her role to the victim and what will be done at the scene and through follow-up.
- 2. The patrol officer shall obtain detailed information essential to determine what offense (or offenses) actually occurred.

Abduction: KRS. 509.020 - 509.040

Assault: KRS. 508.010 - 508.150

Child abuse, neglect: KRS. CHAPTER 620

Conspiracy: KRS. 506.040 - 506.060

Sexual offenses: KRS. 510.110 - 532.043

Stalking: KRS. 508.130 - 508.150
- 3. Obtain preliminary statements from victim and witnesses. Try to establish rapport and get only the needed information. (See appendices to WPD GO 2-28.)
- 4. The officer shall inform the victim, of counseling services available in the area. Ask whether the victim would prefer to have a support person (sexual assault worker, family member, or friend) present if this has not already been done by dispatcher. Offer to contact this person if necessary.
- 5. The patrol officer shall arrange for transportation or transport the victim to the hospital for a sexual assault examination, if appropriate (if the assault occurred within the last 72 hours). Explain the medical and legal necessity of this exam. (See Appendix B to this order.) Inform the victim to take a change of clothing along. The officer may provide transportation back home following the exam. If the assault occurred more than 72 hours before, the officer shall still encourage the victim to seek medical help.
- 6. See GO 2-12 and Victim Services, GO 2-28, for additional guidance.

D. Investigator responsibilities

- 1. The investigator shall obtain a complete report from the patrol officer assigned to the case.
- 2. The initial contact with the victim may happen in different ways:
 - a. At the crime scene: The patrol officer shall protect the crime scene and the investigator shall establish rapport with the victim, transport the victim to the hospital, and begin the preliminary investigation.

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Appendix VIII - City of Wilmore, Kentucky - Sexual Assault Policy (Continued)

- b. At the hospital: Arrange for the collection of evidence needed for prosecution. Explain sexual assault exam procedures, and establish rapport for further interviews. The investigator shall not be in the room during the sexual assault exam but shall have the victim sign a consent form in order to obtain a copy of the hospital report. (See Appendix to GO 2-15 and Appendix B to this order.)
 - c. At the department: Before interviewing, review the patrol officer's report and establish rapport with the victim by allowing her or him to ask preliminary questions or voice initial concerns.
- 3. The investigator shall be trained in sexual assault procedures.
 - a. The investigator shall allow the sexual assault crisis worker to be with the victim for support if the victim desires.
 - b. If the victim prefers a woman investigator, every attempt to provide one should be made, but if one is not available, the investigator shall nevertheless encourage the victim's cooperation.
 - c. Prepare the victim for each phase of the investigation. By explaining what must be done and the reasons why, the officer will encourage the victim's cooperation.
- 4. Follow-up interviews by the investigator.
 - a. Privacy is a necessity for follow-up interviews. Choose a quiet room at the department or go to the victim's home. A support person to aid the victim may be helpful to the investigation. Advise this person of his or her role and ask the person not to interfere with questioning.
 - b. Questions which must be addressed include the following.
 - (1) Assault circumstances: Where approached? How? Where occurred? When?
 - (2) Assailant: Name, if known? Age? Race? Color of hair? Clothing? Height? Weight? Identifying marks? Relationship to victim, if any?
 - (3) Multiple assaults occur? Other crimes committed?
 - (4) What happened during the assault? Were weapons used? Describe them. Were threats made? What were they? Was there a fight or struggle? Injuries sustained? Drugs/alcohol involved? Sexual detail--what did he do? Other degrading acts? Did he ejaculate? What was said?
 - (5) How long was assailant with you?
 - (6) What did you or the assailant do immediately after the attack?
 - (7) Concerns about prosecuting?

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- c. At the conclusion of the interview, the investigator shall ask about any additional assistance needed. (Counseling services are always recommended.) Jessamine County Victims Advocate, Taunya Northup, 101 N. Main Street, Nicholasville, Ky. 40356 Ph# (859) 885-9112, Jessamine County Department of Social Services, 109 S. Second Street, Nicholasville, Ky. 40356, Ph# (859) 885-9451
 - d. Encourage the victim to call later with additional details or to ask questions. Give a number.
 - e. Interviewing child sexual assault victims requires special guidelines. See appendices to GO 2-30 and Appendix C to this order.
 - f. As soon as practicable, alert the victim/witness advocate and Jessamine County Department of Social Services that a sexual assault has occurred. Provide the information necessary for staff to contact the victim.
5. See GO 2-14 and Victim Services, GO 2-28, Investigator responsibilities, for additional guidance

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Appendix to General Order 2-31

- A Sexual Assaults/Victim Impact
- B Evidence Collection - Sexual Assaults
- C Interviewing Child Victims

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APPENDIX A

Sexual Assaults/Victim Impact

Sexual assault is one of the most frightening crimes that can be committed against a person. It is a crime of violence. Any forced sexual contact or unwanted sexual touching is a crime, whether persons are married to each other or not. Indirect assaults include obscene phone calls, exhibitionism, stalking, and indecent exposure. Direct assaults include rape, incest, child molestation, sodomy, and attempts thereof. The two most severe felony sexual assaults are discussed below.

Incest is a sexual involvement with a blood or step relative. The most frequent offender is the father and the most frequent victim is the daughter, but other possibilities exist: mother/son, brother/sister, grandfather/granddaughter, uncle/niece, etc. Coercion is built on trust and love rather than violence. The offender is often immature with low self-esteem. The victim doesn't want to be rejected. Incest can range from fondling to full intercourse. The victim's feelings are very confused because of the relationship with the offender and the rewards/threats by the offender.

Rape is forced sexual penetration against the will of the victim. It may include many different sexual acts--vaginal, oral, anal intercourse, object penetration, plus other humiliating acts (urination by offender, lewd remarks, physical injury). Rapists commonly have low self-esteem, desire for dominance, frustration and instability. They may be anti-social and violent. Social pressures may trigger a rape. Common reactions of victims are shock, embarrassment, anger, fear, guilt, confusion, and lack of power (control).

These attacks are usually emotionally traumatizing experiences from which it may take months or years to recover. Initial concerns will be sexually-transmitted disease, pregnancy, and injuries. At first, the victim will experience confusion, shame, and fear. Later on, helplessness, worthlessness, isolation, distrust, anger, fear, and guilt will become strong feelings. Trouble may persist in the form of inability to express affection, relate to family members, or trust others. Crisis counselors trained to deal with sexual assault can help victims cope with the assault and find a resolution to the incident and their feelings. An active support system and building new strengths and relationships are positive factors in post-rape recovery.

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APPENDIX B

Evidence Collection--Sexual Assaults

General Rules

1. Safeguard crime scene and evidence that is collected.
2. Use caution not to damage, mark, or contaminate evidence.
3. Initial and date all items seized.
4. Document chain of evidence in report.
5. Place all evidence in appropriate containers, seal, initial.
6. See appendix to GO 2-14 for complete instructions.

At the Crime Scene

1. Collect undergarments, clothing, bedding, rugs, or other appropriate items which may contain semen, blood, hairs, fibers, or other pieces of trace evidence, or that might be damaged.
2. Collect wash cloths or towels which may have been used.
3. Collect bottles, glasses, or other objects which may contain latent prints.
4. Search scene for foreign objects (buttons, hair, pieces of torn clothing).
5. If crime occurred outdoors, take soil samples from several areas and sketch the location of each sample taken.
6. If crime occurred in a car, gather sweepings from seats and floors, search floor mats and seat covers for stains.
7. If entry was forced into the victim's residence, gather samples of broken glass, paint samples, and note any pry marks or other signs of forced entry.
8. Photograph crime scene.
9. Photograph bite marks, scratch marks, or other signs of brutality or injury to victim. Only female officers or medical personnel should photograph private sexual areas.

Notes to be Prepared

1. Description of exact location where each piece of evidence was found. [Example: one white bra, left strap torn, found on the ground in rear yard of (address), 6 feet south of rear stairs.]
2. Description of victim's appearance and behavior.
Note: bruises or marks, facial discoloration, disarrayed clothing, smeared makeup, hair disheveled, confused or dazed behavior, bewilderment or disorientation, apparent hysteria or crying, incoherent speech.
3. Description of victim's clothing. Note locations of torn garments, dirt, stains--blood, semen, grass.
4. Description of suspect. Physical description as provided by victim with special attention to items which would not be readily visible if the suspect were clothed: scars, tattoos, moles.
5. Have all signs of trauma or injury, as well as emotional state of the victim, recorded on hospital record. Be certain that smears are taken from vagina, anus, and mouth of victim, as dictated by the nature of the assault.

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APPENDIX C

INTERVIEWING CHILD VICTIMS

I. *Preparing for Interview.*

Before interviewing the child, obtain relevant information from parents/guardian, and if applicable, Child Protective Services case worker, physician, Sexual Assault Crisis Center/counselor, and victim/witness staff.

- A. Explain your role and procedures to above personnel and enlist their cooperation.
- B. Determine child's general development status: age, grade, siblings, family composition, capabilities, ability to write, read, count, ride a bike, tell time, remember events, any unusual problems, physical, intellectual, behavioral, knowledge of anatomy and sexual behavior, family terminology for genital areas.
- C. Review circumstances of assault (as reported already by child to other person): what, where, when, by whom, and to whom reported; exact words of child; other persons told by child; how many have interviewed child; child's reaction to assault; how child feels about it and what, if any, behavioral signs of distress (nightmares, withdrawal, regression, acting out) have occurred.
- D. Determine what reactions and changes child has been exposed to following disclosure of the assault(s): believing; supportive; blaming; angry; ambivalent; parents getting a divorce; move to a new home.

II. *Beginning the Interview.*

- A. Setting: The more comfortable for the child, the more information she/he is likely to share.
 1. Flexibility: A child may like to move around the room, explore and touch, sit on the floor or adult's lap.
 2. Activity: Playing or coloring occupy child's physical needs and allows her/him to talk with less guardedness.
 3. Privacy: Interruption, distracting an already short attention span, or diverting focus of interview will make a self-conscious or apprehensive child withdraw.
 4. Support: If the child wishes a parent (if appropriate) or other person present, allow it. A frightened or insecure child will not give a complete statement.
- B. Establishing a Relationship.
 1. Introduction: Name, brief and simple explanation of role and purpose: "I am the police officer here to help you. My job is to talk to children about these things because we want them to stop happening."
 2. General exchange: Ask about name (last name), age, grade school and teacher's name, siblings, family composition, pets, friends, activities, favorite games/TV shows. (It often helps to share personal information when appropriate, e.g.,

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children, pets.)

3. Assess level of sophistication and ability to understand concepts: does child read, write, count, tell time, know colors or shapes; know the day or date: know birth date; remember past events (breakfast, yesterday, last year); understand before and after; know about money; assume responsibilities (goes around neighborhood alone, stays at home alone, makes dinner, etc.)

III. *Obtaining History of Sexual Assault.*

A. Preliminaries.

1. Use language appropriate to child's level; be sure child understands words. (Watch for signs of confusion, blankness or embarrassment, be careful with the following words: incident; occur; penetration; ejaculation; etc.)
2. Do not ask WHY questions ("Why did you go to the house?" "Why didn't you tell?") They sound accusatory. Ask HOW questions ("How did you end up in the car with ---?")
3. Never threaten or try to force a reluctant child to talk. Pressure causes a child to clam up and may further traumatize him/her.
4. Be aware that the child who has been instructed or threatened not to tell by the offender (**especially** a parent) will be very reluctant and full of anxiety (you will usually notice a change in the child's affect while talking about the assault). These fears often need to be allayed. Be comforting but never lie to the child.
 - "It's not bad to tell what happened."
 - "You won't get in trouble."
 - "You can help your dad by telling what happened."
 - "It wasn't your fault."
 - "You're not to blame."
5. Interviewer's affective response should correspond with child's perception of assault (e.g., don't emphasize jail for the offender if the child has expressed positive feelings toward him.)
6. Ask direct, simple questions as open-ended as allowed by the child's level of comprehension and ability to talk about the assault.

B. Statement.

1. WHAT

- "Can you tell me what happened?"
- "I need to know what the man did."
- "Did he ever touch you? Where?"
- "Where did he put his finger?"
- "Have you ever seen him with his clothes off?"
- "Did you ever see his penis (thing, pee pee, weiner) get big?"
- "Did anything ever come out of it?"

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Once basic information is elicited, ask specifically about other types of sexual contact.

- "Did he ever put it into your mouth?"
- "Did he ever make you touch him on his penis?"

2. WHO

Child's response will probably not be elaborate. Most children know the offender and can name him, although in some cases the child may not understand relationship to self or family. Ascertain from other sources what is the exact nature/extent of the relationship.

3. WHEN

The response to this question will depend on child's ability, how recently assault happened, lapse between last incident and report, number of assaults (children will tend to confuse or mix separate incidents). If the child is under six, information re: time is unlikely to be reliable. An older child can often narrow down dates and times using recognizable events or associating assault with other incidents.

- "Was it before your birthday, the weekend, Valentine's Day?"
- "Was it nighttime or daytime?"
- "Did it happen after dinner, *Sesame Street*, your brother's bedtime?"

4. WHERE

The assault usually occurs in the child's and/or offender's home. Information may be learned about which room, where other family members were, where child was before assault.

5. COERCION

What kind of force, threat, enticement, pressure was used to insure cooperation and secrecy?

- "Did he tell you not to tell? What did he say?"
- "Did he say something bad would happen or you would get in trouble if you told?"
- "Did the man say it was a secret?"

C. Assessing Credibility and Competency.

1. Does child describe acts or experiences to which s/he would not have normally been exposed? (Average child is not familiar with erection or ejaculation until adolescence at the earliest.)
2. Does child describe circumstances and characteristics typical of sexual assault

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situation? ("He told me that it was our secret"; "He said I couldn't go out if I didn't do it"; "He told me it was sex education.")

3. How and under what circumstances did child tell? What were exact words? To whom has the child reported?
4. How many times has child given history and how consistent is it regarding the basic facts of the assault?
5. How much spontaneous information can child provide? How much prompting is required?
6. Can child define difference between truth and a lie? (This question is not actually very useful with young children because they may not understand the concepts. A sample question designed to elicit the child's comprehension of truth and lying might be, "If I told you that I was wearing a purple dress, would I be telling the truth or a lie?")

IV. *Closing the Interview.*

- A. Praise/thank child for information/cooperation.
- B. Provide information.

[Note: Provide specific information about the role of the victim advocate , and procedures for contacting same.] Taunya Northup, Jessamine County Victims Advocate, 101 N. Main Street, Nicholasville, Ky. 40356, (859) 885-9112. Jessamine County Department of Social Services, 109 S. Second Street, Nicholasville, KY 40356, (859) 885-9451.

1. Child: Do not extract promises from a child regarding testifying. Most children cannot project themselves into an unknown situation and predict how they will behave. Questions about testifying in court or undue emphasis on trial will have little meaning and often frightens the child (causing nightmares and apprehension).
 2. Parent: Provide simple, straightforward information about what will happen next in the criminal justice system and approximately when, the likelihood of trial, etc.
- C. Enlist cooperation: Let them know who to contact for status reports or in an emergency, express appreciation and understanding for the effort they are making by reporting and following through the process.
 - D. Answer questions; solicit responses.

Appendices

Appendix IX - Kentucky Revised Statute 524.140

524.140 Disposal of evidence that may be subject to DNA testing - Motion to destroy Liability for destruction - Penalty - Retention of biological material.

- (1) As used in this section:
 - (a) "Defendant" means a person charged with a:
 1. Capital offense, Class A felony, Class B felony, or Class C felony; or
 2. Class D felony under KRS Chapter 510; and
 - (b) "Following trial" means after:
 1. The first appeal authorized by the Constitution of Kentucky in a criminal case has been decided; or
 2. The time for the first appeal authorized by the Constitution of Kentucky in a criminal case has lapsed without an appeal having been filed.
- (2) No item of evidence gathered by law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant shall be disposed of prior to trial of a criminal defendant unless:
 - (a) The prosecution has determined that the defendant will not be tried for the criminal offense;
 - (b) The prosecution has made a motion before the court in which the case would have been tried to destroy the evidence; and
 - (c) The court has, following an adversarial proceeding in which the prosecution and the defendant were heard, authorized the destruction of the evidence by court order.
- (3) No item of evidence gathered by law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant shall be disposed of following the trial unless:
 - (a) The evidence, together with DNA evidence testing and analysis results, has been presented at the trial, and the defendant has been found guilty, pled guilty, or entered an Alford plea at the trial;
 - (b) The evidence was not introduced at the trial, or if introduced at the trial was not the subject of DNA testing and analysis, and the defendant has been found guilty, pled guilty, or entered an Alford plea at the trial, and the trial court has ordered the destruction of the evidence after an adversarial hearing conducted upon motion of either the prosecution or the defendant;
 - (c) The trial resulted in the defendant being found not guilty or the charges were dismissed after jeopardy attached, whether or not the evidence was introduced at the trial or was subject to DNA testing and analysis or not, and the trial court ordered the destruction of the evidence after an adversarial hearing conducted upon motion of either the prosecution or the defendant; or

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Appendix IX - Kentucky Revised Statute 524.140 (Continued)

- (d) The trial resulted in the dismissal of charges against the defendant, and the defendant may be subject to retrial, in which event the evidence shall be retained until after the retrial, which shall be considered a new trial for the purposes of this section.
- (4) The burden of proof for a motion to destroy evidence that may be subject to DNA testing and analysis shall be upon the party making the motion, and the court may permit the destruction of the evidence under this section upon good cause shown favoring its destruction.
- (5) It is recognized by the General Assembly that the DNA evidence laboratory testing and analysis procedure consumes and destroys a portion of the evidence or may destroy all of the evidence if the sample is small. The consuming and destruction of evidence during the laboratory analysis process shall not result in liability for its consumption or destruction if the following conditions are met:
 - (a) The Department of Kentucky State Police laboratory uses a method of testing and analysis which preserves as much of the biological material or other evidence tested and analyzed as is reasonably possible; or
 - (b) If the Department of Kentucky State Police laboratory knows or reasonably believes that the entire sample of evidence to be tested and analyzed that the laboratory, prior to the testing or analysis of the evidence, notifies in writing the court which ordered the testing and analysis and counsel for all parties:
 - 1. That the entire sample of evidence may be destroyed by the testing and analysis;
 - 2. The possibility that another laboratory may be able to perform the testing and analysis in a less destructive manner with at least equal results;
 - 3. The name of the laboratory capable of performing the testing and analysis, the costs of testing and analysis, the advantages of sending the material to that other laboratory, and the amount of biological material or other evidence which might be saved by alternative testing and analysis; and
 - 4. The Department of Kentucky State Police laboratory follows the directive of the court with regard to the testing and analysis; or
 - (c) If the Department of Kentucky State Police laboratory knows or reasonably believes that so much of the biological material or evidence may be consumed or destroyed in the testing and analysis that an insufficient sample will remain for independent testing and analysis that the laboratory follows the procedure specified in paragraph (b) of this subsection.
- (6) Destruction of evidence in violation of this section shall be a violation of KRS 524.100.
- (7) Subject to KRS 422.285(9), the appropriate governmental entity shall retain any biological material secured in connection with a criminal case for the period of time that any person

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Appendix IX - Kentucky Revised Statute 524.140 (Continued)

remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing and analysis.

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