



Sexual Assault Kit Testing Policy in Nebraska



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Over the past few decades, DNA testing has revolutionized law enforcement. Using markers in the human genetic code, investigators are able to identify the important similarities and differences between people. The probability that the DNA profiles of two unrelated individuals match is, on average, less than 1 in 1 billion.

State sexual assault kit testing is just one of the many applications of this technology. From a policy perspective, it is an area that requires special care due to the sensitive subject matter. While there is no statewide kit testing policy in Nebraska, in general the process goes something like this:

When a sexual assault is reported, a specialized nurse known as a SANE nurse (Sexual Assault Nurse Examiner) administers the kit, officially known as a 'sexual assault forensic evidence kit.' To preserve the viability of the DNA, the kit must be collected within 120 hours of the assault. The nurse swabs various body areas for potential DNA, including hair, skin

cells, semen, and other bodily fluids to create the kit. It may also include clothing the victim was wearing and other items. The sexual assault kit is booked into evidence by the law enforcement agency in charge of the investigation.

Most kits are sent to the State Patrol Crime Lab (Crime Lab) for analysis, although some are tested at the University of Nebraska Medical Center. Established in 1971, the Crime Lab's legislative mandate is to "perform services necessary for the recognition and proper preservation, identification, and scientific analysis of evidence materials pertaining to the investigation of crimes." To that end, the laboratory analyzes over 5,000 cases per year in the areas of drug chemistry, fingerprints, biology/DNA, trace chemistry, toxicology, and ballistics.¹

According to Pam Zilly, Director of the Crime Lab, every single kit associated with an active investigation is analyzed. However, kits are not necessarily tested immediately. Outside of rare rush tests, kits take about six months to test. Cases with an impending court date or significant public safety risk can be expedited

1. Nebraska State Patrol. *NSP Divisions: Crime Laboratory*. 2019. <https://statepatrol.nebraska.gov/divisions/investigative-services/crime-laboratory>



and have testing completed in 30 days or less. In the lab's biology unit, five forensic scientists are assigned full-time to testing. In 2019, the lab processed more than 900 cases, with some cases needing up to 20 samples analyzed. After testing, both the results and kits are sent back to the investigating law enforcement agency.

As all kits at the Crime Lab are eventually tested, the only kits that go untested are sitting in evidence at local law enforcement agencies across the state. For example, as of last year, about three out of every four sexual assault kits booked into evidence at the Omaha Police Department have not been tested for DNA.² To remedy this, the department received a \$1.9 million federal grant to help catch up on the backlog of sexual assault kits.³

The result is Omaha's Untested Sexual Assault Kit Project, an effort by the Omaha Police Department and the Douglas County Attorney to implement new best practices and test all kits. The untested kits from Omaha will be sent to the Crime Lab for testing, and the results will be entered into the Combined DNA Index System, a state and national database that houses DNA on individuals related to crimes. Victims will be contacted if the evidence reveals new information for the investigation and an advocate from the Women's Center for Advancement will be assigned to provide support and information.⁴

In order to handle so many previously untested sexual assault kits, the Crime Lab has hired two temporary forensic scientists and a temporary evidence technician. The grant funds the forensic scientists for three years and the evidence technician for two years. While the first year of the program was dedicated to hiring and training, the new lab technicians are now making their way through Omaha's untested kits.

This new "test everything" policy only applies to cases in Omaha, which was the sole Nebraska agency to receive a federal grant to expand testing. Not every law enforcement agency has the resources to adopt this policy. A 2018 internal audit by the Lincoln Police Department (LPD) revealed that 353 sexual assault kits collected since 2004 remain untested.⁵ According to LPD Sergeant Luke Wilke, DNA testing is expensive, so depending on the facts of the case, sometimes kits have to be prioritized.

"In cases in which the perpetrator of the assault is unknown to the victim, the kit is always tested," Wilke said. However, in most sexual assault cases, the victim and the assailant have a preexisting relationship. These types of cases are much more common than ones in which the attacker is a total stranger.

It is worth noting that a DNA match identifies the potential source of the DNA, but says nothing about guilt or innocence. In the case of a sexual assault kit, DNA evidence can determine whether sexual contact occurred, but it cannot determine consent. When parties agree that sex occurred, but disagree on the question of consent, the kit may go untested. The police also cite cases in which DNA evidence is collected, but no charges are pressed and instances where other evidence renders DNA evidence irrelevant.

Efforts have been made in Nebraska to require the testing of all sexual assault kits. In 2018, Sen. Kate Bolz introduced LB 1126, which would have mandated that all kits be tested. The fiscal note estimated a cost of \$1.2 million in the first year and \$433,000 in the second year for the hiring of new forensic scientists, among other new expenses. In 2020, Sen. Machaela Cavanaugh introduced LB 945, which would require Lincoln and Omaha to annually report their inventory of untested kits.

2. Conley, A. *3 of 4 sexual assault kits in Omaha Police evidence are untested. New grant will change that.* Omaha World Herald. 2018. www.omaha.com/news/crime/of-of-sexual-assault-kits-in-omaha-police-evidence-are/article_8504d1c3-edda-510b-a7e2-be4ef5fde8ac.html

3. National Sexual Assault Kit Initiative. *Sexual Assault Kit Initiative Grantee: City of Omaha.* 2019. <https://sakitta.rti.org/omaha/>

4. Women's Center for Advancement. *Omaha's Untested Sexual Assault Kit Project.* 2019. <https://wcaomaha.org/checkmykit/>

5. Johnson, R. *Lincoln police consider changing course on rape kit testing amid national push.* Lincoln Journal Star. 2019. https://journalstar.com/news/local/lincoln-police-consider-changing-course-on-rape-kit-testing-amid/article_057a2baf-9a3c-50e1-a002-d034172ad337.html