

Subject: Sexual Assault Investigations	Page 1 of 9
Effective Date: July 1997	Revision Date: December 2017
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Meets Accreditation Standard:	

Section 1500.60 Sexual Assault Investigations

PURPOSE

The purpose of this general order is to provide sexual assault investigators with guidelines for responding to reports of sexual assault, assisting victims, collaborating with local health and victim service agencies, submitting evidence for laboratory testing, and keeping victims notified.

POLICY

It is the policy of the Shively Police Department that all reported incidents of sexual assault are properly and ethically investigated in an unbiased and truth seeking manner that will support a fair and accurate decision in the criminal justice system. A victim-centered approach includes investigation practices that focus on the actions and choices of the offender, not the actions or inactions of the victim. Methods shall be employed throughout the investigation to reduce the physical and psychological trauma to the victim of sexual violence by responding in a compassionate, sensitive and non-judgmental manner.

DEFINITIONS

- A. **Investigating officer:** An officer assigned to investigate the report of a sexual assault. The investigating officer might be the responding officer or a detective as determined by the supervisor.
- B. **SAFE Kit – Sexual Assault Forensic Evidence Kit:** A forensic evidence collection kit consisting of instructions and labeled packages for properly collecting and storing potential DNA evidence. A victim’s kit includes the victim’s medical history and assault information form. A suspect’s kit includes the request for examination form. SAFE kits are usually collected by trained medical personnel.
- C. **SANE – Sexual Assault Nurse Examiner:** A registered nurse who has completed required education and clinical experience and maintains a current credential from the Kentucky Board of Nursing to conduct forensic examinations of victims of sexual offenses who are 14 years of age or older.
- D. **SANE-ready Hospital:** An acute care hospital certified by the Cabinet for Health and Family Services that a sexual assault nurse examiner is available on call twenty-four hours a day for the examination of persons seeking treatment as victims of sexual offenses. A list of SANE-ready hospitals is available on the CHFS Inspector General’s webpage.
- E. **Sexual assault examination facility:** A licensed health facility, emergency medical facility, primary care center, or a child advocacy center or rape crisis

Subject: Sexual Assault Investigations	Page 2 of 9
Effective Date: July 1997	Revision Date: December 2017
Amends/Supercedes: 1500.60/ November 2011	Approved by: Chief Kevin Higdon
Meets Accreditation Standard:	

center that is regulated by the Cabinet for Health and Family Services, and that provides sexual assault examinations under **KRS 216B.400**. Every hospital of this state which offers emergency services shall provide SAFE Exams. KRS 216B.400.

- F. **Victim advocate:** A rape crisis center advocate's priority is addressing the victim's full range of needs. Advocates assist with the victim's emotional, physical, psychological, economic, and spiritual needs. The advocate can work collaboratively with the investigator on behalf of the victim and acts as a liaison among sexual assault response agencies to identify and facilitate access to services.

STATUTORY PROVISIONS (SUMMARY OF PERTINENT KRS & KAR)

KRS 15.440, sexual assault investigation policy shall include the following requirements:

1. Evidence collected as a result of an examination performed under KRS 216B.400 is required to be taken into custody within five (5) days of notice from the collecting facility, with the consent of the victim. A victim may consent to having a kit collected, but **not** consent to report the assault to law enforcement. These are called non-reporting kits and are not required to be collected by law enforcement and sent to the lab.
2. Evidence received from a collecting facility relating to an incident which occurred outside the jurisdiction of the department shall be transmitted to a department with jurisdiction within ten (10) days of receipt by the department.
3. Evidence retrieved from a collecting facility shall be transmitted to the Kentucky State Police Forensic Laboratory within thirty (30) days of its receipt by the department.
4. A suspect standard, if available, shall be transmitted to the Kentucky State Police Forensic Laboratory with the evidence received from the collecting facility.
5. A process for notifying victims from whom evidence was collected of the progress of testing, whether testing resulted in a match to other DNA samples, and if the evidence is to be destroyed. The notice may be delayed until a suspect is apprehended or the office of the Commonwealth's attorney consents to the notification. Disclosure of the suspect's identity is not required.

KRS 17.175 (3)(a)

The department shall analyze and classify all sexual assault evidence collection kits it receives.

KRS 216B.400

(7) A minor may consent to an examination. Consent of the parents or guardians of the minor is not required for an examination. Hospital

Subject: Sexual Assault Investigations	Page 3 of 9
Effective Date: July 1997	Revision Date: December 2017
Amends/Supercedes: 1500.60/ November 2011	Approved by: Chief Kevin Higdon
Meets Accreditation Standard:	

personnel will not perform a SAFE Exam on a minor without the consent of the minor.

(9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, the pharmacist, the health department, the sexual assault nurse examiner, other qualified medical professional, the victim's insurance carrier, or the Commonwealth.

(10) (a) Each victim shall have the right to determine whether a report or other notification shall be made to law enforcement. No victim shall be denied an examination because the victim chooses not to file a police report, cooperate with law enforcement, or otherwise participate in the criminal justice system.

502 KAR 12:010

Section 2(2)(b)(1) The examination facility shall not contact law enforcement or release any information to law enforcement without the victim's authorization.

502 KAR 20:020 Detection of Deception Examiners

Section 4 (2) An examination shall not be requested, required, or conducted of a sex crime victim as a condition for proceeding with the investigation of the crime.

920 KAR 2:010 & 502 KAR 12:010 Mandatory Notification to Regional Rape Crisis Center

Hospital personnel will notify the Regional Rape Crisis Center that a victim has requested a SAFE exam and request that an advocate be dispatched.

Title VI of the Civil Rights Act of 1964

Victims with limited English proficiency, or who have difficulty reading, writing, speaking, or understanding English, have the right to a competent interpreter at no cost. In no circumstance, should a friend or family member be used to interpret, similarly, victims with a disability should be provided an interpreter or appropriate accommodation to ensure that they have no barriers to reporting a sexual assault.

KRS 431.600

Coordinate child sexual abuse investigations according to KRS 431.600. A referral to a regional Children's Advocacy Center may be appropriate if the victim is under 18 years of age.

SEXUAL ASSAULT INVESTIGATION

A. Sexual assault investigations shall be conducted in accordance with all agency

Subject: Sexual Assault Investigations	Page 4 of 9
Effective Date: July 1997	Revision Date: December 2017
Amends/Supercedes: 1500.60/ November 2011	Approved by: Chief Kevin Higdon
Meets Accreditation Standard:	

policies including, but not limited to, preliminary investigation, follow-up investigation, and assignment of detective personnel.

1. The investigating officer shall approach the victim in a respectful, non-judgmental manner while maintaining objectivity.
 - a. Individuals respond to trauma in a variety of ways. Victims may display a range of demeanor and emotions from crying and distress, to extremely calm and/or seemingly cheerful.
 - b. Trauma can affect a victim's ability to give a detailed or chronological statement. A person experiencing trauma often will recall and/or disclose information over a period of time as memories are triggered and as trust is established with responders.
 - c. A victim's demeanor or inability to articulate a chronological narrative should not be a determining factor in judging their credibility. Responses to trauma can appear to be contradictory.
 - d. Allowing the victim 2-3 sleep cycles prior to interviewing is recommended.
 2. A sexual assault investigation shall be conducted even when the report by the victim to law enforcement is delayed.
 3. The investigating officer shall advise the victim that a medical examination is recommended for their well-being and may yield evidence of the assault even if the victim has already showered or cleaned themselves.
 - a. Victims have the right to receive a medical forensic examination and have evidence collected even if they do not want to participate in the criminal justice process.
 - b. Submission to a medical examination or sexual assault forensic examination shall not be a condition of continuing the sexual assault investigation.
 4. When the investigating officer suspects that the assault may have been facilitated with drugs or alcohol, the necessity for collection of urine and/or blood samples should be determined as soon as possible. Consent from the victim must be obtained to collect any samples.
 - a. Submission of urine and/or blood samples by the victim shall not be a condition of continuing the sexual assault investigation.
 - b. A victim's voluntary use of alcohol, drugs, or illegal substances shall not be a determining factor in whether or not a sexual assault was perpetrated.
 5. The investigating officer and polygraph examiner shall not request or require any victim to submit to a polygraph examination as a condition of proceeding with the investigation.
- B. The investigating officer shall offer victim assistance and support. If requested by the victim, the officer shall facilitate or provide the following:
1. Contacting a support person of the victim's choice.
 2. Contacting a victim advocate on the victim's behalf as soon as possible.
 3. Arranging transportation to a safe place, if necessary.
 4. Advise the victim what to do if the suspect or the suspect's companions or family threatens or otherwise intimidates the victim.
 5. Inform the victim of subsequent steps in the processing of the case.
 6. Provide a telephone number so that the victim may call to report additional

Subject: Sexual Assault Investigations	Page 5 of 9
Effective Date: July 1997	Revision Date: December 2017
Amends/Supercedes: 1500.60/ November 2011	Approved by: Chief Kevin Higdon
Meets Accreditation Standard:	

information about the case, additional injuries that have appeared, or to receive information about the status of the case.

7. Ensure the confidentiality of the victim and their role in case development.
8. Provide a copy or inform the victim how to obtain a copy of the Kentucky Crime Victims' Bill of Rights handbook, or an equivalent resource.
9. Agency personnel shall provide appropriate assistance to victims who have been threatened or who express specific, credible reasons for fearing intimidation or further victimization. Assistance may include, but is not limited to, the following:
 - a. Advising the victim of available legal remedies and assist the victim in accessing those legal remedies (i.e. protective orders or warrants).
 - b. Discussing alternative safety plans with the potential victim.
 - c. Contacting the Office of the Attorney General, **KRS 15.247**, who is responsible for developing and administering a program for the protection of crime victims, witnesses and their families.

PRELIMINARY INVESTIGATION

- A. When responding to a reported sexual assault, officers shall begin a preliminary investigation to include the following:
 1. Responding to immediate needs – rendering aid to the injured, by noting such facts as the position of victims or injured subjects, listening for spontaneous statements, and observing any unusual actions or activities;
 2. Determining that a crime has been committed;
 3. Initiating enforcement action – arresting or pursuing the offender (if applicable) and/or communicating apprehension information;
 4. Conducting a thorough search of the crime scene. This may require securing and limiting access to the crime scene and protecting all evidence, especially short-lived evidence (impressions in sand or mud, etc.);
 5. Assessing and advising supervisor(s) of the situation and determining the need for investigative personnel;
 6. Initiating an investigation – collecting and preserving evidence, photographing the scene and evidence, checking for fingerprints, sketching the crime scene, and describing in detail all stolen property;
 7. Interviewing victim(s), witness(es), and suspect(s), and identifying and describing the suspect(s);
 - a. The victim should be interviewed in a location that is convenient, accessible, and comfortable when possible.
 8. Canvassing the area;
 9. Compiling a thorough and accurate report of on-the-scene activities and completing all documents.
- B. A supervisor shall determine if a detective shall be sent to the scene. If that supervisor is a uniformed supervisor, that supervisor shall contact the appropriate detective supervisor who shall make the decision on the assignment of detective

Subject: Sexual Assault Investigations	Page 6 of 9
Effective Date: July 1997	Revision Date: December 2017
Amends/Supercedes: 1500.60/ November 2011	Approved by: Chief Kevin Higdon
Meets Accreditation Standard:	

personnel to the investigation.

- C. If a detective is dispatched to the scene and does not adopt the case but does provide assistance, then that detective shall supplement the case. If the detective adopts the case, the assisting officer shall supplement the case.

FOLLOW-UP INVESTIGATION

- A. The officer who adopts the case shall be responsible for the follow-up investigation and ensure all appropriate documents are included in the case report.
- B. A mandatory follow-up contact with the victim is required within 30 days of opening the case.
- C. The following activities are intended as a guide to ensure the investigation is complete and ready for prosecution:
1. Review and analyze all previous reports prepared in the preliminary phase, including agency records, and results from laboratory examinations;
 2. Conduct additional interviews;
 - b. When conducting follow-up interviews with the victim, contact the rape crisis center's victim advocate and allow the advocate to be present during the interview.
 - c. When possible, conduct victim interviews in a location that is convenient, accessible and comfortable for the victim.
 - d. Confirm or update the victim's current contact information.
 3. Seek additional information (from officers, witnesses, victims, informants);
 4. Plan, organize, conduct searches, and collect physical evidence;
 - a. Re-photograph injuries to document changes since the preliminary interview.
 5. Identify and apprehend suspects;
 6. Determine involvement of suspects in other crimes;
 7. Check suspect's criminal history;
 8. Prepare case for court prosecution.

SEXUAL ASSAULT FORENSIC EVIDENCE

- A. If a sexual assault forensic examination of the victim is warranted, the investigating officer shall explain the examination and its importance to the investigation.
1. Inform the victim that the sexual assault examination and evidence collection cannot be billed to them.
 2. Inquire whether the victim will consent to a forensic examination.
 - a. Inform the victim of their right to refuse any or all parts of the examination and explain how refusal to consent to the examination will affect the investigation.
 - b. Encourage a victim who refuses a forensic examination to seek medical

Subject: Sexual Assault Investigations	Page 7 of 9
Effective Date: July 1997	Revision Date: December 2017
Amends/Supercedes: 1500.60/ November 2011	Approved by: Chief Kevin Higdon
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- attention including testing for pregnancy and sexually transmitted disease.
- c. When the victim initially chooses not to submit to a forensic examination but subsequently does seek the examination, the investigating agency shall retrieve any collected evidence within five (5) days of notification by the collecting facility. **KRS 15.440**
3. Inform a victim advocate that a sexual assault forensic examination is to be conducted.
 4. A victim advocate or support person of the victim's choice may be allowed to be present during the examination.
 5. Transport the victim to a SANE-ready hospital. If a SANE-ready hospital is not available, transport the victim to the closest sexual assault examination facility or Hospital Emergency Department.
 6. Coordinate with the medical examiner to photograph injuries to genitalia or sensitive body parts with the consent of the victim, if needed.
 7. The investigating officer shall interview the medical examiner and document the interview in a case supplement report.
 8. The investigating officer shall receive the completed SAFE kit, and any other physical evidence collected during the examination. Coordinate with the medical examiner if photographic evidence is required. All evidence shall be identified, submitted for testing, stored, and retained according to the Kentucky State Police Forensic Laboratory *Physical Evidence Collection Guide* and agency evidence collection and storage policies.
- B. When the investigation identifies a suspect, the investigating officer shall attempt to collect a suspect DNA reference standard. A sexual assault forensic examination may be included.
1. If the suspect consents to submission of DNA evidence, the suspect's consent shall be documented in the case report.
 2. If the suspect refuses consent to submit DNA evidence, a search warrant may be required to collect the DNA reference standard.
 3. When a sexual assault forensic examination is performed on a suspect who is in custody, the investigating officer shall advise the suspect of his/her rights as required by the Miranda decision prior to his/her being asked any questions by the medical examiner.
 4. The investigating officer shall interview the medical examiner and document the interview in a case supplement report.
 5. The methods used to obtain the suspect DNA evidence shall be documented in the case report.
 6. The suspect's DNA evidence shall be collected, submitted for testing, stored, and retained according to the Kentucky State Police Forensic Laboratory *Physical Evidence Collection Guide* and agency evidence collection and storage policies.
- C. When notified by a medical facility that a sexual assault forensic evidence kit has been completed and the victim chooses to report the crime to law enforcement, an

Subject: Sexual Assault Investigations	Page 8 of 9
Effective Date: July 1997	Revision Date: December 2017
Amends/Supercedes: 1500.60/ November 2011	Approved by: Chief Kevin Higdon
Meets Accreditation Standard:	

investigating officer shall retrieve the kit within five (5) days. An investigation shall proceed according to this policy. **KRS 15.440**

- D. All sexual assault forensic evidence (SAFE) kits shall be submitted to the forensic laboratory for testing within thirty (30) days of receipt. **KRS 15.440**
1. Other associated evidence with potential DNA evidence should not be submitted to the lab initially. If testing the kit does not generate a DNA profile of the suspect, other items may be submitted for analysis.
- E. In sexual assault cases where suspect DNA evidence has been collected, the suspect DNA evidence shall be transmitted to the forensic laboratory at the same time as the victim's sexual assault forensic evidence or within thirty (30) days of collection, whichever is sooner. **KRS 15.440**
- F. All SAFE kits shall be submitted to the Kentucky State Police Central Laboratory Branch, Forensic Biology Section within 30 days of their receipt and in accordance with **KRS 17.175** and agency evidence collection and submission policies.
- G. In accordance with **KRS 15.440**, SAFE kits received from a collecting facility relating to an incident which occurred outside the jurisdiction of the agency shall be transmitted to a department with jurisdiction within ten (10) days of its receipt by the agency. A unique case number shall be obtained and a KSP-41 shall be completed for these SAFE kits per agency evidence collection policy.
- H. Retention of biological evidence shall be in accordance with **KRS 524.140**.
1. After laboratory testing has been completed, remaining biological evidence including sexual assault forensic evidence kits and associated evidence shall be transferred back to the originating evidence room.
 - a. Biological evidence, including sexual assault evidence, in any Class A, B, C, felony or Class D felony under KRS Chapter 510 shall not be destroyed prior to a trial unless:
 - i. It has been in custody for fifty (50) years; or
 - ii. It has been in custody for at least ten (10) years; and
 - (a) the prosecution has determined the defendant will not be tried; and
 - (b) the prosecution has made a motion before the court to destroy the evidence.
 - b. Biological evidence, including sexual assault evidence, in any Class A, B, C, felony or Class D felony under KRS Chapter 510 shall not be destroyed following a trial unless:
 - i. The evidence was DNA tested and presented at trial; and the suspect was found guilty, pled guilty, or entered an Alford plea; or
 - ii. The evidence was presented at trial but DNA testing was not completed and the suspect was found guilty, pled guilty, or entered an Alford plea and the court has ordered the destruction of the evidence; or
 - iii. The court has ordered the destruction of the evidence, regardless of

Subject: Sexual Assault Investigations	Page 9 of 9
Effective Date: July 1997	Revision Date: December 2017
Amends/Supercedes: 1500.60/ November 2011	Approved by: Chief Kevin Higdon
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- whether it was tested or presented at trial; or
- iv. The trial resulted in the defendant being found not guilty or the charges were dismissed with jeopardy attached and the trial court ordered the destruction of the evidence; or
 - c. When the trial results in a dismissal of charges against the defendant, subject to retrial, the evidence shall be retained until after the retrial, subject to the provisions of (1)(a), above.
 - d. In the absence of a destruction order by the court, the evidence shall be retained for the period of time that any person remains incarcerated in connection with that criminal case. **KRS 524.140(3),(7)**

DNA EVIDENCE STATUS REPORTING

- A. The investigating officer shall notify the victim of the progress of DNA evidence testing including whether the testing resulted in a match to other DNA samples. **KRS 15.440**
- B. It is recommended that a victim advocate be present during the notification.
 - 1. Upon receipt of the results of DNA evidence testing, the investigating officer shall confer with a victim advocate prior to notifying the victim of the results.
 - 2. When a suspect is identified, notification may be delayed until the suspect is apprehended if the safety of the victim is of concern or if the office of the Commonwealth's Attorney consents to the delay.
 - 3. If a DNA match is made to a known person, the person's identity need not be disclosed to the victim.
 - 4. These provisions shall apply regardless of the time elapsed between evidence collection, test results, and DNA matching.
- C. DNA evidence shall be retained pursuant to **KRS 17.175** and agency policy for evidence storage and retention.