

## Analysis of Cuyahoga County's Procedures for Alleviating the Backlog of Sexual Assault Kits

### The Cuyahoga County Sexual Assault Kit (SAK) Task Force Describing the Process of Testing, Investigating, and Prosecuting Unsubmitted SAKs

March 2016

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#### Impetus of the Cuyahoga County SAK Task Force

On October 31, 2009, the City of Cleveland Division of Police (hereafter referred to as the CPD) discovered the remains of eleven women in the home of serial killer Anthony Sowell. The proceeding investigation into the women's murders revealed that the CPD failed to follow up on several missing person and sexual assault reports that could have possibly prevented the murder of several women by Sowell. As a result, the City of Cleveland began to review its policies and procedures for investigating missing person and sexual assault cases. This review and the resulting report was the precursor for the Sexual Assault Kit (SAK) Task Force in Cuyahoga County (Beasley, Bounds, and O'Bryan 2010).

#### Inventory of Sexual Assault Kits in Cuyahoga County

As was the CPD's policy at the time, SAKs were frequently not submitted for testing at the time of collection and for those that were submitted, not all were tested by the forensic laboratory. In 2002, the CPD received a small amount of funding as part of a statewide initiative to inventory and submit unsubmitted ("backlogged") SAKs but was unable to complete the collection and submission of all the unsubmitted SAKs through this project. Thus, the CPD continued to possess an unknown number of unsubmitted and/or untested SAKs.

In 2009, the CPD began a hand count of SAKs in their possession to determine which had been submitted and/or forensically tested. By early-2010, the CPD decided to submit all new SAKs for testing and began cataloging older, unsubmitted SAKs. By mid-2011, the CPD began submitting its backlog of untested SAKs in small batches to the state crime lab, the Bureau of Criminal Investigation (BCI), for testing.

In December 2011, Ohio Attorney General Mike DeWine invited all Ohio law enforcement agencies to submit previously unsubmitted SAKs to the BCI to be tested at no charge to local jurisdictions.

In early 2013, Cuyahoga County Prosecutor Timothy McGinty organized a multidisciplinary team now known as the Cuyahoga County SAK Task Force (Task Force) to address the collection and testing of unsubmitted SAKs along with the subsequent investigation and prosecution of cases resulting from the testing. The Task Force received its first laboratory report from the BCI on February 14, 2013.

Although the CPD began to inventory their SAKs in mid-2009, the CPD's ability to complete a full inventory remained limited by staffing constraints.

In September 2013, the Cuyahoga County Prosecutors' Office (CCPO) began to work with the CPD to conduct a formal inventory of unsubmitted and/or untested SAKs and provided additional staff to conduct the inventory. The CPD completed inventorying SAKs in June 2014, which resulted in 4,373 unsubmitted and/or untested SAKs being identified for assaults that had been committed between 1993 and 2013.

Prosecutor McGinty and Ohio Attorney General DeWine then separately requested all police departments in their jurisdictions (Cuyahoga County, State of Ohio, respectively) to submit their SAKs for testing. In addition to the 4,373 unsubmitted SAKs identified by the CPD, suburban police departments in Cuyahoga County identified 472 unsubmitted SAKs for a total of 4,845 unsubmitted SAKs in Cuyahoga County.

As of 2015, all 4,845 unsubmitted SAKs from Cuyahoga County had been submitted to the BCI for testing.

*There are four main phases to this process—Testing, Investigation, Prosecution, and Disposition. As a SAK proceeds through the process it (potentially) changes from (1) a SAK, (2) an investigation, (3) a prosecution, and (4) a final disposition.*

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### Description of the Task Force's Testing, Investigation, Prosecution, and Disposition Process

#### Current SAK Submission Practices

In December 2014, Ohio Governor John Kasich signed Senate Bill (SB) 316 into law. SB 316 (effective March 23, 2015) requires law enforcement agencies to submit all old SAKs to the BCI or another crime laboratory within one year and all newly collected SAKs to the BCI or another crime laboratory within 30 days of collection.

SB 316 has spurred the submission of additional SAKs to the BCI. As the deadline for submitting old SAKs under SB 316 approaches, SAKs continue to trickle in. As of February 1, 2016, an additional 29 SAKs (for a total of

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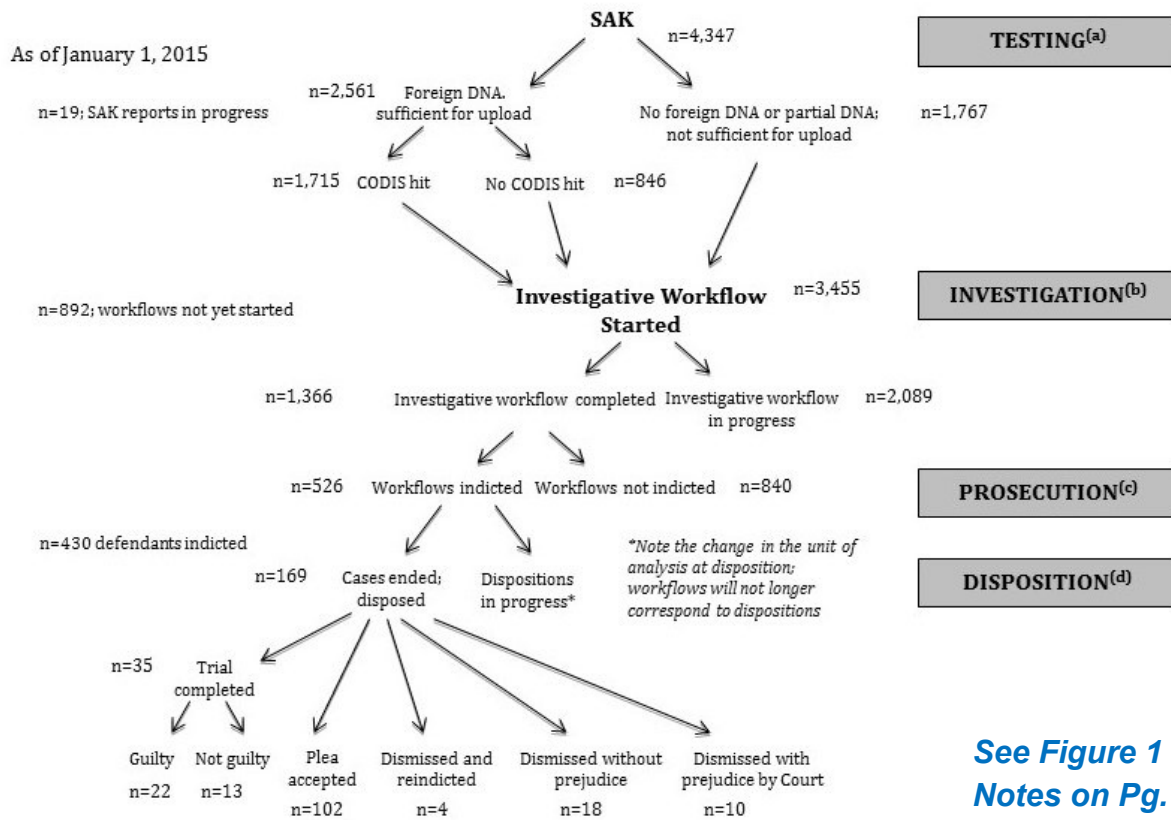
4,874) had been submitted by law enforcement agencies in Cuyahoga County as part of the SAK Task Force.

#### Description of the Task Force's Testing, Investigation, Prosecution, and Disposition Process

Figure 1 details the Task Force processing of an SAK from testing to disposition. There are four main phases to this process—Testing, Investigation, Prosecution, and Disposition. As an SAK proceeds through the process it (potentially) changes from (1) an SAK, (2) to an investigation, (3) to a prosecution, and (4) to a final disposition.

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**Figure 1. Cuyahoga County's Sexual Assault Kit Task Force Testing Process**



See Figure 1  
Notes on Pg. 3

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### Description of the Task Force's Testing, Investigation, Prosecution, and Disposition Process

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#### Testing Phase

The process begins with the forensic testing of the SAKs (see Figure 1 on page 2). Once testing is complete, the BCI creates and submits a DNA laboratory report to the Task Force. The forensic testing yields either a foreign DNA profile that is sufficient for upload into the federal Combined DNA Index System (CODIS) or no foreign DNA or partial DNA that is not sufficient for upload. CODIS is the FBI's program and software for the DNA database to help

in solving criminal investigations where DNA is present. A DNA upload entails adding the unique DNA sequence ("profile") into the CODIS database and searching the database for a match.

If a profile is sufficient for upload, there is either a CODIS hit/match or no CODIS hit/match. For SAKs that produce a CODIS hit, there are two main types of hits:

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#### Figure 1 Notes

##### NOTES:

<sup>(a)</sup>In the Testing phase, an SAK either produces or fails to produce a unique foreign DNA profile sufficient for upload into CODIS. "Foreign" implies not belonging to the victim. "Sufficient for upload" implies having enough of a DNA profile in the sample to upload to the Combined DNA Index System (CODIS), the FBI's program and software of DNA profiles to aid in criminal investigations where DNA is present. A CODIS hit is when the DNA profile matches an existing DNA sample in CODIS. The two types of CODIS hits: (1) *an Offender hit*: DNA profile matches to a named offender already in CODIS and (2) *a Forensic hit*: DNA profile matches to a forensic sample to an unknown offender in CODIS collected at crime scene. A CODIS match can also be a combination of offender and/or forensic hit(s).

<sup>(b)</sup>Once a forensic lab report is submitted, an investigation is opened where a series of tasks ("a workflow") are completed to determine whether to proceed to prosecution. The unit of analysis is now a workflow. *An investigation is completed for each SAK*. In the Task Force, a "John Doe" investigation is when there is a unique DNA profile that is uploaded in CODIS but there is no hit to a named offender in CODIS and the offender cannot be identified by other means. In the Task Force, an "unknown male" investigation is when there is not a unique DNA profile and the offender cannot be identified by other means. *The forensic lab submits reports on all SAKs and all SAKs proceed to the Investigation phase*.

<sup>(c)</sup>Once the workflow is completed, the workflow either leads or fails to lead to an indictment—the Prosecution phase. The reasons why a workflow would fail to lead to indictment are: (1) abated by suspect's death, (2) DNA matches to a consensual partner and not the offender, (3) insufficient evidence, (4) previously disposed, (5) statute of limitations expired prior to Prosecutor's Office receiving case, and (6) victim added to another investigation (e.g., victim added to another investigation for indictment purposes, namely, for serial offenders). *All other workflows lead to indictment*.

<sup>(d)</sup>In the Disposition phase, the unit of analysis is a case, which may or may not include multiple SAKs and/or multiple defendants. At this phase, a workflow will no longer correspond to a disposition. For example, a case might have one defendant and three SAKs. The final disposition of the case might be guilty but on two of the three SAKs. The final disposition of the entire case would still be classified as guilty. A case either proceeds to trial (with the final outcome of the trial either being found guilty or not guilty) or has one of the following outcomes: plea accepted, dismissed and re-indicted, dismissed without prejudice or dismissed with prejudice by the Court.

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### Description of the Task Force's Testing, Investigation, Prosecution, and Disposition Process

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- (1) A CODIS Offender hit: a DNA profile that matches a named offender profile already in CODIS
- (2) A CODIS Forensic hit: a DNA profile that matches to a forensic sample of an unknown offender in CODIS that was collected at a crime scene and/or sample.

A CODIS match could be a combination of both an offender and/or a forensic hit(s), where the DNA profile matches to multiple cases and/or samples. For example, a DNA profile could match to multiple samples that do not have a named offender (multiple forensic hits) or a DNA profile could match a named offender already in CODIS and to a forensic sample without a named offender.

#### Investigation Phase

All SAKs receive a laboratory report and upon receiving the report an investigation is opened by the Task Force. An investigation is completed for each SAK.

Laboratory reports submitted to the Task Force categorize a profile as either belonging to a "known suspect" (i.e., a named individual for whom there is a CODIS hit) or a "John Doe". These categories determine how an offender's information is set up in the CCPO's electronic database, JusticeMatters. Known suspects will have their information included in JusticeMatters when an investigation is opened. "John Does" are all the unknown suspects (e.g., those with no foreign DNA, foreign DNA but not sufficient for CODIS upload, or foreign DNA sufficient for CODIS upload but no hit).

In the Investigation Phase, each SAK and its corresponding report is given a unique identifier by the CCPO (termed a "Matter" ID) and is assigned to a Task Force investigator

who completes a series of specific investigative tasks ("a workflow") to determine whether to proceed to prosecution. These steps include:

- (1) Obtaining and reviewing necessary documents (initial police reports, criminal histories for victim and suspect, [if known], and medical records),
- (2) Attempting to locate victim and suspect (if known), obtaining statements from the victim(s) and suspect(s),
- (3) Creating a photo array, obtaining a buccal swab(s) of the suspect(s) and lab report for the buccal swab(s) (to confirm DNA match),
- (4) Writing an investigative report,
- (5) Submitting the investigative report to the Task Force's lead investigator for review, and
- (6) Meeting with the Task Force's directing prosecutor to discuss the charging decision.

In this Phase, the unit of analysis has changed from an SAK to a workflow.

Workflows in progress ("active") are open investigations—investigators are in the process of completing the (applicable) tasks. Once the (applicable) workflow tasks are completed, the workflow is considered closed ("completed").

#### Prosecution Phase

Workflows that are closed and result in prosecution ("indictment") proceed to the Prosecution Phase.

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During prosecution, workflows are either indicted or not indicted. A workflow is not indicted for the following reasons:

- (1) Abated by suspect(s) death,
- (2) DNA matched to victim's consensual partner and not the offender,
- (3) Insufficient evidence,
- (4) Previously disposed (e.g., case was previously prosecuted without testing the SAK),
- (5) Statute of limitation expired prior to the CCPO receiving the case, and
- (6) Victim added to another investigation (for indictment purposes, namely, for serial offenders).

Workflows that are none of the above, result in prosecution (i.e., initial investigation has been completed and prosecutors with the Task Force decide to indict).

At this Phase, it is common to have several workflows combined and/or split (e.g., serial offenders will have multiple investigative workflows corresponding to each SAK but only one indictment). Thus, an indictment may have

#### REFERENCE

Metcalf, Teresa, Mary Bounds, and Megan O'Bryan. March 2010. "Special Commissions on Missing Persons and Sex Crimes Investigations." Retrieved [http://media.cleveland.com/metro/other/missingpersonsummary\\_book\\_FINAL.pdf](http://media.cleveland.com/metro/other/missingpersonsummary_book_FINAL.pdf)

more than one workflow ("Matter") if there are multiple suspects who committed the assault or if there are multiple DNA profiles collected.

There are three categories of defendants at the Prosecution Phase: (1) "known offenders," (2) "John Does," and (3) "unknown males." "Known offenders" are named defendants.

"John Does" are unnamed defendants with a unique DNA profile that was uploaded into CODIS. "Unknown males" are unnamed defendants without a unique DNA profile identified. Unknown males are included on indictments with known offenders and John Does when the assault was committed by multiple males.

*...it is common to have several workflows combined and/or split (e.g., serial offenders will have multiple investigative workflows corresponding to each SAK but only one indictment). Thus, an indictment may have more than one workflow ("Matter") if there are multiple suspects who committed the assault or if there are multiple DNA profiles collected.*

#### Disposition Phase

Indicted workflows proceed to either a disposed case or a disposition in progress. The unit of analysis is now a disposition, which will no longer correspond to a workflow.

The final types of dispositions for cases are:

- (1) Guilty,
- (2) Not guilty,
- (3) Plea accepted,
- (4) Dismissed and re-indicted,
- (5) Dismissed with prejudice by the Court, and
- (6) Dismissed without prejudice (cases can be dismissed without prejudice: by the Court, by the Prosecutor, or abated by death of the defendant).