

Without a doubt, DNA is some of the strongest evidence in any sexual assault case. However, in such a case DNA can still be direct or circumstantial depending on the circumstances. In cases of child sexual assault, it is often direct evidence. Sex with children is always illegal and recovering a suspect's DNA from a child's body can be direct evidence of an assault. In adult cases, the same is valuable but circumstantial. DNA may prove that sex or contact occurred, but not a lack of consent.

Either way, evidence helps establish facts in a case. Establishing facts makes for a stronger investigation and prosecution. Most investigators are familiar with the statutory requirement and investigative necessity for conducting a SAFE (Sexual Assault Forensic Exam) on a victim. SAFE exams, particularly those conducted within 120 hours of an alleged sexual assault are the best opportunity to recover DNA evidence from a victim if any exists.

Do you think about collecting DNA from suspects though? Just as a suspect's DNA on or in a victim's body can be critical, the victim's DNA on a suspect's body can be as well. This can be an uncomfortable conversation to have sometimes. However, as an investigator, it's your job to determine the facts and get the evidence.

If the assault is reported immediately or uncovered in progress, there is no reason an investigator shouldn't try and collect such evidence. In the case of a male perpetrated assault, this means swabs of the suspect's penis, fingers, and mouth. These should ideally be obtained with consent or a search warrant. However, DNA evidence on the outside of a suspect's penis (or hands) is incredibly volatile and the courts have recognized that. In *Ontiveros v. State* ([LINK](#)) the Texas Court of Criminal Appeals found that there were circumstances where a penile swab could be obtained in an exigency when a suspect was apprehended immediately after an

assault. A good rule of thumb would be to obtain a search warrant for the swab later. You should consult your prosecutor, but you should attempt to collect the evidence.

Another issue is search warrant language, especially when obtaining a suspect sample for DNA comparison. The easiest method to obtain this is through a buccal swab. A cotton swab is rubbed on the inside of the suspect's cheeks. DNA containing buccal cells are deposited on the swabs. But what if the suspect says no? No one would expect an investigator or evidence technician to force a person's mouth open. When presenting an affidavit for a search warrant, make sure to request a "DNA specimen by saliva and/or blood". This way if the suspect refuses a qualified professional can draw a blood sample. Also, for a comparative or evidentiary sample, all legal processes should contain the verbiage, "...by force if necessary."

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