

Fact Sheet

Stein has Prioritized Testing Sexual Assault Kits

- In March 2017, three months into his first term as Attorney General, Josh Stein addressed the NC Conference of District Attorneys and asked for their help in testing sexual assault kits located in local law enforcement jurisdictions across the state.
- In May 2017, NC Conference of District Attorneys Executive Director Peg Dorer [emailed](#) each district attorney: *“You may recall, at our recent conference, the AG and the State Crime Lab Director asked for your assistance in trying to determine the number of untested sexual assault kits that remain in law enforcement agencies around the state. The purpose is to make efficient use of existing testing resources to test these kits. You all committed to assist with this project.”*
- In June 2017, the legislature, in coordination with NCDOJ, passed a law to require each law enforcement agency to report their number of untested sexual assault kits to the State Crime Lab.
- In February 2018, Stein announced the results of the statewide sexual assault kit inventory that found there were 15,160 untested sexual assault kits across North Carolina in the custody of local law enforcement agencies. This included 1,509 untested kits in Forsyth county.
- In June 2018, Stein obtained legislative approval to implement a sexual assault kit tracking system that allowed sexual assault survivors and law enforcement to see in real time where any individual kit was located. Stein also worked with the legislature to authorize the creation of a working group to determine how best to test the kits. The legislature failed to fund any outsourcing of old kits at this time.
- In October 2018, Stein launched a new statewide [sexual assault kit tracking system](#) that barcodes all new sexual assault kits. Survivors and actors in the criminal justice system can now track these kits, in real time, increasing transparency and accountability.
- Also in October 2018, Stein announced \$2 million in grant funding from the US DOJ’s Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI) to test untested kits.
- In January 2019, Stein and the State Crime Lab contracted with a private DNA lab and worked with local law enforcement agencies to begin sending old kits for testing. Stein also worked with legislators to unveil the Standing Up for Rape Victims Act, or SURVIVOR Act, to mandate testing of older kits and prevent future backlogs.
- Since that time, Stein has worked closely with District Attorneys, Sheriffs, Chiefs of Police, and the legislature to test these kits.
- As a result:
 - 80 percent of the older sexual assault kits that are appropriate for testing are either tested (6,640) or in the process of being tested (3,440).
 - DNA samples from 2,287 tested kits have been entered into the CODIS database.
 - 954 of those samples have resulted in a hit that may help law enforcement further investigations and solve cold cases.

- 66 arrests have been made by law enforcement officials related to 91 sexual assaults.

O'Neill Misled Voters About Stein's Record

- In October 2019, Forsyth County District Attorney Jim O'Neill claimed on Twitter (tweet now deleted) "...Stein has stood on the sidelines for almost his entire term while more than 15,000 untested rape kits have sat on the shelves of the lab that Stein is responsible for, collecting dust."
 - Then-News & Observer reporter Lauren Horsch [responds](#) to correct O'Neill's assertion. "Well this is false. Literally one of Stein's top priorities since the NCGA-mandated rape kit audit found those 15,000 untested kits has been testing them." "And those particular kits weren't even at the state crime lab. Those kits were found to be on the shelves of local law enforcement agencies."
 - MediaHub at UNC also [fact-checked](#) O'Neill's claim, stating "Stein has not 'stood on the sidelines' of the issue, and there are not '15,000 untested rape kits' sitting on the shelves at 'the lab that Stein is responsible for.'" The fact check concluded that O'Neill's claims about Stein's record on the rape kit backlog were "misleading at best and false at worst."
- December 2019 in the [North State Journal](#), O'Neill stated "When I look at the 15,000 sexual assault kits sitting up on the shelves in Raleigh, and our current attorney general not making that a priority until three and a half years into his four-year term, it just makes me mad as fire."
- In a January 2020 interview on [WRAL](#), O'Neill said "The only time that the rape kits became important to Attorney General Josh Stein was when I came out in January and announced I was running against him, because I was tired of 15,000 untested rape kits sitting up on the shelves collecting dust."
- In February 2020 O'Neill told the [Smoky Mountain News](#), "In January, when I announced, I had had enough of the thought of 15,000 rape kits sitting up on the shelves at the lab that (Stein's) responsible for and he's done absolutely nothing about."
- O'Neill continued to mislead voters about Stein's record with similar statements throughout the 2020 election.

Stein Set the Record Straight

- In September 2020, Stein's campaign aired an ad titled 'Survivor' to [correct the record](#) and make clear Stein's commitment to testing kits. The ad contrasted Stein's action with O'Neill's inaction and noted the more than 1,500 untested sexual assault kits in Forsyth County where O'Neill had been district attorney since 2009.
- In the ad, a survivor of sexual assault states "...when I learned that Jim O'Neill left fifteen hundred rape kits sitting on a shelf, leaving rapists on the streets, I had to speak out. Jim O'Neill cannot be our attorney general."
- Before the ad was aired, a third-party research firm specialized in evaluating the accuracy of political ads confirmed that "Survivor" was accurate.
- Two separate [media outlets](#) later fact-checked the ad, and neither concluded the ad was false. In fact, one quoted another district attorney "on the condition of anonymity," who stated that while local law enforcement was typically responsible for having rape kits tested that "doesn't leave the DA in that jurisdiction entirely blameless."

O'Neill's Record and Statutory Duty

- The 2017 inventory of untested sexual assault kits (published in February 2018), found 1,509 untested kits in Forsyth county, O'Neill's prosecutorial district.
 - ["2017 Sexual Assault Evidence Collection Kit Law Enforcement Inventory Report," North Carolina State Crime Laboratory, NC Dept. of Justice, 3/01/2018: Appendix 1: Audit Responses by Agency](#)

Agency Name	Total # Kits
Forsyth County Sheriff's Office	96
Winston-Salem Police Department	1,339
Kernersville Police Department	65
Forsyth Technical Community College	0
Wake Forest University	7
University of North Carolina School of the Arts	2
TOTAL	1,509

- Forsyth County District Attorney [Jim O'Neill's official website](#) describes his "primary responsibility" to "advise local law enforcement."
- Most importantly, the [North Carolina Constitution, in Article IV Section 18](#), states: "The District Attorney shall advise the officers of justice in his district..."
- O'Neill also declared that ending the backlog was his top priority yet he failed to get these kits tested.

O'Neill Complained

- On September 29, 2020, O'Neill filed a complaint with the State Board of Elections about the 'Survivor' ad. He asked that Attorney General Stein and his campaign committee be investigated under N.C. Gen. Stat. § 163-274(a)(9) in connection with a statement made in a television advertisement by a sexual assault survivor who spoke out when she learned that O'Neill "left fifteen hundred rape kits sitting on a shelf."

Stein's Campaign Takes a Stand

- On July 21, 2022, Stein's campaign, commercial production company, and a volunteer who is a survivor of sexual assault [filed a declaratory judgment action](#) to ask the U.S. District Court for the Middle District of North Carolina to strike down [North Carolina General Statute § 163-274\(a\)\(9\)](#).
- The statute has been codified for nearly 100 years, but has never been the subject of a reported indictment or charge against any individual or political campaign, likely because it is so clearly unconstitutional.
- This law is unconstitutional because it infringes on the freedom of speech protected under the First Amendment to the Constitution.
- The speech involved in this situation - concerning a political candidate during an election - is core political speech that is the most protected under the First Amendment.
- In 2016, a federal appellate court struck down a nearly identical statute in Ohio. In recent years, other courts have declared unconstitutional similar laws in Minnesota, Massachusetts, and Washington.
- Former North Carolina Supreme Court Justice Bob Orr [released a statement](#) agreeing that the law is unconstitutional.
- Constitutional law expert Michael Gerhardt [filed a declaration](#) with the District Court, outlining the ways in which the law is unconstitutional.
- Stein's campaign team has fully cooperated with this baseless investigation, but the time has come to move forward from this distraction.
- That is why the Stein Campaign and others are asking the court to strike down this unconstitutional law.

Other Notable Information:

["NC attorney general to rapists: 'We are coming for you'", Kate Martin, Carolina Public Press, 1/30/2019:](#)

["NC attorney general works to get thousands of untested rape kits processed," Caroline Bunkard, WECT, 5/01/2019:](#)

["New law requires testing of all rape kits," Matt Moore, WYFF, 9/19/2019:](#)

["Stein: The Survivor Act Will Put Rapists Behind Bars," Press Release, Office of the North Carolina Attorney General, 9/19/2019:](#)

[Nearly 300 sexual assault kits sent for testing; arrest made in 29-year-old cold case](#)

[Rape Kit Test Leads to Arrest of 71-Year-Old Man in 1993 Assault](#)

["2 charged in Fayetteville cold case after rape kit tested 30 years later," WTVD, 4/24/2020:](#)

["COLD CASE BREAKTHROUGH: Testing of rape kit leads to DNA match, arrest in 1996 sexual assault," WECT, 6/10/2019:](#)

["24 years after a teen was raped near uptown Charlotte, DNA leads to an arrest," Joe Marusak, Charlotte Observer, 4/17/2019:](#)