



End Violence Against Women International
(EVAWI)

Untested Evidence and the Investigation of Cold Sexual Assault Cases

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June 2017
Updated June 2022

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OnLine Training Institute

This module is part of EVAWI's OnLine Training Institute (OLTI), which includes review exercises, practical applications, and an end-of-course test. Participants can also download a personalized certificate of completion to use for continuing education or other purposes. For more information, please see the [EVAWI website](#).

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Recommended Citation

Lonsway, K. A., Archambault, J. & Dissell R., (2022). *Untested Evidence and the Investigation of Cold Sexual Assault Cases*. End Violence Against Women International.

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Sgt. Joanne Archambault (Retired, San Diego Police Department) is the Founder and Chief Executive Officer for End Violence Against Women International (EVAWI). Prior to founding EVAWI, Sgt. Archambault worked for the San Diego Police Department for over 22 years, in a wide variety of assignments. During the last 10 years of her service, she supervised the Sex Crimes Unit, which investigated approximately 1,000 felony sexual assaults each year. Under her leadership, the San Diego Police Department's Sex Crimes Unit was recognized for pioneering research, groundbreaking victim-centered practices, and multidisciplinary collaboration that changed law enforcement responses to sexual assault across the nation. She also established and operated a highly successful for-profit training and consulting business for 22 years, providing expert guidance to hundreds of police departments and allied agencies, and training tens of thousands of practitioners.



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Acknowledgements

We are extremely grateful to the following individuals (listed in alphabetical order) for their valuable contributions to the development of this training module:

- AEquitas: The Prosecutor's Resource on Violence Against Women, Washington, DC
- Richard A. Bell, JD, Special Investigations Division Chief, Assistant Prosecuting Attorney, Cuyahoga County Prosecutor's Office, Cleveland, OH.
- Rebecca Campbell, PhD, Professor, Michigan State University, East Lansing, MI; Lead researcher for the National Institute of Justice-funded Detroit Sexual Assault Kit Action Research Project.
- Sergeant Mike Davis, Vancouver Police Department, Vancouver, WA.
- Sergeant Liz Donegan (Ret.), Austin Police Department, Austin, TX.
- Mary DuFour Morrow, Project Director, Michigan Sexual Assault Kit Initiative, Prosecuting Attorneys Association of Michigan, Lansing, MI.
- Diana Faugno, MSN, RN, CPN, SANE-A, SANE-P, FAFS, DF-IAFN, Forensic Registered Nurse Consultant, Dallas, GA.
- Linda Ledray, RN, PhD, SANE-A, FAAN, Founder and Director of the SANE-SART Resource Service (SSRS), Minneapolis, MN.
- Rachel Lovell, Ph.D., Lead Researcher, Begun Center for Violence Prevention Research and Education at Case Western Reserve University; Co-Lead Researcher on the Cuyahoga County Sexual Assault Kit Research Study, Cleveland, OH.
- Detective Sergeant Jim Markey (Retired), Phoenix Police Department, Phoenix, AZ.
- Julie Renfroe, Assistant Laboratory Director, Richmond Crime Lab, Richmond, CA.
- Rana Sampson, Problem-Oriented Policing Consultant, San Diego, CA.
- Patricia M. Speck, DNSc, CRNP, APN, FNP-BC, DF-IAFN, FAFS, FAAN. Professor, Department of Family, Community and Health Systems, University of Alabama at Birmingham School of Nursing, Birmingham, AL.
- Russell W. Strand, Special Agent (Retired, U.S. Army Criminal Investigation Command), Partner, Strand & Heitman Innovative Forensic Techniques (SHIFT) LLC, Rolla, MO.
- Sergeant Judith Weber (Retired, San Diego Police Department); Adjunct Professor, Alliant International University, San Diego CA.



Course Objectives

At the end of this training module, the learner will be better able to:

- Describe the evolution of thinking on the problem first described as a “rape kit backlog,” and now understood as untested evidence in sexual assault cases.
- Apply the SARA model to a recurrent problem, such as untested kits and other associated evidence in cold sexual assault cases.
- Explain issues underlying the problem of untested evidence in sexual assault cases.
- Formulate a plan to respond to the issue of untested evidence in sexual assault cases.
- Consider the challenges associated with conducting an inventory of untested kits and other associated evidence in sexual assault cases.
- Design a strategy for submitting previously untested evidence to the crime laboratory, as well as prioritizing cases for testing and investigative follow-up.
- Develop a policy that is reflective of the Department of Justice’s position regarding testing evidence without victim consent.
- Prepare for the investigation of cases associated with untested evidence, and secure sufficient resources to pursue prosecution or exoneration where appropriate.
- Consider creating a specialized unit to investigate and prosecute cold sexual assault cases.
- Explore the development of a computerized tracking system to record the status, progress, and outcomes of sexual assault cases and their associated evidence.
- Determine a manageable caseload for investigators and prosecutors, and ensure that specialized training and strong supervision are available to be successful.
- Develop a plan to educate the community about these complex issues.
- Create a protocol to notify victims when a case is selected for renewed investigation.
- Follow best practice recommendations for investigating sexual assault.

Introduction

In July 2015, *USA Today* published the results of an “exclusive nationwide count,” which indicated that hundreds of thousands of sexual assault kits and associated evidence were being stored by law enforcement without ever being submitted for analysis.¹ Each kit was seen as a missed opportunity for justice – another survivor failed by the system, another rapist free to re-perpetrate. The article opens with the story of Joanie Scheske, whose rapist was identified 18 years following her sexual assault, when evidence in another case was finally tested. That evidence remained in police storage for eight years, and Scheske could not understand why:

I had a really difficult time wrapping my head around why that rape kit was never tested. My case is a poster child as to why you test these kits.

Scheske is not alone. Many have a difficult time understanding this problem, both because of the complexity of the issues as well as the sheer scale of the numbers.

The Problem of “Untested Kits”

This article capped off 16 years of media coverage on this issue, which began in 1999 and grew as journalists revealed that city after city faced the same problem. As many as 17,000 sexual assault evidence kits were being stored without testing in New York City² ... another 12,669 in Los Angeles County³ ... 8,717 in Detroit⁴ ... 6,663 in Houston⁵ ... more than



Photo Credit: www.cleveland.com

¹ To quote the article: “In the most detailed nationwide inventory of untested rape kits ever, *USA TODAY* and journalists from more than 75 Gannett newspapers and TEGNA TV stations have found at least 70,000 neglected kits in an open-records campaign covering 1,000-plus police agencies – and counting. Despite its scope, the agency-by-agency count covers a fraction of the nation’s 18,000 police departments, suggesting the number of untested rape kits reaches into the hundreds of thousands.” See [“Tens of thousands of rape kits go untested across USA: Exclusive nationwide count by USA Today reveals abandoned rape evidence.”](#) By Steve Reilly, *USA Today*, July 16, 2015.

² Martha Bashford, Chief, Sex Crimes Unit, New York District Attorney’s Office. In a presentation entitled, “How New York City Tackled its DNA Backlog,” given at the *International Conference on Sexual Assault, Domestic Violence, and Stalking* hosted by EVAWI in San Diego, CA, April 4, 2012.

³ Human Rights Watch (2009). [Testing Justice: The Rape Kit Backlog in Los Angeles City and County](#). New York, NY: Human Rights Watch.

⁴ Campbell, R., Fehler-Cabral, G., Pierce, S.J., Sharma, D.B., Bybee, D., Shaw, J., Horsford, S. & Feeney, H. (2015). *The Detroit Sexual Assault Kit (SAK) Action Research Project (ARP), Final Report*. Washington, DC: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice (NCJ 248680).

⁵ Ritter, N. (2016). [Down the Road: Testing Evidence in Sexual Assaults](#). Washington, DC: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice (NCJ 249805).

12,000 in Memphis⁶ ... and nearly 5,000 in Cleveland.⁷ Even smaller cities like Amarillo, Texas⁸ were found to have approximately 1,000 untested kits in storage, and Davenport, Iowa had another 600 or so (Campbell et al, 2015).⁹

In other words, media outlets raised alarm in numerous communities, where the problem was essentially the same: hundreds, if not thousands of sexual assault evidence kits were being stored by law enforcement agencies without being submitted to a laboratory for analysis. Faced with media scrutiny and public outrage, communities developed various strategies to respond.

“Forklift Approach”

In New York City – the first to face the problem under the glare of public scrutiny – officials responded by implementing a self-described “forklift approach,” sending every single untested kit to the laboratory for analysis. This included approximately 17,000 untested kits stored in facilities across the city, in cases reported between 1989 and 1998.¹⁰ Martha Bashford, Chief of the Sex Crimes Unit in the New York County District Attorney’s Office, explained why the community followed such an approach: It was cheaper than using any screening process (Bashford, 2012).

Testing was completed in January 2009, and it greatly expanded the number of DNA profiles in forensic databases, including the Combined DNA Index System (CODIS) operated by the Federal Bureau of Investigations (FBI).¹¹ The process also yielded numerous DNA matches (often referred to as CODIS “hits”), identifying potential serial offenders and helping to resolve cases. For example, in Manhattan alone, the analysis of 3,490 kits produced 49 convictions and one exoneration (Bashford, 2012).

However, the testing effort was limited by the DNA technology used at the time, as well as the smaller number of profiles in the DNA databases, as compared to the present. Also, not everything in the kits was tested. Only the swabs were analyzed in the initial

⁶ [“Nearly half of Memphis sexual assault kits now tested.”](#) By Ryan Poe, *The Commercial Appeal*, April 19, 2016.

⁷ [“State crime lab finished testing nearly 5,000 older Cuyahoga County rape kits.”](#) By Rachel Dissell, *The Plain Dealer*, November 16, 2016.

⁸ [“Police: Backlog testing of rape kits yields few matches.”](#) By Robert Stein, *Amarillo Globe News*, March 18, 2106.

⁹ The [Joyful Heart Foundation](#) offers a website tracking the number of untested sexual assault evidence kits, as well as legislative responses and reforms in the US.

¹⁰ [“Finally, thousands of old rape-evidence kits are to be tested.”](#) By Julián Aguilar, *New York Times*, August 3, 2013.

¹¹ In 1988, the Federal Bureau of Investigations (FBI) launched the national DNA database, known as the National DNA Index System (NDIS). This database was created with a software program for users to access it: the Combined DNA Index System, or CODIS. Today, over 190 public law enforcement laboratories in the US meet the requirements to participate in CODIS on a national level. For more information, see the [FBI website](#).

phases. Nonetheless, the testing and reforms enacted were the result of enormous financial investment – and years of painstaking effort – by New York City officials.¹²



Photo Credit: Berkeley Lab / Foter.com / CC BY-NC.ND

Following New York City's lead, other cities began submitting their untested kits for analysis. This included communities as diverse as Los Angeles,¹³ Cleveland,¹⁴ Memphis,¹⁵ Houston,¹⁶ and others. Along the way, strategies were developed for triaging and prioritizing kit testing. New Orleans screened a sample of approximately 1,000 kits for testing,¹⁷ while Detroit used research methods to pursue a hybrid approach of first testing a stratified random sample of 1,595 kits (Campbell et al., 2015) and then using the knowledge learned to expand the effort to test approximately 10,000 in total.¹⁸

“Test All Kits”

At the same time, several states passed laws designed to prevent this problem from re-occurring. These laws are often described as “test-all-kits,” because they seek to ensure that evidence is submitted for testing in cases with a medical forensic exam. In other words, this applies to current investigations of sexual assault, not cold cases.

¹² New York City officials supported their forklift approach with a number of additional measures, including the establishment of a new Cold Case Unit, which was staffed with two senior attorneys from the District Attorney's Office. These specially assigned prosecutors worked with members of the New York City Police Department, to ensure that any leads identified in these cases were investigated and vigorously pursued. In addition, the crime laboratory expanded their capacity to process DNA evidence, including hiring new criminalists, so analyses could be completed within 30-60 days of submission. A notification system was also created for CODIS hits, to ensure that the law enforcement agency, prosecutor's office, and laboratory were all notified of any hits as soon as possible (Bashford, 2012; Human Rights Watch, 2009).

¹³ [“LA County sends 4,763 rape kits out for testing.”](#) By Sam Allen, *Los Angeles Times*, October 17, 2010.

¹⁴ [“State crime lab finished testing nearly 5,000 older Cuyahoga County rape kits.”](#) By Rachel Dissell, *The Plain Dealer*, November 16, 2016.

¹⁵ [“Memphis police: Backlogged rape kits tested, suspects ID'd”](#). By Adrian Sainz, Associated Press, March 10, 2015.

¹⁶ [“City done with lab testing of rape kit backlog.”](#) By Katherine Driessen, *Houston Chronicle*, February 23, 2015.

¹⁷ [“Analysis of Untested Sexual Assault Kits in New Orleans.”](#) By Mark S. Nelson, National Institute of Justice, U.S. Department of Justice, Washington DC (no date).

¹⁸ Wayne County Sexual Assault Kit Task Force FAQ, April 2017.

Illinois passed the first such law in 2010,¹⁹ requiring law enforcement to submit evidence for testing in all cases of reported sexual assault. The law also requires agencies to inventory the kits they have in storage and develop a plan to submit them for analysis.

Many other states have since followed Illinois' lead. As of December 2016, a total of 30 states had legislated some type of statewide reforms to address untested kits, and this number continues to grow. The Joyful Heart Foundation tracks the number of untested kits and the status of various reform efforts through their End the Backlog project.

As with the forklift approach, test-all-kits laws have yielded noteworthy results, including numerous DNA profiles and CODIS hits that identify potential serial offenders. Based on these results, the test-all-kits approach is spreading nationwide. The fear expressed by many is that nothing will change without such a legislative mandate. Unfortunately, it is not yet clear what impact the test-all-kits legislation has on sexual assault victims or cases. This was the conclusion of a report published by the National Institute of Justice (NIJ), the research arm of the U.S. Department of Justice:

There are no nationwide studies of whether the jurisdictions are actually complying or how these laws are affecting the nation's crime laboratories (Ritter, 2016, p. 27).

Funding for Reforms

It is also clear that new laws are only part of the solution. Significant progress will not be made unless testing is supported with meaningful efforts to investigate and prosecute sexual assault. The primary barriers are funding and personnel – not only to conduct testing, but also to store, track, and manage evidence. Additional funds are necessary to hire, train, and retain qualified criminalists, and jurisdictions need expansion of their laboratory facilities, to work through the lengthy process of accreditation and ensure compliance with established standards. Funding is also needed for the increased workload of law enforcement investigators, supervisors, victim advocates, prosecutors, and other professionals responding to these cases and victims.

A considerable amount of federal funding has already been allocated to the task. To date, the U.S. Congress has appropriated about 1.2 billion to test DNA evidence, and this includes sexual assault kits. With an estimated cost of about \$1,000 per kit, these funds will be sufficient to test approximately one million kits (Reilly, 2015). Then in September 2015, Vice President Joe Biden and Manhattan District Attorney Cyrus Vance Jr. announced a combined total of \$79 million for use by 40 police agencies nationwide to address the problem of untested evidence in sexual assault cases.²⁰

¹⁹ "Illinois to test every rape kit" By Megan Twohey, *Chicago Tribune*, July 6, 2010.

²⁰ "[More than 40 police agencies to get \\$79M to test rape kits.](#)" By Steve Reilly & Charisse Jones, *USA Today*, September 11, 2015.

Unprecedented Opportunities

The submission of untested evidence offers several unprecedented opportunities. First, it provides a chance to identify offenders and pursue justice in unresolved cases where this was not previously possible because the law enforcement response was flawed, DNA evidence was unavailable, or victims were unable or unwilling to participate in the original investigation. The identification of a subject also helps prevent future crimes by identifying previously undetected offenders and lengthening the sentences of those who are already incarcerated. To that extent, the submission of untested evidence can help to create safe communities and re-establish trust in the criminal justice system, which may have eroded when citizens realized how many sexual assault investigations had been neglected or mishandled – and how many potential prosecutions were thwarted. DNA testing also helps to exclude suspects during an investigation and exonerate defendants who have been wrongly convicted.

Finally, as DNA evidence is submitted for analysis, we are certain to learn a great deal about sexual assault perpetrators and victims, as well as criminal justice processes and community services. For example, researchers, with access to the large pool of data, can test questions about serial offending and other dynamics.²¹ We can also begin evaluating whether trauma-informed approaches and enhanced victim support can improve healing and decrease high rates of case attrition. As communities grapple with these problems and implement reforms, they can also measure the impact of these critical changes.

In other words, there are several reasons to test forensic evidence kits: The potential for criminal prosecution is only one. We therefore stand at a precipice of unrealized potential. With sufficient personnel, resources, and a dedicated focus, we can significantly advance our understanding of sexual violence – and strengthen our criminal justice and community response systems. However, this will require a comprehensive understanding of what the real problems are, to ensure that we are addressing the root causes, and not just treating symptoms. It will also require a sincere commitment to changing the practices that led to this problem in the first place.

The question, then, is whether the nation is ready for a more nuanced dialogue about the complexity of sexual assault – one that emphasizes effective investigations and effective prosecutions, with forensic evidence as just part of the process (Ritter, 2016, p. 28).

Overview of Module

This module is designed to help communities address the complex challenges of untested evidence in sexual assault cases. While the material is largely written with

²¹ This type of research is being undertaken in Cleveland, with data compiled by the [Cuyahoga County Sexual Assault Kit Task Force](#). The research is being conducted by a team at the Begun Center for Violence Prevention Research and Education, at Case Western University. As described on their [project website](#), the team has already produced a number of research briefs on topics such as *Victim Characteristics*, *Serial vs. Single Sexual Offenders*, and *Cost Savings and Cost Effectiveness*.

reference to cold cases, much of the guidance applies equally to current sexual assault cases and investigations that have been recently inactivated or suspended.

For example, we will explore the “forklift approach” in more detail and compare alternative strategies to prioritize cases for testing and follow-up investigation. We will discuss issues arising from the public disclosure of untested kits, including community education and media responses. We will then provide concrete recommendations for policies and practice, including the development or improvement of a Cold Case Unit and the creation of tools to prioritize testing and investigations. Specific guidance will be offered for notifying victims that their investigation has been re-opened, keeping victims informed of the status of their case, and providing ongoing victim support throughout the criminal justice process. Perhaps most important, we will highlight the need for sufficient resources to support the analysis of sexual assault kits and other evidence, as well as the investigation and prosecution of sexual assault cases – both old and new.

Understanding the Problem of Untested Evidence in Sexual Assault Cases

I think about the thousands of serial rapists that were somehow able to get away with it because of the deficiencies in our system. How were they able to pick the most vulnerable people, the people that either had drug addictions, or mental health issues, or other problems, and prey on those people? They didn't get caught because we couldn't deal with creating a system that helps those people, or listens to those people, or believes those people ... It just makes you catch your breath, how much it's impacting people's lives.

- Rachel Dissell, reporter for *The Plain Dealer*, Cleveland, Ohio²²

Problem-Oriented Policing

In the field of law enforcement, there is a popular approach to problem solving known as Problem-Oriented Policing (or “POP”). POP was designed to offer police an analytic approach to the reduction of crime and disorder. A fundamental premise of this model is that effective solutions are only found when the problem is defined correctly and analyzed comprehensively. Far too often we design solutions that only address perceived symptoms of a problem, rather than the problem itself. The POP design avoids this dilemma, by teaching officers to approach problems in their community using the “SARA” model, which stands for *Scanning - Analysis - Response - Assessment*.²³

²² [“How an Ohio reporter helped convict more than 100 rapists.”](#) By Chava Gourarie, *Columbia Journalism Review*, September 2, 2015.

²³ For more information on Problem-Oriented Policing, please see Goldstein (1990) and the website for the [Center for Problem-Oriented Policing](#).

Understanding the SARA Model

The first step in this process is to *Scan* or identify a recurrent problem. The problem could be a pattern of crimes or specific issues faced in a community area. In this training module, we will focus on the recurrent problem of untested evidence in sexual assault cases. The second step is to *Analyze* data to better understand the problem.

The third step is to enact a *Response* (or multiple *Responses*), followed by an *Assessment* – to determine what, if any, impact is seen. Information should come from a variety of sources that evaluate both quantitative as well as qualitative impact.

Finally, if the *Response(s)* lead to no change, a re-evaluation of the problem should include the consideration of additional angles to determine if gaps exist in the original *Scanning* and *Analysis* that might lead to different *Responses*. Then *Assess* again.



Photo Credit: University of Portsmouth

Example: The SARA Model in Action

As an illustration, Joanne Archambault describes an example from her time spent working as a patrol sergeant with the San Diego Police Department:

At one point while I was supervising patrol in a San Diego neighborhood, we found ourselves faced with the problem of repeated robberies and assaults at a particular trolley stop. Rather than simply responding to the reports over and over again, my officers and I analyzed the problem by collecting data from a variety of sources. What we learned was that the physical design of the trolley stop itself was contributing to the problem.

The area was very dark at night, and the platform was raised above a narrow walkway, leaving neighborhood residents isolated and vulnerable while approaching and waiting for the trolley. Not all the trolley stations had a high number of robberies, but this one did.

With information gained from our analysis, we approached the transportation division, which invested tens of thousands of dollars in improving the physical layout of the trolley station. As a result of these improvements, the number of robberies and assaults at this location was significantly reduced. However, this would not have happened if we simply

continued to respond to calls of robberies at the station rather than analyzing why offenders picked this station for repeated robberies.

Critical Role of Evaluation

Using a Problem-Oriented Policing (or “POP”) approach, a reliable and valid evaluation is possible, even in small departments. Many medium- and large-sized police departments have crime analysts with advanced degrees who use more sophisticated methods in this type of analysis and assessment. Smaller agencies may not have this resource, but any agency can work with community organizations that share their concerns and have skilled personnel to assist with analysis and assessment. These stakeholders and their unique perspectives are critical to the process, so they should be invited to join law enforcement at the collaborative problem-solving table.

Law enforcement agencies can also seek help from university researchers or community-based (“applied”) researchers who are willing to work on the problem. There may even be possibilities for partnering on a grant application and project. For instance, in the example described above, it would be important to know whether robberies and assaults increased at other trolley stations, once they decreased at this particular one. Displacement of crime is not always predictable, but it is a possibility to explore using an analytic approach and collaborative community partnerships. It is also crucial to engage management in the process of evaluation, because it would be counterproductive and unfair to develop a *Response* that will not be adequately supported by organizational leadership.

With the proper application of evaluation methods like POP, meaningful outcomes can be used to guide problem resolution or improvement. The goal is to enact policies and practices that are driven by data collected using a rigorous method – not just what looks good or feels good at the moment. It is also important to ensure that the appropriate metrics are used to assess program impacts. For example, a reduction in the amount of time to complete a sexual assault investigation, or conduct laboratory analyses, might be an indicator of progress – or it might be the result of cutting corners. It is always important to ensure that the outcomes being measured are true indicators of success.

We believe the time has come to apply this framework of Problem-Oriented Policing to the problems associated with untested evidence in sexual assault cases. With a POP strategy of *Scanning, Analysis, Response, and Assessment*, we hope to advance the discussion of these issues, to ensure that our *Responses* address not just symptoms, but also the underlying causes of this complex and multifaceted problem.

DNA and Sexual Assault Investigations

For more information on the topic of DNA and sexual assault investigations, EVAWI offers a comprehensive training module entitled, [Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations](#).

The National Institute of Justice (NIJ) also offers a publication entitled [Sexual Assault Kits: Using Science to Find Solutions](#). It explains what a sexual assault evidence kit is



and how it is used, including a discussion of the role of DNA evidence in a sexual assault investigation and prosecution. Also described is the problem of untested evidence and various federal initiatives designed to address the problem.

Scanning and Analysis: Defining the Problem

Particularly in the early media coverage of this issue, the problem of untested evidence in sexual assault was often described as a “rape kit backlog.” Yet the definition of what constitutes a “backlog” has varied across the country and also changed over time.²⁴

Rape Kit Backlog

At first, the backlog was seen as a problem with the nation’s forensic laboratories, which had in their possession thousands of evidence kits that had been submitted by law enforcement but were awaiting analysis because of a lack of resources. Congress responded to this concern by enacting and repeatedly reauthorizing the DNA Backlog Elimination Act, which allocated millions of dollars of funding for DNA resources.

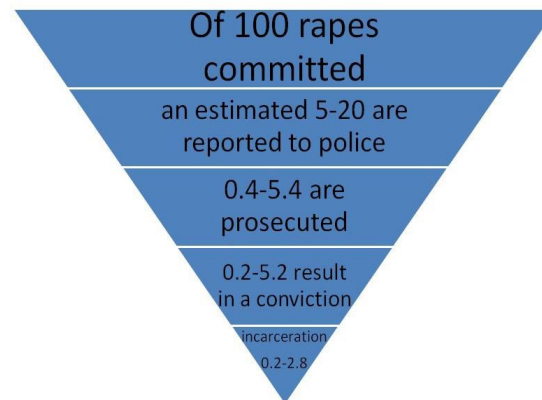
This funding has greatly expanded the capacity of forensic laboratories in the U.S. Nonetheless, the backlog of DNA evidence remains in crime laboratories – and indeed, it has only continued to increase over time – because the demand for DNA analysis continues to outpace capacity increases (Nelson, Chase & DePalma, 2013).

Untested Evidence

The characterization of the problem then shifted from crime laboratories to police property rooms, focusing on evidence kits that were never submitted to the laboratory in the first place. This definition of the problem was highlighted in the *USA Today* article cited at the beginning of this module, but it is supported by other research as well.

²⁴ The term “backlog” is often used to refer to evidence that has been collected but not tested, regardless of whether it has been submitted to a laboratory for testing. However, the National Institute of Justice (NIJ) defines a backlog as evidence that has been submitted but not closed by a final report within 30 days. Also included are samples from convicted offenders and arrestees that have not been tested and uploaded into CODIS within 30 days of submission (Nelson, Chase & DePalma, 2013). In contrast, evidence that has been collected and is being stored by law enforcement without having been submitted to the laboratory for analysis is generally described as “untested,” “unsubmitted,” or “unanalyzed.”

In 2004, for example, the National Institute of Justice (NIJ) published a national survey of 1,692 law enforcement agencies, which concluded that approximately 169,000 rape cases across the country had biological evidence that had been collected but never submitted to a laboratory for analysis (Lovrich et al., 2004). Another 2007 study with 2,250 law enforcement agencies found that forensic evidence had not been submitted in almost one in five (18%) unsolved rape cases from 2002-2007 (Strom et al., 2009).²⁵



Smaller scale studies also document that a high percentage of evidence kits are never submitted for testing. In one study with adolescent victims (Shaw & Campbell, 2013) and another one with adults (Patterson & Campbell, 2012), as many as 41% of the evidence kits collected by a Sexual Assault Nurse Examiner were never tested.

Despite research studies such as these, there is no official estimate for the number of sexual assault evidence kits in law enforcement custody nationwide (Ritter, 2016). This is both because of limited resources as well as logistic challenges. For example, while some law enforcement agencies have sophisticated information technology (IT) systems to inventory and track evidence, many – if not most – still do not. There is therefore no mechanism in place to accurately determine how many kits are being stored across the country, let alone deciding how many have been tested (Ritter, 2016).

Symptom or Underlying Cause?

It is no surprise that professionals, policymakers and the public are outraged at the problem of untested evidence. Many of these kits do represent a missed opportunity for justice, and a profound failure by the criminal justice and community response system. However, if we let the images of stacked-up kits define the problem for us, we may not address the full range of challenges that constitute the real underlying problem.

As the definition of the problem has broadened, it has become increasingly clear that untested kits are just a symptom of a larger and far more complex problem. The problem is not simply a “rape kit backlog” or even “untested kits.” The problem is our failure to thoroughly investigate and successfully prosecute sexual assault cases that are reported every day in this country.

Alternative View of the Problem

This broader view of the problem is reflected in attrition data for the U.S. criminal justice system:

²⁵ For more information on this study, please see the website for the National Institute of Justice: [National Survey of Untested Evidence in Law Enforcement Custody](https://www.nij.gov/research-and-statistics/forensic-science/national-survey-of-untested-evidence-in-law-enforcement-custody).

Of 100 forcible rapes that are committed, approximately 5-20 will be reported, 0.4 to 5.4 will be prosecuted, and 0.2 to 5.2 will result in a conviction. Only 0.2 to 2.9 will yield a felony conviction. Then an estimated 0.2 to 2.8 will result in incarceration of the perpetrator, with 0.1 to 1.9 in prison and 0.1 to 0.9 in jail (Lonsway & Archambault, 2012, p. 157).²⁶

As this graphic illustrates, the most significant point of attrition is actually the first step in the process, where 80-95% of sexual assault victims decide that they are unable or unwilling to engage with the criminal justice process.²⁷ Then as many as one-third to one-half withdraw their participation at some point during the investigative process.²⁸

The second main attrition point is the police department. In one study, data was collected on sexual assault cases with a medical forensic exam, in six jurisdictions over a period of 20 years. Researchers found that only 14% of these cases ever progressed beyond the police department. The vast majority (86%) were never referred to the prosecutor's office, and no formal charges were ever filed (Campbell et al., 2013).

Attrition then continues at the prosecutor's office. In Salt Lake City, professionals were "shocked" to learn that only 6% of their sexual assault cases with a medical forensic examination led to a successful prosecution (Valentine, Shaw, Lark & Campbell, 2016). The results were seen as "dismal," but they "helped serve as a wakeup call" for that community to begin enacting reforms (p. 1380).

Gender Bias in Sexual Assault Response

There is no reason to believe that the level of case attrition in Salt Lake City is unusual. However, their response certainly was. Very few communities have engaged in this type of self-review and comprehensive reform. This is why the U.S. Department of Justice published groundbreaking new guidance in 2015 on [Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence](#). Given that sexual assault is committed predominately against female victims,²⁹ any failures in the criminal justice response will have a particularly damaging effect on women and girls. Gender bias can manifest in a variety of ways: "misclassifying or underreporting sexual assault, "inappropriately concluding that sexual assault cases are unfounded," "failing to test sexual assault cases, and "interrogating rather than interviewing victims and witnesses (U.S. Department of Justice, 2015, p. 3). Whether it is explicit or implicit, such bias will inevitably influence case outcomes and attrition.

²⁶ For additional reviews of sexual assault case attrition within the U.S. criminal justice system, please see McEwan (2011) and Spohn & Tellis (2012).

²⁷ See, for example: Fisher, Cullen & Turner, 2000; Kilpatrick, Edmunds & Seymour, 1992; Kilpatrick, Resnick, Ruggiero, Conoscenti & McCauley, 2007; Tjaden & Thoennes, 2000.

²⁸ See, for example: Frazier, Candell, Arikian & Tofteland (1994); Spohn, Rodriguez & Koss (2008); Tellis & Spohn (2008).

²⁹ For example, the NIJ-funded National Violence Against Women Study (NVAWS) found that 85% of victims of either completed or attempted sexual assault were female (Tjaden & Thoennes, 2000). More recently, the National Intimate Partner and Sexual Violence Survey (NISVS) funded by NIJ and CDC similarly documented that 93% of rapes are committed against female victims (Black et al., 2011).

In other words, gender bias plays a role in the problem of untested evidence, as well as larger failures in the investigation and prosecution that have created a “justice gap” for sexual assault. The question is not whether there is a problem. The question is what we are going to do about it. After we have completed our *Scanning* and *Analysis* of the problem of untested evidence in sexual assault cases, what will our *Responses* be?

Training Bulletin on Gender Bias

EVAWI has created a [Training Bulletin](#) series on gender bias that is designed to explore the phenomenon of gender bias, both explicit (conscious) and implicit (unconscious), and the resulting stereotypes and attitudes that can influence the professional response to, and investigation of, sexual assault.

Responses to the Problem of Untested Evidence

Conduct an Inventory of Untested Kits

In many jurisdictions, one *Response* will be to conduct an inventory of evidence kits, to determine how many are being stored and how many have been tested. This process can be painstaking, as in Detroit where they had to conduct their inventory by hand:

The census in Detroit took 15 weeks and 2,365 person-hours ... Team members had to manually count the kits one by one, opening each of more than 11,000 kits ... In all, 2,512 sexual assault kits had laboratory numbers, although it could not be determined how many had been tested, and 8,707 had never been submitted to the laboratory (Ritter, 2016, p. 8).



Thousands of untested rape kits in storage in L.A.

Photo: Patricia Williams

Photo Credit: Patricia Williams

Common Challenges

This quote highlights one of the many challenges agencies face when conducting such an inventory: Determining whether evidence is truly untested. Some items in an evidence kit may have been only partially tested – perhaps for blood type, but not DNA. Or, slides might have been created but not tested. In Cleveland, these kits are called “boomerangs” or “round-trippers,” because they were sent to the laboratory at some point, but then were returned untested, or only screened or partially tested.

Another possibility is that evidence may have been screened using outdated procedures but then never tested beyond this initial screening. Or the evidence might have been tested using old technology, in which case re-testing could produce different results. If there is no documentation associated with an evidence kit, there may be no way to determine what the laboratory did or did not do.

In many of these cases, the original investigator was reassigned or retired before the results were returned, because the process of submitting, testing, and obtaining results from the laboratory often took years. This is why there is often a disconnect between the original police report, laboratory reports with test results, and any supplemental reports that were added to the case file at a later time. It also means there is often no investigator who is personally invested in the case, which helps to explain why so few of these cases were investigated or prosecuted after the laboratory results were eventually returned. DNA was often seen as a tool for prosecuting cases, not investigating them.

All of this highlights the importance of understanding an agency's past practices and policies when conducting an inventory of sexual assault evidence kits. It also serves as a reminder that a case can only be evaluated in terms of the technology that was available at the time. Any inventory will identify evidence that was untested or unclear, as well as partially tested, or tested using the limited technologies available at the time. All of these alternatives must be taken into account when exploring the path forward.

Practical Guidance from NIJ

In 2011, the National Institute of Justice (NIJ) awarded grants to the Houston Police Department in Texas, and the Wayne County Prosecutor's Office in Detroit, Michigan. The goal was to conduct action research projects that would (a) investigate the large numbers of sexual assault kits (SAKs) that had not been submitted to a laboratory, and (b) use scientific methods to determine how best to proceed. The [NIJ website](#) provides information and resources related to these projects, including several videos and a publication entitled, [Sexual Assault Kits: Using Science for Find Solutions](#).

NIJ also offers guidance based on the experience of these communities in a document entitled, [Performing an Audit of Sexual Assault Evidence in Police Custody](#). Valuable suggestions include the following:

- Bring everyone to the table.
- Formulate goals.
- Clarify language and agree on terms to be used.
- Find all the locations where sexual assault evidence kits are stored.
- Find out what information is computerized ... and what's not.
- Loop in IT support.
- Start small.
- Touch it once.
- Develop a central database.
- Evaluate available resources and develop a staffing plan.
- Remember that it's all about the details.

- Support the staff and volunteers.
- Once the audit is completed, expect that the final count may be controversial.
- Re-examine local policies and state statutes regarding evidence retention.
- Prepare for media inquiries and public scrutiny.
- Be aware that the “final count” may not be “final.”

NIJ also highlights the importance of strong collaboration between all of the stakeholders involved: law enforcement, prosecutors, health care providers, and victim advocates. However, to learn the most from any such effort, it will be important to collaborate with researchers as well. For guidance on how to do so, please see the NIJ guidance on [Forming an Action-Research Team to Address Sexual Assault Cases](#).

Conducting an Inventory of Evidence Kits

For more detailed guidance on how to conduct an inventory, and “lessons learned” from the Detroit team, please see the [Final Report on the Detroit Sexual Assault Kit \(SAK\) Project](#). Particularly helpful for this purpose are two sections: *The Step-by-Step Process of Planning and Conducting the Detroit SAK ARP Census* (Figure 2-1, p. 49-55) and *Lessons Learned: Conducting a SAK Census* (p. 285-288).

Another helpful resource is a [video interview](#) with Dr. Rebecca Campbell, where she explains why so many sexual assault kits remained untested in Detroit.

Any inventory of sexual assault kits should be accompanied by an evaluation of the policies and practices for evidence storage, retention, disposition, and removal. This extends beyond sexual assault to all of the cases handled by a law enforcement agency, and their associated evidence. To support this process, EVAWI developed detailed [Model Policy Materials on Evidence Retention, Disposition, and/or Removal](#). These materials provide law enforcement agencies with sample language as well as instructional commentary, so they can serve as an educational tool, as well as a template for developing policies, protocols, and training in this area.

Prepare for Public Scrutiny

As communities begin inventorying the evidence kits they have in storage, it is important to prepare for the media inquiries and public scrutiny that will inevitably follow.

Jurisdictions should be prepared to regularly report to the media about their progress in testing evidence, which requires keeping up-to-date statistics, promptly responding to media requests for information, and proactively issuing press releases with updates. These issues will be discussed in more detail later in the module, but one critical point is worth noting at the outset: *Any news about the effort will reach victims in these cases.*

Some survivors are likely to be afraid of being contacted about the sexual assault they hoped to leave in the past. Others may believe their case will *finally* be investigated and

prosecuted. Then if it is not, they may be disappointed yet again – and feel even further betrayed. It is therefore essential that police departments and prosecutor’s offices are transparent about the inventory they are conducting and provide realistic information about the likelihood of various outcomes, including any investigation or prosecution.

Testing Evidence

Beyond simply counting evidence kits, many jurisdictions will *Respond* by testing them. Some will follow a forklift approach, testing at least some items (e.g., the swabs) from all their stored kits. Others will make the determination to test evidence from some kits but not others. However, making this decision will require reviewing the resources available and weighing the advantages and disadvantages of various alternative strategies.



Photo Credit: snre / Foter.com / CC BY

Expanding DNA Databases and CODIS Hits

As previously noted, any testing initiative is likely to expand DNA databases and generate CODIS hits. This was demonstrated with early initiatives in Los Angeles³⁰ and New York City,³¹ as well as New Orleans,³² and the two cities involved in NIJ-funded

³⁰ In a study funded by the National Institute of Justice (NIJ), Peterson et al. (2012) tracked the outcomes of 1,948 randomly sampled kits from the Los Angeles Police Department and Los Angeles Sheriff’s Department. They found that foreign DNA was identified in 55% of the sexual assault cases (1,070), of which 36% yielded a profile that was eligible for CODIS (Peterson et al., 2012; see also Ritter, 2012 for a detailed summary). Half (50%) of the Los Angeles DNA profiles that were uploaded into CODIS then resulted in a hit (or 17.8% of the total sample). The vast majority of these CODIS hits were with profiles in the Offender Index, which includes samples collected from known individuals (92%). Only 8% matched to another case based on forensic evidence, with profiles in the Forensic Index (Peterson et al., 2012).

³¹ In New York City, the analysis of approximately 17,000 evidence kits yielded 2,000 cold hits and 200 active investigations, arrests, or prosecutions – as of January 2009 (Human Rights Watch, 2009). Of the 3,490 evidence kits tested specifically from Manhattan, 38% resulted in a foreign DNA profile being developed and submitted to CODIS (Bashford, 2012).

³² In New Orleans, a total of 1,008 sexual assault kits were submitted for analysis, which yielded 256 male DNA profiles that were uploaded to CODIS and 139 CODIS hits. Analysis consisted solely of screening for semen and identifying a DNA profile when the screening result was positive. Almost all of the CODIS hits were matches with a known offender (132), although most of these offenders were not previously known to be a suspect (113). In other words, they yielded new investigative leads (Nelson, no date). For more information, please see the website for the [National Institute of Justice](http://www.nij.gov).

research projects: Detroit³³ and Houston.³⁴ In fact, the rate of CODIS hits from tested kits ranged from 13.8% in New Orleans, to 17.8% in Los Angeles, to 21.1% in Houston (Wells, Campbell & Franklin, 2016). In Detroit, the rate was approximately 26%.³⁵

The numbers in Detroit are particularly noteworthy, because much of the evidence was collected before the city had a forensic examiner program; it was collected in a hospital setting. In fact, much of it was collected before CODIS existed, and some pre-dated DNA technology itself. Because this evidence was successfully tested after so many years, it reminds us that DNA is quite stable and not nearly as fragile as once believed.

Yet the SARA model and a POP approach would guide us to conduct a broader *Assessment* of this particular *Response*. Has it led to improvements in the reporting, investigation, and prosecution of sexual assault? Are we treating victims better? Are we identifying additional victims and offenders? Are we holding more offenders accountable? Are we exonerating the wrongly convicted? Are we preventing violence?

Investigating and Prosecuting Cases

In Los Angeles, more than 12,500 evidence kits were tested, but only two convictions resulted, and this was not because of any DNA analysis.³⁶ In New Orleans, 1,008 kits were tested, and only six convictions resulted.³⁷ As of December 2016, Houston saw 28 convictions after testing more than 6,600 kits, and Memphis saw 10 after testing more than 7,000 kits.³⁸ A number of factors can help to explain these low numbers.

For one thing, many evidence kits will not yield foreign DNA or a CODIS-eligible profile. To illustrate, a random sample of 1,948 evidence kits was selected for analysis in Los Angeles, and DNA profiles were identified in just over half of them (55%). Of these, 36% yielded a DNA profile that was eligible for CODIS, and half of these resulted in a CODIS hit. This translates to 8% of the entire sample (Peterson et al., 2012; see also Ritter, 2012 for a detailed summary).

³³ Detroit initially submitted 1,595 kits for analysis, yielding 785 CODIS eligible profiles (49% of the sample). This produced 455 CODIS hits, and identified 127 suspects who were identified in more than one report. In other words, 28.5% of the kits matched a DNA profile that was already in the database, and 9% linked with more than one sexual assault case. CODIS hits also linked suspects to crimes committed in 23 different states and the District of Columbia (Campbell et al., 2015).

³⁴ In Houston, the analysis of 6,663 resulted in 2,305 CODIS-eligible profiles, yielding 850 CODIS hits (Driessen, 2015; Ritter, 2016). When a sample of 491 cases were selected for analysis, “55 percent yielded a DNA profile, and 79 percent of these profiles were successfully uploaded into CODIS. There were CODIS hits in 21 percent of the sample, or 104 cases (Ritter, 2016, p. 15; Wells et al., 2016).

³⁵ Wayne County Sexual Assault Kit Task Force FAQ, April 2017.

³⁶ According to Peterson et al. (2012), “We determined that neither of the two new convictions involved helpful DNA testing” (p. iv). In fairness, this evaluation was conducted only six months after the analysis was completed, so Los Angeles officials may not have had sufficient time to successfully investigate these cases to the point of a successful resolution, such as a prosecution or exoneration. However, the research was not extended beyond this six-month time period, so it is unclear if there were any additional results from their testing initiative (see the [National Institute of Justice](#) website for more information).

³⁷ See [Analysis of Untested Sexual Assault Kits in New Orleans](#), by Mark S. Nelson, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice (no date).

³⁸ “Even after backlogged rape kits tested, convictions are rare.” By Jericka Dunkan & Laura Strickler, *CBS News*, December 21, 2016.

Prosecution is also precluded in many of these cases because the statute of limitations had expired. In Houston, researchers randomly sampled 491 cases with untested kits and found that the statute of limitations had expired in as many as 44% (Ritter, 2016). These patterns have been consistently seen in communities with kit testing initiatives.

In addition, most jurisdictions have dedicated their resources to testing kits, not the follow-up investigation and prosecution of cases. It is therefore not surprising that so few convictions have resulted. Higher conviction rates are seen in communities that have dedicated resources to the renewed investigation and prosecution of cold cases.

In Detroit, testing approximately 10,000 kits resulted in 92 convictions as of April 2017,³⁹ but that number continues to grow as investigators and prosecutors work additional cases. The Wayne County Prosecutor's Office also partnered with the Michigan State Appellate Defender's Office to screen convictions for the possibility of exonerating any defendants who had been wrongfully convicted. After reviewing 933 cases, one new trial was granted for a man who had been incarcerated for 14 years, when DNA testing excluded him as the source of biological evidence recovered in the case.⁴⁰

Additional prosecutions, convictions, and exonerations could be seen in any of these communities as future hits continue to identify "John Doe" profiles in CODIS and other DNA databases. For example, one arrest was made in 2015, in a 20-year rape case first identified as a John Doe in the New York City forklift initiative. The suspect was arrested in Florida and extradited back to New York City to face felony charges.⁴¹

One Step in a Complex Process

While prosecution will be precluded in many cold cases for a variety of reasons, a key factor is because DNA testing – even a CODIS hit – is only one step in a lengthy process. In other words, the process does not proceed directly "from kit to court" or even "from CODIS to court." DNA alone will not support the successful investigation and prosecution of most sexual assault cases, or exoneration where the facts warrant.

Once a suspect has been identified, the victim will need to be interviewed, along with the suspect and any witnesses who remain available. Yet locating them may take time, particularly after a lengthy delay. Other investigative procedures will also be necessary, including re-testing evidence. Even locating the evidence may prove challenging.

It can also be difficult to locate the original police report or documentation from the medical forensic exam, because law enforcement agencies and health care facilities purge their records to comply with legal requirements and agency policies. This can pose particular challenges for older medical records, because hospitals and other health care facilities may have closed or merged with another entity. Investigators and

³⁹ Wayne County Sexual Assault Kit Task Force FAQ, April 2017.

⁴⁰ ["SADO's DNA project obtains new trial for client incarcerated for fourteen years."](#) By Amanda Tringl, Michigan State Appellate Defender Office and Criminal Resource Center (accessed 12/12/16).

⁴¹ ["Man wanted in 1995 NYC rape ID'd after 2015 West Palm arrest."](#) By Kate Jacobson, *Sun Sentinel*, May 7, 2015.

prosecutors may need to work with these entities – as well as their lawyers – to establish agreements on how to obtain medical records associated with cold sexual assault cases in a way that complies with more recent privacy protections like HIPAA (the Health Insurance Portability and Accountability Act of 1996). These issues have become even more complicated, due to the move to electronic records.

Taking a Case to Court

If the evidence establishes probable cause to believe that a particular suspect committed a specific crime, additional time will then be needed to seek an arrest warrant, and make an arrest. A search warrant may also be needed to obtain a DNA reference standard from the suspect, to confirm the match with any DNA profile developed from evidence.

As the investigation moves forward, other types of evidence may need to be tested before the case can be presented to a prosecutor. Then further testing may be necessary before the case can proceed to trial (for example to confirm the CODIS hit).

At that point, prosecutors will need time to prepare for issues the defense is likely to raise. This may include challenges based on due process and the failure to provide exculpatory evidence, if police reports or evidence are no longer available. Of course, many of these same steps are needed to exclude a suspect during an investigation or to exonerate a convicted person, when the facts support this conclusion.

This more complex picture helps to explain why a relatively small number of cold cases yield a successful investigation and prosecution after a CODIS hit. It also explains why conviction rates are higher in communities with multidisciplinary collaboration and dedicated resources for follow-up investigation and prosecution.

Cuyahoga County (Cleveland)

This point is perhaps best illustrated in Cleveland, Ohio, where officials dedicated extensive resources to the follow-up investigation and prosecution of cold cases. This was possible because the Ohio Attorney General's Office paid for the testing of all unsubmitted kits in the state. This effort is being led by the Sexual Assault Kit Task Force, which was established in 2013 within the Cuyahoga County Prosecutor's Office. Prosecutors, investigators, and advocates are embedded together in that location.

With some of these kits, the case may have been easier to prosecute than it would have been years earlier, both because patterns emerged over time and because victims may be better prepared to cope with their trauma and engage in the process. Many victims have said they were now motivated to participate with the investigation and prosecution of their sexual assault, in the hopes of preventing future harm to other victims. The renewed investigation of their case was therefore a welcome development.

On the other hand, some of these cases were almost certainly more difficult to investigate and prosecute due to the passage of time. Memories fade, witnesses die or relocate, and many victims do not want their wounds re-opened or their "past lives"

revisited. In addition, some judges and juries look unfavorably on the delays in prosecution – even if the case remains within the statute of limitations – and ask whether some level of fairness has been compromised for the defendant. They may wonder why the case didn't "matter enough" to police and prosecutors when it was initially reported years earlier, leaving a great deal of explanation and questioning during the voir dire process. Legal wrangling may play out in appeals courts for years.

Despite these challenges, the Task Force has seen more than 570 defendants indicted as of March 2017, and this includes many cases that were poorly investigated – or not investigated at all – at the time of the initial report. Even more striking, the conviction rate for indicted cases (that were not dismissed) continues to be over 93%. Testing was completed in November 2016 for all sexual assault kits collected between 1993 and 2010.⁴² However, no exonerations have yet been identified.

Cuyahoga County Sexual Assault Kit Task Force

A Sexual Assault Kit (SAK) Task Force was established in Cuyahoga County, Ohio, to investigate and potentially prosecute cases associated with approximately 5,000 previously unsubmitted SAKs with DNA evidence. Research has since been conducted by the [Cuyahoga County Sexual Assault Kit \(SAK\) Pilot Research Project](#) to understand more about these unsubmitted SAKs and explore how this can inform criminal justice responses across the country regarding untested DNA evidence. Several research briefs summarize their findings, also covered in the EVAWI webinar, [Unsubmitted Sexual Assault Kits: Changing What We Know About Rape](#).



Photo Credit: snre / Foter.com / CC BY

A Cautionary Note

While Cleveland's conviction rate has prompted some communities to follow their lead, it is always important to remember that case outcomes are not the only measure of success. Victim welfare must remain at the center of our efforts.

Otherwise, victims might be coerced into participating – or even arrested if they don't. This was seen in Sacramento County (California), where a 17-year old was detained for failing to appear in court to testify against the 37-year old accused of raping her.⁴³ Or in

⁴² Data provided by the Sexual Assault Kit Task Force in Cuyahoga County, March 2017. Also see: ["Testing of backlogged rape kits yields new insights into rapists and major implications for how sexual assaults should be investigated."](#) Press Release from Case Western Reserve University, June 6, 2016.

⁴³ ["Victims' advocates protest as prosecutors detain 17-year old rape victim in California."](#) By Norimitsu Onishi, *New York Times*, April 15, 2012.

Harris County (Texas), where a woman was arrested – upon her release from a hospital where she was seeking treatment – to “ensure her safety and appearance at trial.”⁴⁴

⁴⁴ [“Texas woman was jailed for fear she would not testify, lawsuit says.”](#) By Daniel Victor, *New York Times*, July 22, 2016.



This is why victim advocates have been involved in many kit testing initiatives. In Cleveland, the Prosecutor's Office hired five victim advocates to support the work of their Sexual Assault Kit Task Force. They follow a victim notification protocol and regularly discuss advocacy concerns at their Task Force meetings. Additional strategies for incorporating victim advocacy will be described later in the module.

Benefits of Testing Kits

As jurisdictions consider the possible *Response* of testing kits, it will be critical to weigh the costs and benefits – for victims, communities, and the agencies involved.

Linking Cases

One of the strongest arguments for testing kits is that it can link multiple sexual assault cases involving the same suspect. This can help to identify or exclude suspects, provide investigative leads, support charging decisions, overcome a consent defense and result in successful prosecution. In Detroit, for example, CODIS hits have linked a total of 798 suspects to reports across 40 states, as of April 2017.⁴⁵ As of September 2016, more than 50 suspects were linked to 10-15 cases each.⁴⁶

In Cuyahoga County, 737 suspects were linked with more than one case, either within their testing project and/or based on a prior arrest or conviction.⁴⁷

Note on Language: Serial Offenders

When suspects are linked to more than one case based on their DNA profile, they are often described as serial offenders. However, DNA databases include profiles from people who are arrested as well as convicted for certain offenses. Profiles are also generated from evidence in cases that have not been adjudicated. Therefore, a more accurate description is that these suspects have been identified in more than one case. Alternatively, some people describe these individuals as “suspected serial offenders.”

Saving Money

In addition to solving cases and prosecuting dangerous offenders, DNA testing can also potentially save a great deal of money. In Cleveland, 26% of the cases in their kit testing initiative with an indicted defendant linked that suspect to more than one sexual assault victim.⁴⁸ As a result, investments in the Sexual Assault Kit Task Force have yielded the county a net savings of \$38,700,000 in terms of preventing future crime. This translates to a savings of \$8,893 per kit (Singer, Lovell & Flannery, 2016).⁴⁹

⁴⁵ Wayne County Sexual Assault Kit Task Force FAQ, April 2017.

⁴⁶ “[3-day summit to focus on handling of sexual assault cases, evidence.](#)” *CBS Detroit*, September 26, 2016.

⁴⁷ Data provided by the Sexual Assault Kit Task Force in Cuyahoga County, April 2017.

⁴⁸ This figure includes only suspects identified by name, not those indicted as a “John Doe” based on their DNA profile. Data provided by the Sexual Assault Kit Task Force in Cuyahoga County, March 2017.

⁴⁹ Thanks to the Cuyahoga County Prosecutor's Office for providing information and materials on project costs.

Sample Tool for Projecting Cost Savings

In Cuyahoga County, the Sexual Assault Kit Task Force regularly calculates the amount of economic harm caused by each indicted defendant – to the victim of sexual assault, other victims of crime, and the criminal justice system – based on subsequent convictions committed by the indicted defendant. This computation is used to calculate the cost of not investigating and prosecuting cold cases, and projecting the cost savings as a result of testing this evidence, investigating these cases, and prosecuting these defendants. A sample spreadsheet is available, to adapt for use in other communities.

Identifying Patterns of Offending

In hindsight, some of the Cleveland cases had patterns that could have been identified with investigative work, even if DNA testing was not available. For example, one offender preyed on women exclusively at bus stops, while another rode up to his victims on a bicycle. These connections could have easily been investigated at the time.

Then there is the case of Dwayne Wilson, who was about to walk out of prison in October 2014, after serving a 5-year sentence for sexual battery. Tests on four previously untested kits connected his DNA to the rapes of four women, prior to his incarceration. Those crimes were committed across a wide geographical area, but they all involved the use of a knife or box cutter. After connecting these cases and following up with an investigation and prosecution, Wilson was sentenced to life in prison.⁵⁰



Photo Credit: Esquire.co.uk

This case illustrates the power of linking cases. Yet it also highlights the crossover nature of serial offending. Among Wilson's victims were strangers as well as non-strangers, including two young girls that he knew (aged 11 and 14). In fact, 56 suspects identified in the Cleveland testing initiative were linked with sexual assault cases involving at least one victim who was a stranger and one who was a non-stranger.⁵¹

Corroborating Statements

Even in cases where a suspect's identity is known, DNA testing has the potential to advance an investigation by corroborating (or challenging) statements. For example, in both Detroit and Cleveland, a disproportionate number of cases with untested evidence involved female victims who were poor, mentally ill, addicted to drugs, and/or from

⁵⁰ "[Serial rapist Dwayne Wilson's life sentence for 1990s rapes will protect women from being 'stalked and attacked' in the future, prosecutor says.](#)" By Rachel Dissell, *The Plain Dealer*, April 1, 2015.

⁵¹ Data provided by the Sexual Assault Kit Task Force in Cuyahoga County, April 2017.

ethnic minorities. Suspects in these cases often stated that sex was exchanged for money or drugs, and such statements damage the credibility of victims. Therefore, it is critical for investigators to complete a thorough investigation, including testing any available evidence that may help to determine whose statement is more credible.

A sample case illustrates this point. In April 1993, a Cleveland woman named Cynthia Espey⁵² reported that a man grabbed her and dragged her into the hallway of a small apartment building. Espey told police that the man put a knife to her throat and raped her. After he ejaculated, he took her leather coat and fled. Espey called police and was taken to a hospital, where forensic evidence was collected and documented.

Days later, Espey contacted police and left a message that she knew the identity of the man who raped her: Michael Bass, a man who was known to police based on prior small-time robberies and drug dealing. He was arrested for the rape, but he told detectives that Espey had given him consensual oral sex in exchange for drugs.

Unfortunately, police took this opportunity to arrest Espey on an outstanding misdemeanor warrant, whereas Bass was released the following day after all charges were dropped.

When Espey was released from jail, she went to police and told them she wanted the rape investigation to move forward. Although she admitted to working as a prostitute in the past, she said she did not consent to having sex with Bass and denied exchanging sex for drugs. The case was taken to a Grand Jury, which declined to charge Bass for the rape. No forensic evidence was presented. In 1993, it was rare for forensic evidence kits to be tested for anything other than blood type or the presence of semen.

Twenty years later, Espey's evidence was tested using current DNA technology, and her case was reopened by the Cuyahoga County's Sexual Assault Kit Task Force. At that time, investigators had only two days to re-investigate the case before the 20-year statute of limitations expired. After reviewing the case file, an investigator noted a difference in the statements made by Espey and Bass. Bass told police that the encounter involved consensual oral sex. However, Espey said it involved forced vaginal penetration. When the investigator tracked Espey down, she confirmed the statement she had given 20 years earlier. She also told investigators she'd seen Bass in the neighborhood where they both lived on a number of occasions over the years.

When investigators reviewed the laboratory report from the Ohio Bureau of Criminal Identification, they noticed that the DNA matching to Bass came from a vaginal swab. As a result, Bass was indicted and later pleaded guilty to sexual battery. A judge sentenced him to three years' probation and required him to register as a sex offender.

The case thus illustrates how DNA can be used for more than identification. Here, it established a specific sexual act and corroborated the victim's statement, while contradicting the suspect's. This is even more critical in the era of touch DNA, where the

⁵² Cynthia Espey is named with permission, provided to Rachel Dissell of *The Plain Dealer* in Cleveland, Ohio.

location and type of biological evidence can have a dramatic impact in terms of corroborating statements. However, it is also important to recognize that the suspect's statement could have been challenged during the original investigation, if the investigator had been more thorough and perhaps less biased against the victim.

For in-depth information on this case, including interviews with investigators and prosecutors, please see the article [Reinvestigating Rape: A Race for Justice](#).

Policies on Victim Arrest

When Cynthia Espey reported her sexual assault, she did not receive the help she was looking for from law enforcement. Instead, she was arrested on an outstanding misdemeanor warrant. This type of arrest is likely to eliminate any chance of investigating or prosecuting the felony sexual assault. It is therefore important to distinguish between felony and misdemeanor criminal activity, and the impact each has on the safety of a community.

If the victim has committed a felony or has an outstanding felony warrant, this will most likely need to be processed. Yet it is still possible to evaluate different possible responses (e.g., conferring with the prosecuting attorney or appearing in front of a judge to ask that the victim be released on her/his own recognizance pending a hearing.) Regardless of how a warrant is handled, it is important that the sexual assault report not be disregarded, just because of a victim's criminal activity or criminal history.

For more information on this topic, see our OLTI training module entitled: [Effective Victim Interviewing: Helping Victims Retrieve and Disclose Memories of Sexual Assault](#).



Prioritizing Safety for Sex Workers

San Francisco has adopted a first-of-its-kind [policy](#) to not charge crimes committed by people who are involved in sex work or victims of violence, to encourage them to come forward and provide information to law enforcement. Specifically, the policy states:

The District Attorney's Office will not prosecute persons for involvement in sex work or other forms of sex trade when they are victims or witnesses of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime. For purposes of this policy, persons will not be prosecuted for uncharged offenses including Penal code §§ 647(a), 647(b), 653.22, 372, and misdemeanor drug offenses, when reporting sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime.

Information gathered from a victim or witness of a violent crime who is engaged in sex work or other forms of sex trade including trafficked persons will not be used in any manner to investigate and prosecute that person, during the course



of the investigation or in the future. So long as the person making the report does so truthfully, any statements they make shall not be used against them in the current investigation or in any future criminal action against them concerning this incident brought by this office for violation of Penal code §§ 647(a), 647(b), 653.22, 372.

Immigration status will not be used by the District Attorney against victims and witnesses of violent crime in any way. The Office of the District Attorney shall not report to any person or government agency the immigration status of any person making a report under this policy, with the exception of assisting with the application for immigration relief that would benefit the victim or witness.

Common Limitations

While the discussion so far has focused on the advantages of testing evidence, there are also a number of common limitations with this *Response*. These are not always meaningfully addressed in the discussion of untested kits and “test all kits” legislation.

Which Items are Tested?

One common limitation is the number of items tested from the evidence kit. Depending on the forensic laboratory, only the vaginal swabs may be tested – or the vaginal swabs and other swabs from the victim’s body.⁵³ Yet a sexual assault kit includes a number of additional swabs, items, and clothing (e.g., undergarments). In one study conducted by the FBI and NIJ, a sample of, 597 sexual assault evidence kits were found to contain 8,694 discrete biological samples (Ritter, 2016, p. 5).



Photo Credit: www.techagainstassaults.com

Why test only the swabs? Because resources are limited. As expensive as it is to test the swabs from thousands of evidence kits, it would be virtually impossible to secure the resources to process and test all of the bags and boxes of crime scene evidence ... including clothing and bedding ... towels and bedspreads ... cushions, carpet and car upholstery ... not to mention condoms, tissues, and evidence from a suspect exam.

Moreover, unlike an evidence kit – which includes DNA from a limited number of sources – crime scene evidence can have DNA from a virtually unlimited number of sources. All of these sources may need to be excluded to assist in the investigation.

If all this evidence was submitted to the laboratory, it would simply shift the piles of untested evidence from one place to another. The laboratory would become the new police property room, and the overwhelming demand on resources would prevent law enforcement from responding appropriately to new crimes reported in our communities.

⁵³ Some jurisdictions also test only one of the swabs taken from each orifice, whereas others test more than one. In Cuyahoga County, for example, three of the five swabs taken from each orifice are tested.

Is Testing Blind?

Another common limitation is the failure to test evidentiary items based on the specific case facts and assault history. For example, if only the vaginal swabs are tested, this is not likely to advance the investigation of a case where the victim reports oral copulation or attempted but not completed penile-vaginal penetration. Alternatively, the suspect may have used a condom or not ejaculated. Based on this assault history, other sources of evidence are likely to be more critical than the internal vaginal swabs.

Similarly, if a male victim reports that a male suspect orally copulated him, but the victim showered afterward, this may or may not have destroyed the saliva evidence from the victim's penis. However, it may be intact on the underwear the victim put on after the assault, making that the most significant potential source of probative evidence. In that case, the underwear should be tested before the swabs taken from the victim's penis.

This is why the original "forklift" in New York City expanded from testing only the swabs to other sources of evidence, such as underwear, clothing, tissues, and condoms. In Cuyahoga County, they test additional items if the swabs do not initially yield a "hit." When evaluating any testing initiative, it is therefore critical to consider which items are being tested, and whether testing is based on the specific assault history.

Just Testing Kits?

Given these common limitations, any jurisdiction *Responding* by testing kits will need to be transparent with victims and the public. For example, anyone notifying a victim that their kit tested "negative" must be prepared to explain that this only means foreign DNA (meaning DNA not belonging to the victim) was not recovered from the specific items tested. This does not necessarily mean there was no evidence, or that the victim was not sexually assaulted. As noted above, the suspect may have worn a condom or not ejaculated. Alternatively, there may have been attempted but not completed penile-vaginal penetration. Victims deserve information about other types of evidence that might be available and whether or not there is any plan to have that evidence tested.

Similarly, the public must understand that cases will only be re-evaluated if there is an evidence kit associated with the report. The forklift approach began as an effort to test sexual assault evidence kits, but of course a kit is only available if the victim had a medical forensic exam. Most victims do not have such an exam. Estimates range from 19-40% for the percentage of victims who seek medical care following their sexual assault (for review, see Campbell, 2008; also Kilpatrick et al., 2007; Zinzow et al., 2012). Of those who report their sexual assault to law enforcement, approximately half (44-55%) have a medical forensic examination (McEwan, 2011; Peterson et al., 2010).

This is why some communities have expanded their testing initiative to re-evaluate cold cases without an evidence kit – or where the kit failed to yield a foreign DNA profile. This is part of the larger movement to broaden our view of the problem, and it can yield additional case linkages when the suspect who is named in one case can be identified from DNA in another. We will address these issues in more detail, in the section on specialized units. However, this discussion again highlights the point that any effort to

improve the investigation and prosecution of sexual assault must extend beyond testing kits to the many other types of information and evidence that may be available.

Funding for Sexual Assault Kit Testing

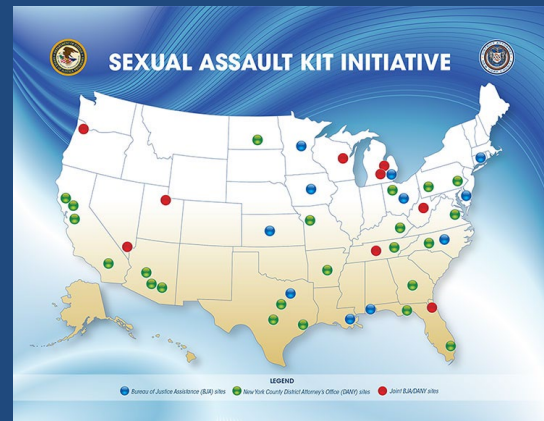
For jurisdictions seeking to inventory or test evidence kits currently being held in storage, there are a number of funding sources available to support the work.

In September 2016, the Bureau of Justice Assistance (BJA) awarded over \$38 million to help state, tribal and local government agencies process sexual assault kits in law enforcement custody that had not been submitted to forensic laboratories. Additional awards will be given in 2017. The program also enables jurisdictions to assign personnel to pursue leads and criminal investigations based on evidence discovered through kit testing, as well as developing evidence-based tracking systems and training law enforcement on sexual assault investigations. Grantees can even use the funds to conduct research on outcomes in sexual assault cases and increase the collection of DNA that may lead to the identification of serial perpetrators. For more information, see BJA's webpage on the National Sexual Assault Kit Initiative (SAKI).

The New York County District Attorney's Office (NYCDAO) also awarded approximately \$38 million in grants to 32 jurisdictions in 20 states to reduce the number of untested sexual assault kits. The two-year awards (often referred to as "DANY grants") range from \$97,000 to \$2 million, and they will be used to test an estimated 56,475 sexual assault kits, generating DNA profiles that will help solve cases across the country. More information is available from the webpage for the program hosted by the NYCDAO.

Finally, the National Institute of Justice (NIJ) and Federal Bureau of Investigation (FBI) Laboratory have formed a Sexual Assault Kit (SAK) Partnership. The FBI laboratory will process and test a limited number of untested kits, while scientists at NIJ collect and analyze data to help improve knowledge and processes. Any law enforcement agency or public forensic laboratory is eligible to submit a limited number of sexual assault kits for analysis (up to 30 kits per request). The submitting agency is required only to pay shipping costs to and from the FBI DNA Laboratory. For more information, please see the webpage for the SAK Partnership between NIJ and the FBI.

Beyond kit testing, the Office on Violence Against Women (OVW) offers STOP Violence Against Women Formula Grants that can be used to improve investigations and prosecutions, as well as collaboration with allied disciplines. For more information, see the [OVW webpage](#) for grant programs.



Do Not Test Evidence without Victim Consent



Photo Credit: Department of Justice

Another concern raised with the *Response* of kit testing is the possibility that evidence might be submitted to the laboratory without a victim's consent. This concern also applies to "test all kits" laws regarding current and future investigations. Since 2009, the [Violence Against Women Act \(VAWA\)](#) has required all U.S. states and territories to ensure that all victims of sexual assault can obtain a medical forensic exam free of charge – and regardless of whether or not the victim cooperates with law enforcement or participates in the criminal justice process. This is a requirement for states and territories to remain eligible for STOP Grant funds, and it is often referred to as "forensic compliance."

Forensic Compliance

As a result of VAWA, some evidence is now being stored for victims who have had a medical forensic exam – but not yet made the decision to report to law enforcement or participate in the investigative process. In some communities, these exams are called "medical reports," "restricted reports," or "non-reports." In others, the victim's identity is kept confidential from law enforcement, and they are called "anonymous reports" or "Jane Doe reports." However, we prefer the term "non-investigative reports," because this places the primary focus – not on anonymity – but on what happens as a result of the exam and the collection of forensic evidence. Because these victims have not yet decided to participate in the criminal justice process, no investigation should be initiated and no evidence should be tested.

It is critical that these victims are given straightforward information about what will happen to the evidence in their case: It should simply be stored until they say otherwise. If they later decide they are able to participate in the investigation, this is described as "converting" from a non-investigative report to a standard reporting process. At that point, an investigation can be initiated, and the evidence can be tested.

Training Module on Forensic Compliance

For more information, guidance, and concrete tools for implementing forensic compliance, please see the OnLine Training Institute module, entitled, [*The Earthquake in Sexual Assault Response: Implementing VAWA Forensic Compliance.*](#)

Several archived webinars address a number of issues related to VAWA forensic compliance, including: [*Opening Doors: Alternative Reporting Options for Law Enforcement and VAWA Forensic Compliance and Investigating and Prosecuting 'Converted Cases.'*](#)

Department of Justice Position

This position is not just ours: It is clearly stated by the U.S. Department of Justice, Office on Violence Against Women (OVW), in their white paper entitled, *Sexual Assault Kit Testing Initiatives and Non-Investigative Kits*. In that paper, OVW states that:

Submitting non-investigative SAKs to a forensic laboratory for testing, absent consent from the victim, should not be standard operating procedure for a law enforcement agency (OVW, 2017, p. 4).

Three reasons are given for this position:

1. Testing a kit before the victim has made a report to law enforcement undermines the victim's prerogative to decide if and when to engage with the criminal justice system.
2. Testing a kit without the victim's express consent either to submit the kit or to report the assault to law enforcement is not an advisable way to cultivate community trust.
3. Funding for testing SAKs is not unlimited, and grant funds should be directed to activities that promote accountability for offenders and justice and healing for victims (OVW, 2017, p. 5, 7 & 8).

CODIS Eligibility

Another question is whether these DNA profiles are eligible for uploading into CODIS and the National DNA Index System (NDIS). The Federal DNA Identification Act ["Federal DNA Act," 42 U.S.C. §14132(a)(2)] governs the NDIS, and specifies which types of DNA records can be stored and searched in this national database. Specifically, it authorizes the inclusion of DNA profiles in NDIS if they are derived from "analyses of DNA samples recovered from crime scenes." This includes evidence collected from the victim's body and clothing during a medical forensic exam.

NDIS Operational Procedures further clarify that a forensic DNA record "submitted to NDIS shall originate from and/or be associated with a crime scene; the source of which is attributable to a putative perpetrator." In other words, there must be reason to believe that the DNA profile belongs to the person who committed the sexual assault.⁵⁴

Generally, any foreign DNA profile derived from a sexual assault evidence kit will be eligible for CODIS and NDIS, as long as there is documentation that: (1) a crime has been committed, and (2) elimination samples have been provided, or at least requested, from any consensual partners. Elimination samples are needed whenever a victim has engaged in consensual sex within days of the sexual assault. If the consensual partner's profile is uploaded to NDIS, from samples collected during the victim's medical forensic exam, it must be removed in accordance with the Federal DNA Act.

⁵⁴ [Section 4.2.1.3.](#)

When a sexual assault victim has a medical forensic exam and consents to having their evidence tested, any foreign DNA profile derived from the evidence kit will be eligible for CODIS, as long as it otherwise satisfies NDIS criteria (e.g., quality assurance standards, request for elimination samples from any consensual partner).

However, if the victim has had an exam, but not yet decided to participate in the law enforcement investigation, there is some disagreement regarding whether these samples can be tested. Some jurisdictions are submitting this evidence for testing, because the state has a statutory mandate requiring all sexual assault evidence kits to be tested (a “test all kits” law). Others do so because the law enforcement agency offers a mechanism for anonymous, “blind,” or third party reporting (through a designated health care provider). In these jurisdictions, the statutory requirement or reporting mechanism is interpreted as sufficient for the purpose of initiating a criminal investigation – and thus meeting the requirement for CODIS eligibility. Yet it is difficult to reconcile this position with the very purpose of these reporting mechanisms, which is to provide access to a medical forensic exam *without initiating the investigative process*.

In this scenario, when a victim has a medical forensic exam without making a decision about criminal justice participation, the elements of a criminal offense have not yet been established in a crime report documented by law enforcement. It is beyond the scope of a health care provider’s role to determine whether or not a crime occurred. Moreover, law enforcement cannot document a reasonable belief that the DNA belongs to the perpetrator(s), because no steps have been taken to exclude any consensual partners.

This is the basis for EVAWI’s position that samples should not be tested if the victim has an exam but has not yet decided to participate in a law enforcement investigation.

In fact, it may not even be appropriate to characterize this as evidence, until the victim decides to participate in the process of a law enforcement investigation and the elements of a criminal offense have been established. It is more accurately seen as a collection of biological samples (and documentation from the medical forensic exam).

Evidence in Non-Investigative Cases

Additional details on this issue are provided in our OLT module: [Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations](#). Also, a Training Bulletin specifically explores the question: [Should We ‘Test Anonymous Kits?](#)

OVW’s position paper is entitled, [Sexual Assault Kit Testing Initiatives and Non-Investigative Kits](#), and it offers a great deal of helpful guidance in this area.

Develop a Testing Plan

When a jurisdiction decides to submit previously untested kits to the laboratory, decisions must be made regarding how to prioritize testing resources. Will all the untested kits be submitted? If so, will this happen all at once, or will they be submitted in batches? If in batches, how will they be selected? How will the order be determined?



Alternatively, if not all kits will be tested, how will they be selected and prioritized?

One recommendation from Detroit: Start small.

Starting with as few as 10 kits could help a jurisdiction clarify goals, work through logistics, identify resources and staffing, and determine what information is difficult to track down (Ritter, 2016, p. 20).

Regardless of the testing plan chosen, the next challenge will be the new backlog of cases requiring investigation. As the CODIS hits begin to pile up, how will agencies select which cases to prioritize for follow-up investigation and potential prosecution? Many lessons have been learned in communities already addressing these questions.

Lessons in Prioritization

In Cleveland, the Sexual Assault Kit Task Force decided to test more than 4,800 kits, but they still needed to determine which to test first. The state crime laboratory initially made the decision to test kits in chronological order, so cases approaching the statute of limitations would be processed first. As hits began rolling in, sometimes 25 or more a week, cases were distributed to investigators who then had to race against the clock:

In 2013, the earliest cases were reaching the 20-year statute of limitations for filing charges. Prosecutors and police sometimes had only hours between when the DNA results came back and when the statute of limitations ran out. [In one case,] the detectives waited in a woman's driveway for her to come home after carpool duty. They needed to get an indictment to the Grand Jury before the day was out.⁵⁵

When the crime laboratory caught up on these older cases, they then “jumped” to more current cases and worked toward the middle – so they were working both the oldest kits and the most recent kits from 1993-2011. The hope was that they would be able to prevent additional assaults committed by younger and more active perpetrators.

At first, Task Force leaders engaged in only a cursory review and prioritized those cases that required “all hands on deck.” In other words, they identified those cases that

⁵⁵ [“How an Ohio reporter helped convict more than 100 rapists.”](#) By Chava Gourarie, *Columbia Journalism Review*, September 2, 2015.

needed to be investigated swiftly to secure a Grand Jury indictment, either because the statute of limitations was approaching or for some other reason. They also prioritized cases with urgency if they involved multiple hits or if the suspect was not in prison. But a case involving James W. Daniel III changed all that.

Daniel was identified through DNA testing as a suspect in an unsolved home invasion and rape committed in 2000. The victim reported that a man broke into her home on the East Side of Cleveland around 3 a.m. He used excessive profanity and kept his face covered during the rape. The case was assigned to a detective on the Task Force. The detective started to work the case, but unfortunately it was only one of the many cases she had been assigned, including several approaching the statute of limitations.

The detective's initial work revealed that Daniel had no convictions for sex offenses, but he had multiple convictions for burglary as well as felony assault. During the course of the investigation he was released from prison, after serving four years for robbery.

The detective began looking for Daniel, and she contacted his parole officer in the hopes of confronting him the next time he reported. But before she could locate and arrest him, he raped and robbed a morning jogger, as well as another young woman walking home in a Cleveland suburb. The attack on the jogger was captured on video, which only heightened public fear. For weeks, there was no suspect, and DNA testing of the evidence from the sexual assault kit did not produce a match to identify one.

Investigators scoured the neighborhood for more video recordings, and a forensic scientist did additional testing on the clothing collected from the two victims. This included "touch DNA," which can test for any skin cells left on an object after it has been touched. This sensitive analysis was conducted on the sports bra of the first victim and the jeans pocket from the second victim. When a profile was identified, Task Force members realized that the suspect was a man they were already pursuing in the 2000 cold case. This was a "nightmare" scenario, according to then-County Prosecutor Timothy McGinty.

The Task Force moved quickly to figure out what they could do to improve their methods for prioritizing cases, in the hopes of avoiding another similar scenario. They now utilize a system of digital "stamps" recorded on each file, to indicate a priority level based on the evaluation of a number of factors, including when the statute of limitations expires, whether the suspect has a prior record of sexual assault or other violence, and whether the suspect is incarcerated or not.

In addition, the office hired researchers to analyze data from the Task Force and guide their efforts to prioritize cases. In fact, the public attention generated by this case helped to secure additional funds for investigators, prosecutors, and a crime analyst to help evaluate patterns using crime data – a bit of a silver lining to these terrible events.

By hiring additional personnel, investigations can be accelerated, decreasing the risk that other victims will be attacked during the time an investigation is being completed. Now that the Task Force has caught up with cases nearing the statute of limitations, the

current Cuyahoga County Prosecutor Michael C. O'Malley has stated his determination to prioritize the investigations where suspected perpetrators remain on the streets.

Statute of Limitations and “John Doe” Warrants

As in Cleveland, some jurisdictions will prioritize cases for testing based on the statute of limitations at the time of the assault. This is done in the hope of pursuing cases that are still eligible for prosecution. Over time, however, many states have eliminated the statute of limitations for sexual assault, or modified the law so it does not begin running until a suspect has been identified. In other words, the “clock does not start ticking” until there is a named suspect. In these states, the additional time will offer increased opportunities to prosecute cases and hold offenders accountable.

However, even if the statute of limitations is running, and testing does not identify a suspect, prosecutors may still be able to obtain a “John Doe” warrant or indictment, based on the suspect’s DNA profile rather than a name. The decision to take such an action will be based on a number of factors, including what specific information has been provided by the victim and whether any consensual partner has been excluded. A John Doe warrant or indictment (like any other warrant or indictment), serves to extend the statute of limitations until the suspect is identified and arrested.

As of March 2017, grand juries in Cleveland have indicted 121 “John Doe” suspects based on unidentified DNA profiles. Nine have since been identified through kit-to-kit matches or a subsequent arrest.⁵⁶ (In 2010, Ohio revised their DNA collection laws, making it possible to collect DNA pursuant to a felony arrest.) In addition, they have indicted “unknown males” in cases where the victim remembered multiple attackers but the laboratory was only able to develop DNA profiles for some of the suspects.

Testing Outside the Statute of Limitations

When a testing plan is being developed, one question is whether to include cases that appear to be outside the statute of limitations. While resources are limited, there are several arguments supporting the value of such testing. The first is this: We might be wrong. Calculating time under the statutes of limitations can be extremely complex and should always be done in consultation with prosecutors. In addition, there are certain circumstances that can toll (suspend) the running of time (e.g., a suspect has fled the country or state to avoid an arrest and prosecution). A misdemeanor-level offense might be elevated to a felony with a longer (or with no) limitations period if, for example, the offender turns out to have prior qualifying convictions. Making the determination may require some investigation.

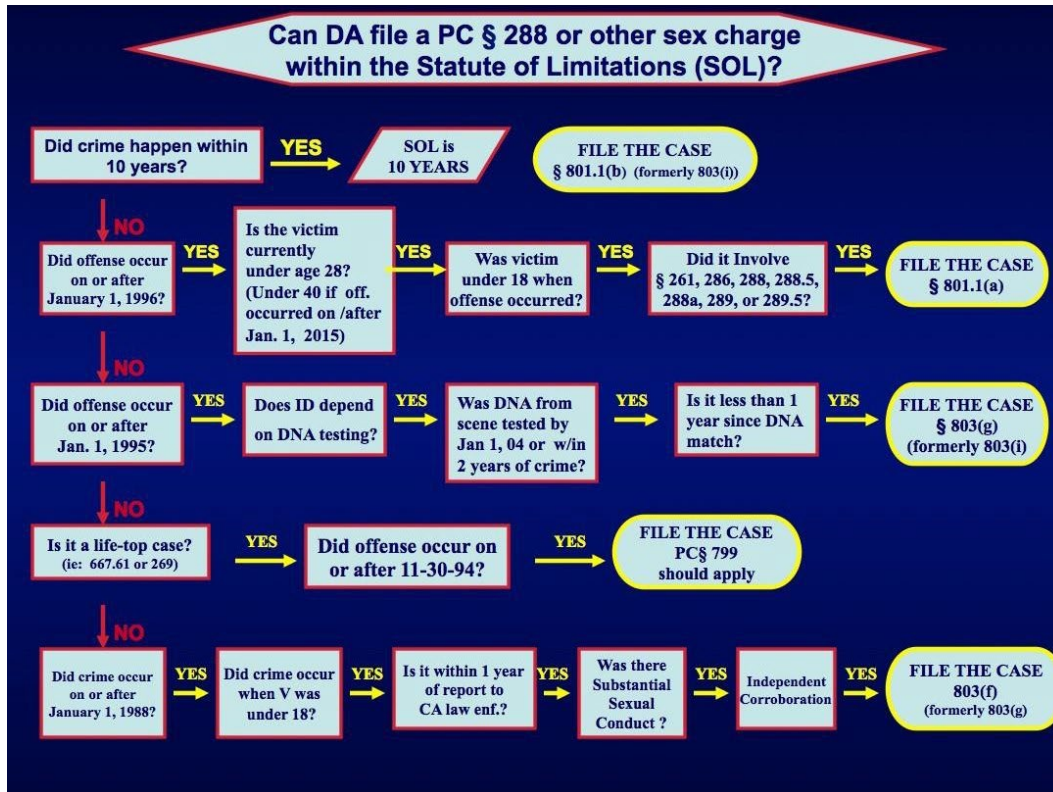
Further complicating matters, unless the amendment to a statute of limitation was specifically written to be retroactive, the statute in effect at the time of the offense will be the one that applies.⁵⁷ These points are illustrated with the following flowchart, which

⁵⁶ Data provided by the Sexual Assault Kit Task Force in Cuyahoga County, March 2017.

⁵⁷ A newly extended statute of limitation cannot be applied to revive a case where the original limitations period has already expired; it can, however, properly extend the time for prosecution when the original limitations period has not yet run out. See *Stogner v. California*, 539 U.S. 607, 6118-21 (2003).

outlines considerations when determining the statute of limitations for felony sexual assault offenses in California.

San Diego County District Attorney Statute of Limitations Flowchart



Yet another reason to test evidence in a case that appears to be outside the statute of limitations is that it might be possible to introduce that evidence in a future parole hearing or another criminal case if the perpetrator re-offends. Research in Detroit revealed that CODIS hits were just as likely in cases where the statute of limitations had expired, as in cases where it had not (Campbell et al., 2015).

Pursuant to Rule 404(b) in the Federal Rules of Evidence or the state equivalent, evidence from a prior case can potentially be introduced for an approved purpose in another case. Under those circumstances, the victim of a prior sexual assault can even testify at trial of another sexual assault – even if their own case was never prosecuted. Moreover, even if the evidence or victim testimony cannot be introduced, testing may provide renewed investigative energy and leads, as well as validation for the victim.

Texas allows DNA profiles from cases outside the statute of limitations to be entered in a database that can be searched by law enforcement across the state, as a means of gathering intelligence.⁵⁸ This can be extremely valuable – not only for law enforcement and prosecution, but also for victims and communities as a whole.

⁵⁸ [411 Texas Government Code, Subchapter D-1](#), beginning at 411.0601.



For all these reasons, jurisdictions might wish to test evidence in cases apparently outside the statute of limitations, even if they are given a lower priority for analysis.

Statute of Limitations

The [National Center for Victims of Crime \(NCVC\)](#) offers two reports on this topic:

[*Increasing Victims' Access to Justice: The Statute of Limitations and the Prosecution of Sexual Assault Cases*](#)

[*Why Test Rape Kits after the Statute of Limitations Has Expired?*](#)

For information on the Texas law and DNA profiles outside the statute of limitations, please see the website for the Texas Department of Public Safety, in the section providing information about the [Statewide CODIS DNA Database Program](#).

Prioritizing Cases for Testing

Because resources are limited, agencies may not *Respond* by testing all their previously unsubmitted kits. Instead, they may make individual determinations about whether to test evidence in each particular case, by evaluating whether they have what they need to re-open an investigation. Are there any police reports, photographs, or other forms of evidence and documentation still available? Or have they been purged? This evaluation will require a considerable allocation of personnel and resources. In Detroit, for example, the process of selecting 1,600 cases took 2,958 staff hours (NIJ, 2016b).



When making these decisions, it is crucial to solicit input from a wide variety of perspectives:

Testing evidence in sexual assault cases raises complex legal, psychological and evidentiary issues – and having a team with representatives from the police department, prosecution, forensic sciences, medicine and both systems-based and community-based advocacy will help ensure that the testing plan considers diverse perspectives (NIJ, 2016b, p.1).

This will help sort out what factors should and should not be used to prioritize cases.

Stranger Sexual Assaults

For example, stranger sexual assaults have historically been seen as a high priority for testing, since DNA can potentially identify an unknown suspect. Yet the Detroit team found that CODIS hit rates were equally likely in cases involving strangers and non-

strangers (Campbell et al., 2015). Other factors were similarly found to be unrelated to the likelihood of a CODIS hit: victim age, suspect age, exam timing, and other assault characteristics (Campbell et al., 2015). This means there is no support for using these factors to prioritize cases for testing, at least based on the likelihood of a CODIS hit.

Both the Detroit and Houston teams also raised concerns about how the level of relationship was being defined in these cases. Who is a “stranger” versus a “non-stranger?” The determination is not always simple or straightforward, given the complexity of real-world interactions (Ritter, 2016, p. 19). Making the determination is also a time-consuming process, because most of the information comes from the narratives contained in police reports, which vary greatly in their level of detail and accuracy. Plus, victims do not always share the same definition as police. Caution is therefore advised when prioritizing cases based on this variable.

Victim Participation

Some have also proposed that cases should be a lower priority for testing if the victim is unwilling to participate in the investigation and prosecution (Nelson, 2010; OVW, 2010). However, as with the victim-suspect relationship, caution is advised when making this determination, because police reports are often replete with stereotypic beliefs, gender bias, and mistaken assumptions about sexual assault (Ritter, 2016). In fact, some common victim behaviors are often interpreted as a lack of cooperation, or even outright belligerence against an officer, when they may simply be a response to trauma.⁵⁹

In addition, victims often become uncooperative based on how they are treated. When sexual assault victims receive poor treatment from law enforcement or prosecutors, whether it is blatant skepticism, hostile interrogation tactics, or other forms of mistreatment, it is not surprising that they frequently respond by withdrawing their participation or even becoming angry and “uncooperative.” Some even recant. Unfortunately, this fuels commonly held beliefs about false reporting, and increases the likelihood that the next victim will be mistreated and become “uncooperative” as well. It also means the perpetrator is free to assault additional victims.

These failures can also deny victims access to crime victim compensation funds, when their reports are improperly unfounded or exceptionally cleared (on the basis that they were “uncooperative”). Crime victim compensation funds can be used to reimburse victims for counseling expenses, as well as other financial losses resulting from the crime. Therefore, denying victims access to these funds can add financial harm to the physical and psychological damage they are already suffering as a result of the sexual assault. By re-evaluating these cases, it may be possible to provide some victims access to the crime victim compensation funds they need, and deserved all along.

Resource: Start by Believing

Start by Believing is the global campaign developed by EVAWI to transform responses to sexual assault and overcome the common belief that victims are only fabricating

⁵⁹ For discussion of victim cooperation in sexual assault cases, see Kaiser, O’Neal & Spohn (2016).

reports out of revenge, a desire for attention, or as an excuse for their own questionable behavior. It “flips the script” on the message victims have historically received from professionals and support people, which is: “How do I know you’re not lying?”

When investigators approach each sexual assault report with a Start by Believing philosophy, they are better able to conduct thorough, evidence-based investigations; this is key to achieving due process and holding offenders accountable.

For more information, please visit the [Start by Believing website](#).

Adjudicated Cases?

Any jurisdiction undertaking a testing initiative will need to decide whether or not to include cases that have already been adjudicated. One reason to do so is because it may simply require fewer resources to test all kits than it does to determine an accurate status because the documentation of case dispositions may be inaccurate or unclear.

In addition, there is value in testing available evidence, to potentially exonerate the wrongfully convicted. According to the [Innocence Project](#) there have been 350 post-conviction exonerations in the U.S. as a result of DNA testing, as of June 2017. However, legal screening requires more than just DNA testing. It also requires reviewing all the information and evidence available in a case, to determine whether new testing could potentially support an exoneration.

DNA testing can also be useful in cases that have already been adjudicated, if it assists in the investigation or prosecution of another case linked with a CODIS hit. Testing can potentially eliminate issues that might otherwise be appealable by the defendant. In Cleveland, for example, some questioned the decision to prosecute a man who was already on death row, awaiting execution for another crime – until his conviction was overturned by a federal judge. Prosecution immediately became a more urgent priority. Yet DNA testing obviously requires resources, so jurisdictions will need to carefully weigh decisions about testing adjudicated cases. It is also worth checking to determine whether funding sources used for testing allows it.

Victim is Deceased or Cannot be Located

Anytime a jurisdiction begins reviewing older cases, some victims may now be deceased or impossible to locate. This does not necessarily mean that the case cannot be prosecuted. It depends upon what other evidence may be available and admissible to prove the crime. Such evidence might include, for example, the victim’s 911 call for help or the victim’s account of the assault made to a health care provider during a medical forensic examination.

The admissibility of out-of-court statements by an unavailable witness was addressed in the 2004 United States Supreme Court decision, *Crawford v. Washington*,⁶⁰ and its

⁶⁰ Crawford v. Washington, 541 U.S. 36 (2004).

progeny. These cases hold that the Constitution's Confrontation Clause⁶¹ requires that defendants have an opportunity to cross-examine the witness whose "testimonial" statements are introduced at trial.

"Nontestimonial" statements will only be admissible if they come within a jurisdiction's exceptions to the rule barring hearsay – for example, statements classified as "excited utterances." This could include a 911 call from a victim seeking help, statements made to resolve an ongoing emergency, and statements made to medical professionals for diagnosis and treatment. These statements are typically viewed as nontestimonial and, therefore, admissible as long as they come within the jurisdiction's hearsay exceptions.

Where evidence exists to support it, the doctrine of forfeiture by wrongdoing may provide another means for the prosecution to introduce statements of an unavailable victim. This doctrine permits the admission of out-of-court statements when the victim's unavailability to testify was intentionally caused by the defendant (e.g., the defendant murders the victim or engages in witness intimidation to prevent the victim's testimony). The rules governing admissibility under *Crawford* and subsequent cases, as well as forfeiture by wrongdoing, are complex; determinations about admissibility, and whether there is sufficient evidence to prosecute a case with an unavailable victim, require the legal analysis of a prosecutor. In Cuyahoga County, convictions have been obtained in several cases involving a deceased victim. However, this has most often been seen in cases involving multiple victims.

Crawford v. Washington

For more information on *Crawford* and other court decisions on victim statements, please see the following publication from AEquitas: The Prosecutors' Resource on Violence Against Women: *The Prosecutors' Resource: Crawford and Its Progeny*.

For more information on the doctrine of forfeiture by wrongdoing, please request the Forfeiture by Wrongdoing statutory compilation and case law digest from AEquitas.

⁶¹ U.S. Const. amend. VI.

Re-Testing with New Technologies

Finally, decisions about which evidence to test should always take into consideration how rapid the advances in DNA technology have been over the years. If DNA was introduced in an older case, new technology might develop a far more powerful profile, especially if RFLP⁶² (an earlier DNA technology) was originally used, or if serology was simply used to determine blood type. Testing might also be used to take another look at any unsolved cases – including cases where the prosecutor originally declined to file charges or the charges were ultimately dropped. Although the evidence may have been tested at the time, current DNA technology might produce a different result.



Photo Credit: www.uri.edu

Once again, this point is illustrated in a case out of Cleveland. In 2006, a suspect committed a series of crimes including kidnapping, attempted rape, and robbery of a woman, as well as the kidnapping and attempted murder of her 21-year old son. During the attack, the suspect forced the son into the trunk of the car and slammed it closed with his hand. At the time, the detective searched for a match to the palm print on the car trunk, with negative results. In addition, no male DNA was recovered from the evidence in the victim's sexual assault kit.



Photo Credit: Foter.com / Photo Credit: Diana

However, ten years later, investigators reviewing the laboratory reports decided to run the palm print again, and this time, a suspect was identified. Investigators then submitted the victim's pants for "touch DNA" analysis and the resulting profile matched the palm print from the trunk of the car. These new test results were enough to indict the suspect on a number of charges.⁶³

With continuing advances in DNA technology, it makes sense to take another look at old cases. Even DNA tested using today's technology may have different results in the very near future. This is therefore an issue that must be continually re-evaluated, based on advances in technology and resources.

⁶² The first technology that was widely used by law enforcement for DNA typing was called Restriction Fragment Length Polymorphism (RFLP). The process is described by Campbell et al. (2015): "A DNA sample is broken into pieces by restriction enzymes, resulting in restriction fragments that are separated according to their length to evaluate different patterns across persons" (p. 74). For more information, please see our OLT module on [Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations](#).

⁶³ "[Palm print helps solve Cleveland rape and attempted murder case from 2006, prosecutors say.](#)" By Rachel Dissell, *The Plain Dealer*, October 13, 2016. Additional information provided by the Sexual Assault Kit Task Force in Cuyahoga County, March 2017.

Creating a Testing Plan

The National Institute of Justice (NIJ) offers a summary of recommendations on [Creating a Plan to Test a Large Number of Sexual Assault Kits](#), as well as a video entitled, [How Research and Technology are Expanding Sexual Assault Kit Testing](#).

More detailed guidance is available in the [Final Report on the Detroit Sexual Assault Kit \(SAK\) Project](#), which provides guidance for developing a testing plan. In particular, see the [Step-by-Step Process of Creating the Detroit SAK ARP Testing Plan](#) (Figure 4-1, p. 143-148) and [Lessons Learned: Developing a SAK Testing Plan](#) (p. 309-312).

Create a Specialized Unit

For jurisdictions that *Respond* by testing kits, decisions will also need to be made regarding how to prioritize cases for follow-up investigation and potential prosecution. One strategy is to create a specialized unit for cold sexual assault cases.

Many law enforcement agencies have created Cold Case Units to investigate unsolved homicides, or they have assigned certain detectives to focus on investigating these cases.⁶⁴ This same approach can be used to tackle cold sexual assault cases, because it allows designated personnel to build the expertise, skills, and relationships they need to be successful. Ideally these efforts will involve not only the law enforcement agency and prosecutor's office, but also victim advocates and other allied partners.

The purpose of such an entity could be to review cold cases with untested evidence, or to review cold sexual assault cases more generally, since many sexual assault cases do not have an evidence kit. However, it must be clear that the specialized unit or dedicated investigators will not be sufficient to accomplish these objectives on their own. Any such effort must be supported with strong leadership, clear policies, and vigilant oversight to address possible gender bias, as well as supervisory accountability. Only then will the specialized unit or personnel have what they need to pursue successful investigations, prosecutions, and exonerations in these challenging cases.

To provide one example, the Phoenix Police Department established their [Adult Sex Crimes Cold Case Squad](#) in 2000.⁶⁵

Cold Case Unit in Phoenix Police Department

The Adult Sex Crimes Case Squad is housed in an advocacy center outside the Phoenix Police Department. It includes four full-time detectives and a supervisor assigned to review and investigate these cases, as well as two prosecutors tasked with

⁶⁴ According to one survey, approximately 18% of law enforcement agencies with 100 or more sworn officers have a Cold Case Unit, over half of which are supported with grants or other external funding sources (Davis, Jensen & Kitchens, 2012; cited in Campbell & Wells, 2014).

⁶⁵ Thanks to Detective Sergeant Jim Markey (Retired), for providing information and materials from the Phoenix Police Department Adult Sex Crimes Cold Case Squad.

pursuing them. The team also works collaboratively with forensic scientists and victim advocates, to ensure that cases are fully pursued. Team members meet regularly and cross-train frequently, to better understand each other's roles and responsibilities.

For more information on the Phoenix Cold Case Unit and others, please see the report by Campbell and Wells (2014), entitled: [Testing Sexual Assault Kits in Cold Cases and Follow-Up Investigations: Practices Used in Agencies in the United States](#).

Develop Tools for Case Evaluation

To prioritize cases for investigative follow-up, tools can be created to help guide the decision-making process. The Phoenix Adult Sex Crimes Cold Case Squad has developed a number of such tools, which we adapted for this module. They are provided in Word format, so they can be easily modified for use in other communities.

Sample Tools: Case Review for Investigative Priority

First, the [Cold Case Investigation Checklist](#) can be used to document the information and evidence available in a cold case, including any investigation conducted after a file review or CODIS hit. This includes any investigative, medical, and forensic reports, as well as any search warrants, crime scene photographs, witness statements, suspect admissions, criminal history, and other records. This tool can also be used to help evaluate the laboratory results in context, to ensure that investigators are thinking well beyond the evidence that might be available from the victim's medical forensic exam. After determining what information and evidence are available in a case, the assessment can be made regarding its priority for follow-up investigation. To support this decision-making process, we provide sample guidelines in a tool described as the [Cold Case Investigative Priority](#). However, these guidelines are not intended to be comprehensive or all-inclusive, because the relevant factors will vary from case to case.

Examples of Investigative Priority

For any community developing tools to evaluate the investigative priority of cases, difficult conversations will need to be had regarding the value of various factors. This is because resources are limited. While we might wish that all cases could be pursued with investigative follow-up, the reality is that some will be prioritized above others.

As an illustration, the Cold Case Investigative Priority guidelines offer the following factors as indicating a Very Good priority for investigative follow-up:

- Medical forensic exam report available
- Additional evidence available (e.g., latent fingerprints, clothing, photographs, composite of the suspect)
- Detailed interview conducted with victim
- Victim location known

- Victim willing to participate in the investigation and prosecution
- No obvious consent defense (e.g., home invasion, abduction, stranger assault)
- Victim statement is consistent with evidence
- Witnesses located and available
- Original crime scene located and processed
- Evidence processed by the crime laboratory and reports available
- Case linked to additional victims/cases/scenes

Yet we have already noted cautions with some of these factors. For example, police reports vary greatly in terms of the information they provide: Some are extremely detailed, whereas others have very little information. Therefore, it might be hard to prioritize cases if a significant amount of information is missing from the report.

In addition, the information in a police report will not always be accurate. As previously noted, many victims are *unable* to participate in the investigation and prosecution of their sexual assault, due to the traumatic impact of the crime. However, these victims are often characterized as *unwilling* to participate, and this has a very different connotation. The victim's "unwillingness" might also be the result of mistreatment, which could be rectified with renewed contact, an apology, and a proper investigation. Records might be similarly missing or inaccurate with respect to other factors, such as the victim's statement, availability of witnesses, or the evidence collected and processed. Therefore, these priority factors should simply be used for guidance. The ultimate determination of priority must be made by investigators and supervisors on a case-by-case basis.

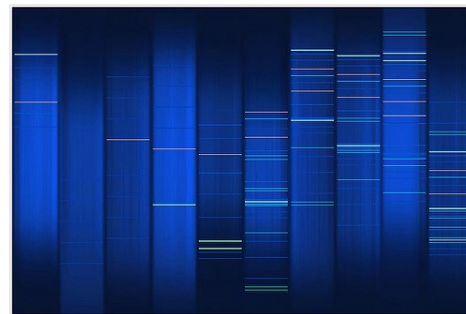


Photo Credit: Andrew Eick / Foter.com / CC

Investigative Priority of CODIS Hits

Tools will also be needed to help prioritize cases for investigation following a CODIS hit, whether it is part of a cold case review, testing initiative, or a new investigation. Again, we might wish that all cases with a CODIS hit could be immediately pursued with investigative follow-up, but resources are limited and some will need to be prioritized above others.

When there is a CODIS hit returned, the evaluation of investigative priority is similar to what has already been described. Investigators must determine whether the case has sufficient information and evidence to warrant follow-up investigation. Tools can be created to assist with this process, by organizing information and tracking case activity and outcomes.

Sample Tools: Case Review Following a CODIS Hit

Once again, the Phoenix Adult Sex Crimes Cold Case Squad has developed sample tools that we have adapted and can be further tailored for use in other jurisdictions.

First, the [CODIS Hit Priority Factors](#) can be used to evaluate factors such as the suspect's custody status and prior criminal record, as well as the victim's location and willingness to participate in the investigation and possible prosecution. The [CODIS Hit Priority Scoring](#) form can then be used to put a point value to the various factors.

To illustrate, highest investigative priority might be given to cases where the suspect has multiple arrests or convictions for sexual assault, and is either not in custody or is in custody and has a release date of less than 12 months – particularly when the victim has been located, is willing to participate in the process, and any consensual partner has been excluded. In other words, highest priority might be given to cases with high-risk offenders and a relatively high likelihood of successful investigation and prosecution. Conversely, a lower priority might be given to cases where the suspect is deceased or incarcerated for more than 10 years, the victim is deceased or has not been located and/or any consensual partner cannot be located and excluded.

While higher scores generally indicate a more urgent priority for investigation, it is not recommended that jurisdictions establish a specific cutoff – because other factors may need to be taken into consideration. In addition, new information may be uncovered or circumstances may change that require a different assessment or course of action.

Create a Computerized Tracking System

An ideal strategy is to incorporate these tools for case review and evaluation, as well as case tracking and management, into a single computerized tracking system. This is the only way to coordinate information in a comprehensive way and to record the status, progress, and outcomes of all reported sexual assaults and their associated evidence.

Whether commercially purchased or developed in-house, a comprehensive tracking system can allow members of the police department, prosecutor's office, and laboratory to share information. This can help to ensure that there is accountability when the case elements and information justify taking appropriate action – for example, when a CODIS hit is returned. Such a system can even include links for law enforcement to access the report and photographs from a medical forensic exam, if it is coordinated with health care providers. Crime laboratory personnel can then help to prioritize analyses of various evidentiary items, based on the specific case facts and assault history.

The system should also include non-investigative kits, with documentation indicating that the evidence should not be tested and explaining why not. This is necessary to ensure that they are not caught up in any testing initiative undertaken by the agency. Many sex crimes investigators rely on their agency's own records management system for tracking their cases, but most are insufficient for this purpose. Most systems do not provide information on which steps have already been taken in a case (and what the

results were), and they do not track cases through the entire criminal justice system. Any community embarking on a testing initiative would be well advised to contact other jurisdictions that have already led the way, to find out what data they collected on their cases and evidence, and how it is tracked and reported. It is very important to track the necessary information from the outset, because it takes much longer to go back to the original files and collect additional information than it does to increase the amount of information recorded during the original inventory of cases and associated evidence.

One particularly innovative effort was undertaken in Detroit, where they worked with the United Parcel Service (UPS) to develop a system for tracking their evidence using bar codes (Campbell et al., 2015). Other jurisdictions will likely follow a similar strategy.

Phoenix Example

Another example is seen in the Phoenix Police Department. Their computerized tracking system is referred to as Sex Crimes Analysis and Tracking (SCAT), and it functions primarily as an information management system for investigators.

REVIEWED	NAME	SCORED	Accepted
1/27/2009	Markey	Average	Yes

SYNOPSIS
Victim met suspect at a party and agreed to go with suspect to purchase more beer. She followed him to his apt in order to get his wallet. Once inside the suspect's apt he forced her into his bedroom and sexually assaulted her.

NOTES

9/3/1993	A4330	Det Juslin was contacted by Tucson PD on 08/25/93 informing him that the suspect has taken his wife and left town for Fresno, CA. His wife's family reporting her missing, TPD #9308255501.
8/17/1993	A4330	Det Juslin wrote that He was contacted by the suspect's intensive probation officer and was informed that the suspect quit his job and left town on 8/9/1993 leaving only his mother's Tucson address as contact.

SCAT Software System: Home Screen

Courtesy of Detective Sergeant Jim Markey (Retired, Phoenix Police Department)

This particular system was designed for a large police agency with a high volume of cases – not only rape and sexual assault, but also other sexually motivated crimes including kidnapping, indecent exposure, voyeurism, trespassing, burglary, etc. It is based on Microsoft Access software, and it includes a number of critical data fields (as demonstrated in the picture above).⁶⁶

San Diego County Example

The San Diego Police Department and the San Diego Sheriff's Department have also developed a tracking system, working in partnership with the District Attorney's Office.

⁶⁶ Thanks again to Detective Sergeant Jim Markey (Retired), of the Phoenix Police Department.

The system is designed to track each CODIS hit and record actions taken on the part of investigators and prosecutors, culminating either in a prosecution or case closure. This offers the ability to effectively manage, mine, and track this voluminous data. For example, the system can generate various reports for supervising prosecutors to track and manage CODIS hits. Automated email notifications are sent to prosecutors who may be pursuing a defendant on other cases (or have prosecuted that defendant in the past) to alert them of any new or open CODIS hits. The program also emails detectives to check on the status of open hits to ensure that there is follow-up by law enforcement.

Sample Email Notifications

We provide two examples of sample email notifications. First is an email sent to investigators notifying them of a DNA match in CODIS:

Good Afternoon Detective Smith:

We are following up on a CODIS hit dated _____ associating _____ with certain DNA evidence found during an _____ investigation. Attached is a copy of the lab report and hit report showing the source of the DNA match to Mr/s. _____. You were listed as the detective on the lab report.

We appreciate your help in this matter. Please do not consider our inquiry as a request to submit this case to our office. The decision on whether or not to submit a case to our office rests solely with you. We understand there are many valid reasons cases are not submitted. We simply need to update our local and State CODIS Hit Outcome Project (CHOP) records. Any information you can provide us is appreciated.

Second is a sample email sent to the San Diego County District Attorney's office:

Dear Deputy District Attorney Rodriguez:

A DNA CODIS hit was linked to a suspect you are currently prosecuting or prosecuted.

Our office has implemented the CODIS Hit / CMS Integration Project. We are importing all CODIS hits into CMS so that our DDAs will have real time access to the CODIS hits. The goal of this project is to ensure that our DDAs are aware of all open CODIS hits against a defendant and to follow-up with law enforcement to determine the status of the CODIS hit. The CODIS hit you are being notified about might relate to any of the following:

1. a case you have already prosecuted;
2. a new CODIS hit on a defendant that you are currently prosecuting on another unrelated case; or
3. a new CODIS hit on a defendant you have prosecuted in the past on another unrelated case.

We need you to follow-up on this CODIS hit. You will not be responsible for reviewing the case for issuance if the CODIS hit is later submitted to our office. We simply need you to get an update from the Detective. So, please do the following:

1. Request the lab and CODIS Hit reports from the SDPD crime lab by emailing _____. Please copy DDA Brent Neck, the Coordinator of this Project, on all requests made. DDA Neck is automatically copied on any response you receive from the lab, and he or his staff will save the reports to the CMS Case Folder.
2. Contact the detective listed to determine the status of the hit. Let the detective know we understand there are many reasons why a case would not be submitted to our office. We are only inquiring into the status of the hit to update our local and state CHOP records and to make sure that all CODIS hits are accounted for by this project.
3. Copy all emails or notes to the Progress Report Notes for the CODIS hit. The CMS number is listed below.
4. Notify DDA Brent Neck once a disposition on the CODIS hit has been reached. Our office has strict reporting requirements governed by the DOJ, including case disposition. Therefore, it is important to notify DDA Brent Neck so he can close out cases in the CHOP network.

The CMS number associated with the CODIS hit should be used for tracking needs only and is not to be used for issuing or rejecting a potential case. A new case should be created if/when this hit is officially submitted to our office for issuing consideration.

The CODIS hit case information is listed below. If you have any questions, please feel free to contact. _____

Implementation of the database has led to significant improvements in the level of follow-up on CODIS hits in San Diego. It has also helped to ensure that prosecutors make charging decisions based on all known cases associated with a defendant through DNA. The current plan is to add latent fingerprint identifications to the database for similar reasons.⁶⁷

More information on this system is provided in the Appendix, with slides from a presentation given by San Diego Deputy District Attorney Brent Neck. In particular, statistics are reported for the number of CODIS hits and the various crime types. The sheer numbers are staggering – approximately 5,400 CODIS hits since the program began. Of these, however, only about 6% were for forcible rape. More than half were for burglary (55%), 14% for vehicle theft, 11% for robbery, 5% for assault, and 4% for homicide. The figures thus highlight the impact of CODIS hits far beyond sex crimes. Hits to any type of crime can help to identify offenders, provide investigative leads, inform sentencing with “prior bad acts,” and offer leverage during plea negotiations.

⁶⁷ Thanks to Deputy District Attorney Brent Neck of San Diego County for providing this information.

Computerized Tracking Systems

The Sexual Assault Kit Initiative (SAKI) offers an [Evidence Tracking Toolkit](#), which includes documents, webinars, and other resources on a three key topics: (1) Conducting a Sexual Assault Kit Inventory, (2) Selecting and Implementing and Evidence Tracking System, and (3) Sample Evidence Tracking Systems.

Additionally, please see our OLT module on [Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations](#). Also see the [Biological Evidence Preservation Handbook](#), which was published in 2013 by the National Institute of Standards and Technology and the National Institute of Justice (NIJ). This document provides detailed information on evidence tracking and management systems in the Appendix (pages 46-50), including functions, capabilities, and reports to be considered when acquiring a new system. It was adapted from *Property and Evidence by the Book* (Latta & Bowers, 2011).

Dedicate Sufficient Resources

One of the first things we learned in Houston is that this problem is not something for property rooms and crime labs to deal with. Although testing kits is part of the solution, it is only one part. Workload then flows downstream – to investigators, prosecutors, and victim advocates – which is why it is so important to think holistically in terms of a system response (quoted in Ritter, 2016, p. 6).

Competent, high quality investigations take time to complete, but they also require sufficient resources, including personnel, training, and supervision. Successful prosecution also requires additional resources, and if the case goes to trial, prosecutors will often need to call investigators and forensic scientists to testify – not only when evidence is tested, but also to explain why there was a delay in testing or reasons for testing some evidence but not all evidence in certain cases. This is a critically important function for these professionals, but time spent in court inevitably takes away from the time required for investigations and bench work. Time is also needed for all of the professionals involved to invest in creating trustworthy and productive relationships.

One key recommendation is therefore to ensure that sufficient resources are dedicated beyond testing the kits to investigating and prosecuting these cases, and providing adequate support for victims who may be asked to participate in the process.

Investigations and Prosecutions

In Cleveland, the prosecutor's office had to request additional investigators from the Ohio Attorney General's Office and \$400,000 from county officials to support the work of investigators, prosecutors, and justice system advocates – before federal funding was

obtained to help cover those costs.⁶⁸ In Detroit, continuous effort has been needed to secure public and private funding to advance this work.

As of April 2017, as many as 959 cases with CODIS hits were awaiting investigation, so completing this task will require additional investments in investigators, prosecutors, and victim advocates.⁶⁹

In fact, the effort to secure resources will often require collaboration with policymakers, victim advocacy groups, local and regional media, and other stakeholders. The public will also need to be educated on the challenges faced in sexual assault investigations and prosecutions, so they understand the real cost of doing the best job possible, when it comes to pursuing justice, healing, and closure for victims.

The reality is this: If we do not dedicate the resources needed to support these investigations, prosecutions, and exonerations – or if we divert resources for the sole purpose of DNA testing – we may find ourselves less able to hold perpetrators accountable, even as the number of CODIS hits continues to rise.

Sample Tool: Projected Expenses and Completion Date

In Cleveland, the Prosecutor's Office regularly reported on the progress of their Sexual Assault Kit Task Force, including a projected date of completion. This projection calculates the "workflow" associated with each evidence kit, including the time needed to collect reference standards from all identified suspects and consensual partners. When each workflow is completed, the investigator's numbers are re-calculated.

An average is computed for all completed workflows, as well as anticipated future workflows, to determine the final expected completion date. With investigative personnel included in this calculation, the figures are used to provide an empirically-based argument for the resources needed to complete the project – and indeed, to accelerate the pace if necessary. The reports also help provide benefactors with a sense that the project is finite: They will not be giving money to it forever. A sample report is provided in the Appendix, so it can be adapted for use in other jurisdictions.

Thanks again to the Cuyahoga County Prosecutor's Office.

Laboratory Capacity and Efficiency

Significant investments are also needed in forensic laboratories, so criminalists can conduct the intensive bench work needed to develop DNA profiles from crime scene evidence and clothing submitted during the course of an ongoing investigation. As previously noted, this includes money to hire, train, and retain qualified criminalists, but also to expand laboratory facilities and work through the lengthy process of

⁶⁸ ["Cuyahoga County's rape kit backlog will be eliminated more swiftly, preventing additional attacks, with support from attorney General Mike DeWine and the county."](#) By Rachel Dissell, *The Plain Dealer*, November 21, 2014.

⁶⁹ Wayne County Sexual Assault Kit Task Force FAQ, April 2017.

accreditation and ensure compliance with established standards. The goal should therefore be “capacity enhancement” for our forensic laboratories, rather than “eliminating the backlog,” because laboratories will continue to receive submissions, not just for sexual assaults but also for many other types of crime with biological evidence. Fortunately, technological innovations continue to increase the efficiency of DNA testing. These include the use of robotics for tasks such as sampling, DNA extraction, and human pipetting – all of which occur at a number of junctures during DNA testing. These advances allow laboratory personnel to conduct DNA testing at exponentially faster speeds, at a fraction of the cost from earlier years. In addition, robots are more consistent and limit the possibility of human error, and they free the analyst to perform more complex tasks such as screening crime scene evidence and interpreting DNA testing results. DNA interpretation can be quite complex, and software is now available from commercial vendors that can help speed up the interpretation process.

One particularly exciting innovation is Rapid DNA Testing. Using a tabletop system, this technology can produce CODIS-quality DNA profiles in less than 90 minutes:

Traditional DNA typing processes require several pieces of laboratory equipment that need specialized laboratory space, highly trained personnel, and can take hours, weeks or months to test samples. Rapid DNA technology reduces time-to-results and is designed for both technical and non-technical personnel.⁷⁰

Smaller handheld units are also available, demonstrating how DNA testing will likely become faster and immediately accessible for law enforcement to use in the field. Other advances include rapid DNA testing services, with samples submitted directly from health care providers to the laboratory for analysis.⁷¹

Rapid DNA Service (RADS)

One example of a collaborative innovation is a program called RADS (Rapid DNA Service). First implemented in 2011 at four pilot sites in California, the program allows health care providers to submit samples directly to the laboratory for DNA testing. The typical turnaround time is 20 business days. Based on the program’s success, it was expanded as of March 2017 to 29 counties and 5 of the state’s 7 DNA laboratories. So far, more than 2,000 cases have been processed, resulting in over 700 cases with searchable profiles, and more than 300 CODIS hits. More than a third of the cases (35%) have resulted in a searchable CODIS profile, and 44% of the searchable profiles hit to a known individual.

The RADS program has helped to identify unknown offenders far more quickly than conventional DNA testing, which can aid in the investigation and prosecution of cases. In some instances, this has prevented future attacks and kept the community safer.

⁷⁰ Information drawn from the former website for the GE Healthcare Life Sciences.

⁷¹ Information on the Rapid DNA testing services (RADS) program provided by Julie Renfroe, Assistant Laboratory Director, Richmond Crime Lab, Richmond, California.

Legal Challenges

When considering the question of resources, it is important to keep in mind that the costs in some cases will extend beyond the trial level. Especially when prosecuting older cases, appeals should be expected from defendants on issues related to fairness, sentencing, and other issues. For example, legal issues have arisen in cases where the suspect was a juvenile at the time of the offense, but an adult at the time the evidence is tested and the case pursued. There have also been several appeals based on the length of time that elapsed between the original report and prosecution, with the defense arguing that this delay compromised the defendant's constitutional right to due process. Some of these convictions have been upheld by the courts, whereas others have been dismissed. However, they put police action (or inaction) under scrutiny and have implications for the investigation and prosecution of cold cases across the country.



Photo Credit: weiss_paarz_photos via

In particular, one case that was eventually heard by the Ohio Supreme Court involves a defendant named Demetrius Jones.⁷² He was charged with rapes committed in 1993 and 1994, based on evidence tested nearly 20 years later. After he was convicted, the defense appealed on the basis that it was unfair to prosecute a suspect decades after the crime was reported to law enforcement, if the police knew the suspect's identity but did not pursue charges. A state appeals court originally found that the delay was unfair to Jones, but Cuyahoga County prosecutors successfully appealed the verdict to the Ohio Supreme Court.

In their decision, the Ohio Supreme Court articulated the appropriate test for evaluating a claim that preindictment delay created prejudice against the defendant. The Court held that a defendant must first present evidence of actual prejudice (not just speculation). Then, if this burden is met by the defendant, it shifts to the State, who must produce evidence of a justifiable reason for the delay. The Court determined that this particular defendant failed to meet his burden of proving actual prejudice, so the lower court's decision was reversed and remanded.⁷³ This logic was reaffirmed in a subsequent case decided by the Eighth Circuit.⁷⁴ However, defendants in future cases might be able to prove that the delay created prejudice against them and their case, so prosecutors will need to develop strategies for responding to these issues and appeals.

Ensure Manageable Caseloads

To ensure that any *Response* is effective, investigators and prosecutors must have caseloads they can reasonably manage. Although there is no official industry standard for how many felony sexual assault cases a detective should carry, informal standards

⁷² [State v. Jones, 2017 Ohio 176 \(Ohio Ct. App. 2017\)](#)

⁷³ ["Ohio Supreme Court reverses decision in Cleveland rape kit case that drew national attention."](#) By Rachel Dissell, *The Plain Dealer*, July 27, 2016.

⁷⁴ [State v. Patterson, 2017-Ohio-1444](#)

indicate that 6-8 cases per month is reasonable for them to be effective. This translates to about 72-96 cases per year.⁷⁵ However, this standard is for new cases.

As previously stated, cold cases may require more resources, because of the time spent locating victims, suspects, and potential witnesses as well as the time needed to overcome legal challenges and issues that might arise because of a poor initial investigation. For prosecutors, the amount of time will increase if the case goes to trial, and especially if it is then subsequently appealed. This means that many law enforcement agencies and prosecutor's offices will need to significantly revise their caseload standards to effectively investigate and prosecute cold sexual assault cases.

Portland Police Bureau Audit

In 2007, the city auditor in Portland, Oregon released a report on the Portland Police Bureau, evaluating their Sexual Assault Response and Investigation. One of the factors considered was the size of caseloads for their sexual assault investigators. However, the entire report offers an extremely valuable example of how a law enforcement agency can be assessed in a comprehensive way to guide any needed reforms.

Provide Specialized Training

Sexual assault investigators and prosecutors also need specialized training to be successful at this complex and challenging task. We have already cited evidence from one national study of 2,250 law enforcement agencies which found that forensic evidence was not submitted in 18% of unsolved rape cases. When asked why, 17% said it was because investigators were uncertain whether it would be useful. An additional 2% said they did not know where to send it for analysis (Strom et al., 2009). Clearly, training is needed to provide investigators and prosecutors with a basic understanding of DNA and its role in a sexual assault investigation, as well as best practice recommendations for how to utilize laboratory services.



Beyond the Rape Kit: Improving All Aspects of the Sexual Assault Investigation, presented by Jessica Shaw, Gail Krieger, Debi Cain, Rebecca Campbell, Annie Harrison. Photo Credit: Scott Williams

Training on DNA in a Sexual Assault Investigation

EVAWI offers a comprehensive training module on Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations. All of our training modules are available in our Resource Library. However, the interactive version in the OnLine Training Institute includes review exercises, practical applications, and an end-of-course test, after which participants can print a personalized certificate of completion.

⁷⁵ See, for example, the report by William Prummell entitled, [Allocation of Personnel: Investigations](#).

Gender Bias

Training is also needed to address fundamental misunderstandings about the nature and dynamics of sexual assault, including common myths about false reporting. These are the beliefs and attitudes that can be expressed in gender-biased responses.

For example, decades of research demonstrate that police officers and others often view sexual assault reports with skepticism, especially when they do not resemble the stereotypic image of a rape. In other words, when they are not committed by a stranger, with a weapon or extreme violence, and resulting in physical injury to the victim (e.g., Campbell, 1995; Frazier & Haney, 1996; Kerstetter, 1990; Lonsway & Fitzgerald, 1994).

Stereotypic cases are also more likely to result in an arrest (e.g., Bouffard, 2000; Jordan, 2002), and they are more likely to be prosecuted and result in a conviction and incarceration (e.g., Bouffard, 2000; Bryden & Lengnick, 1997; Campbell et al., 2001; Frazier, Candell, Arikian, & Tofteland, 1994; Kingsnorth, MacIntosh, & Wentworth, 1999; Spears & Spohn, 1997; Spohn, Beichner, Davis-Frenzel, & Holleran, 2002).

There are many factors underlying this pattern of attrition for sexual assault cases, but one is the perceived credibility of the victim. This point is illustrated in case files reviewed by the Houston team, many of which included “credibility concerns” that reduced the likelihood of successful investigation and prosecution. These included:

- An inconsistent story by the victim
- Victim or outcry witness had ulterior motives for reporting
- Evidence contradicts victim story
- Lack of witness corroboration
- Victim was unable to verbalize/articulate details
- Victim had mental illness
- Victim had a history of prostitution
- Victim was engaged in risky behavior at the time of the offense
- Victim did not attempt self-defense
- Emotional response was inconsistent for the event (Wells et al., 2016, p. 21).

Many of these factors reflect common dynamics of sexual assault, including the impact of trauma on a victim’s behavior and memory. Their categorization as “credibility challenges” thus confirms the reality that myths, stereotypes, and gender-biased attitudes often come into play when investigators are evaluating sexual assault cases. Other factors on the list have no place in a case file, because they reflect an officer’s personal opinion rather than an investigative fact. Clearly, such findings indicate that improvements in training and supervision are needed to overcome these biases.

Training on Sexual Assault Dynamics and False Reports

Several [OLTI modules](#) offer guidance on the realistic dynamics of sexual assault, the impact on victims, and misconceptions regarding false reports. These include:

Dynamics of Sexual Assault: What Does Sexual Assault Really Look Like?

Victim Impact: How Victims Are Affected by Sexual Assault and How Law Enforcement Can Respond Successfully

False Reports: Moving Beyond the Issue to Successfully Investigate Sexual Assault

In addition, we offer an archived training bulletin entitled, *[Understanding the Neurobiology of Trauma and Implications for Interviewing Sexual Assault Victims](#)*. Written by Dr. Chris Wilson, Dr. Kim Lonsway, and Sgt. Joanne Archambault (Ret.), with contributions by Dr. Jim Hopper, this 38-page document provides basic information about the brain and explores the impact of trauma on behavior and memory. This helps to explain why victims often behave in ways that can be easily mistaken as signs of deception. The training bulletin also highlights the implications for law enforcement interviews conducted with victims of sexual assault and other traumatic crimes.

Integrate Victim Advocacy

Victims can give more detailed statements to law enforcement, remember more information, and can otherwise engage more fully with the investigation when they are not so traumatized and have adequate support (Campbell et al., 2009, p. 121, emphasis added).

Victims need support to recover from a sexual assault, but it is also a key requirement for them to become engaged – and remain engaged – with the criminal justice system (for review, see Lonsway & Archambault, 2013). This may be particularly true for adolescent victims, who are often vulnerable in so many ways (Campbell et al., 2011).

This is why victim advocates are often involved in Cold Case Units and kit testing initiatives taking place in communities across the country. As one example, the position of a justice advocate was created within the Houston Police Department to:



Photo Credit: Patricia Evans

- Establish and maintain contact with victims in collaboration with investigators.
- Identify victims with complex psychosocial needs and serve those needs.
- Connect victims to other resources.
- Serve as a liaison between the police department and community organizations.

- Document contact with the victim (Ritter, 2016, p. 25).

By integrating victim advocacy in any *Response* to the problem of untested evidence, this increases the likelihood that victims will stay involved in a renewed investigation and prosecution that might result. It will also help victims on the road to recovery, by connecting them with additional resources that offer support of various kinds.

Training on Victim Advocacy in the Criminal Justice System

EVAWI offers two training modules on the topic of effective victim advocacy within the criminal justice system:

Effective Victim Advocacy within the Criminal Justice System

Breaking Barriers: The Role of Community-Based and System-Based Victim Advocates

The first module offers detailed guidance on the role of community-based and system-based victim advocates, for work that intersects with the criminal justice system. It was designed specifically for advocates themselves. The second module is an abbreviated version of the first, and it is intended for other professionals who may, in the course of their duties, work with victim advocates. It is generally recommended that readers only complete one of the two modules, as they overlap significantly.

Offer Strong Supervision

Supervisors play a critical role in ensuring that law enforcement officers conduct thorough and competent investigations – regardless of whether the case is old or new. They must therefore demonstrate a detailed understanding of sexual assault dynamics, common victim reactions, and proper law enforcement response by subordinates.

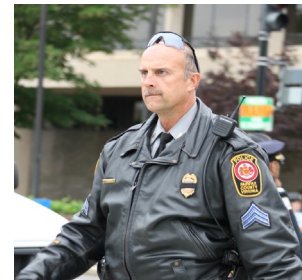


Photo Credit: Elvert Barnes
via Foter.com / CC BY-SA

For ongoing investigations, a supervisor's responsibilities include the following:

- Reviewing all case files assigned, regardless of whether an arrest will be made or a warrant requested.
- Ensuring that investigators keep victims, or if a victim prefers, their advocate, apprised of the status of their case.
- Making certain that cases where probable cause has been established are referred to a prosecutor and personally meeting with the prosecutor as needed.

- Ensuring that any follow-up requests from the prosecutor are completed whenever possible.
- Reviewing all case closure determinations to ensure that policies and procedures regarding case closure have been followed correctly.
- Ensuring that investigators do not unfound cases based solely on the victim's initial statement or a cursory preliminary investigation.
- Reviewing individual caseloads to ensure that no investigator has a disproportionate number of unfounded cases or exceptional clearances based on the victim's lack of participation.
- Providing feedback and discipline where appropriate, for investigators who have not followed proper policies and procedures.
- Documenting and reviewing incidents that are presented as informational reports where it is unclear if the legal elements of a sexual assault are met.⁷⁶

Other responsibilities establish general expectations for performance and create an environment where subordinates can be as successful as possible. These include:

- **Exhibiting sensitivity to victims and ensuring the same from their subordinates.** Supervisors must communicate clear expectations for the appropriate role and responsibilities of all officers and investigators, and ensure they receive the training, resources, and support they need to meet them.
- **Providing ongoing opportunities for training in sexual assault response.** Investigators need to know their statutory requirements, agency policies and procedures, typical sexual assault dynamics, and common victim behaviors.
- **Helping to locate resources for effective sexual assault responses.** If current resources, training, and support are not sufficient to meet the stated objectives, supervisors have the responsibility to do whatever they can to increase them. This could include seeking outside assistance for funding and resources if necessary.
- **Encouraging problem solving partnerships.** Cooperation is needed between law enforcement agencies and other community organizations such as rape crisis centers and forensic examiner programs. Supervisors must take the lead to establish and maintain these critical relationships.
- **Enhancing communication with prosecutors.** This is needed to ensure that investigations meet quality standards, and to help ease the transition for victims

⁷⁶ Some of these supervisor responsibilities are outlined in [The Michigan Model Policy: The Law Enforcement Response to Sexual Assault for Adults and Young Adults](#), developed by the Michigan Domestic and Sexual Violence Prevention & Treatment Board, 2015.

moving from the investigation phase to prosecution. Of course, this communication should be a “two-way street” with prosecutors being held accountable to investigators as well as the community, for vigorously pursuing sexual assault cases where the facts and evidence warrants.

- **Not defining success in terms of clearance or case outcomes.** Supervisors must not create an environment where investigators have an incentive to inappropriately unfound or exceptionally clear cases based on victim non-cooperation. This environment can also contribute to burnout for investigators who serve victims well, because the measure of success will often be unattainable, creating disappointment, frustration and job dissatisfaction. This frustration may then be transmitted to victims.
- **Redefining “success” for sexual assault response and investigation.** All too often, success has been defined in terms of case outcomes. But there are many other measures of success that matter, and may in fact be more important, especially in cases where prosecution may be impossible. Job performance must be evaluated based on quality, regardless of case outcomes – in other words, for doing the right thing today, no matter what was done in the past, or what may happen in the future for each case.
- **Developing realistic and meaningful evaluation tools.** This can include an assessment of investigative steps taken, even in difficult cases, as well as the quality of written reports. It could even include feedback from victims, and collaboration with advocates and community partners.
- **Recognizing and rewarding personnel for performance and victim service.** Commendations are all too often given only for high profile arrests and heroism in situations of physical danger. To communicate the value placed on victim services, it is important to formally recognize this particular type of heroism on the job.

It is clear that failures in supervision and accountability are one more piece of the complicated puzzle in the national failure to properly investigate and prosecute sexual assault cases. Improving supervision must therefore be part of the solution as well.

Training on Clearance Methods and Supervision

EVAWI offers a training module on *Clearance Methods for Sexual Assault Cases*, which provides a detailed discussion of how to properly clear or otherwise close cases and offers guidance for supervisors on how to evaluate the performance of investigators. The document is available in our Resource Library, but the interactive version in the OnLine Training Institute includes review exercises, practical applications, and an end-of-course test, after which participants can print a personalized certificate of completion.

Educate the Community

A truly comprehensive *Response* will require educating the public about these complex issues. In many communities, residents only learned about the problem of untested kits from the media. As reporters informed the public about the size and scope of the problem, community members grappled with the question of, “How did we get here?” and “How do we fix this problem and move forward?” Strong leadership is needed from criminal justice agencies and community partners, to provide clear communication, promote transparency, and facilitate both mutual understanding and positive reforms.



Photo Credit: NYCDOT / Foter.com / BY-NC-ND

Public Outreach and Notification of Cold Case Work

In fact, this type of outreach can help build public support, which will be needed to sustain such a resource-intensive effort. We previously described the case of James W. Daniel III, which painfully illustrated how insufficient resources can create competing priorities, which can translate directly into additional victims. This case therefore served as a catalyst for the Task Force in Cleveland to receive increased funding to support their work. However, consistent media coverage over the course of many years also helped that community maintain its focus on the problem, as journalists first brought the issue to light and then covered the successes, challenges, and lessons learned from the Task Force’s work. It helped to build the foundation for real and lasting change.

In Detroit, media coverage has also helped to sustain community interest in testing evidence and supporting investigations and prosecutions. In addition to state, local, and federal funding garnered to support the project, the District Attorney reached out to Detroit business leaders who established a public private-initiative called [Enough SAID](#) (Sexual Assault in Detroit). As of November 2015, the entity had raised millions of dollars for kit testing through private fundraising and grants from public sources.⁷⁷

Survivors in the Community

Yet public education is needed for more than community support – it must also speak directly to survivors, including those whose evidence went untested for years. Any public announcements or media coverage will put them on notice that they might be contacted in reference to their case.

The timing must therefore be carefully considered. Some communities may decide to wait to make any public statement until there are investigators, prosecutors, advocates, and other resources available to pursue these cases and offer support for victims.

⁷⁷ [“Detroit Businesswomen Team Up to Get Rape Kits Tested.”](#) By Claire Martin, *Business Day*, November 7, 2015.

Survivors can then be encouraged to contact authorities to find out about their case, if they choose. This may be especially helpful for survivors who may be difficult for authorities to locate, if they remarried or relocated since the time of the original report.

Acknowledging Past Failures

It may also be advisable to begin any public statement by acknowledging past failures in the investigation and prosecution of sexual assault, and then indicating how these failures will be managed moving forward. This may include submitting previously untested kits to the laboratory for analysis and re-investigating cold sexual assault cases. This type of public acknowledgement will be critical, because moving forward with an investigation and prosecution of a case will often mean exposing individual agencies, officers, investigators, prosecutors, and supervisors for mistakes and inappropriate conclusions they made.

Public outreach can also help residents to understand the challenges associated with laboratory resources and DNA testing. However, it can also highlight advances in the technology, information, and training now available, as well as explaining some of the complex dynamics surrounding sexual assault and the impact of trauma on victims.

This type of statement could look something like this:

The Police Department] recognizes that reports from sexual assault victims have too often been handled inappropriately. We are committed to thoroughly investigating all reports of sexual abuse and assault, while being sensitive to the unique impact of this crime on victims. To consistently improve our response to these traumatic crimes, we are working with prosecutors, victim advocates, and other professionals to implement a series of reforms in the way we respond to and investigate cases of sexual abuse and assault. We are also working with our community partners to identify and prevent any gender bias in these responses. The Police Department will continue to seek ways to further improve our services, and we welcome constructive feedback from community residents and partners in candid discussions and collaboration.

In other words, public outreach should acknowledge the fact that many investigations were handled improperly, and many sexual assault victims were unable to achieve any sense of justice – but also describe the steps being taken to correct the problem.

Apologize or Not?

One of the questions that must be addressed is whether to publicly apologize. For many leaders in law enforcement and prosecution, this decision will not be easy. This is not necessarily because these leaders don't recognize the moral failures involved, but rather because such an apology will almost certainly be used against their agencies in

litigation, both criminal and civil. In other words, they may fear that a public apology will prove too costly for taxpayers.⁷⁸

Yet there is evidence to suggest that an apology can be a positive force in a scenario like this one, and that it can even reduce exposure to liability – if the apology is authentic, meaningful, and linked with efforts to make amends.

Social science research consistently finds that for those who have been wronged by systemic abuse or negligence, sincere apologies from representatives of those systems can promote healing, dissipate anger and resentment, reestablish trust, and facilitate closure (Campbell, Fehler-Cabral & Horsford, 2017, p. 9).

Survivors also highlight the importance of an apology in helping them come to terms with their experience. This was the conclusion of the Joyful Heart Foundation, on the basis of their interviews with 79 sexual assault survivors in their report, [Navigating Notification](#).

Survivors in our study wanted the criminal justice professionals to take responsibility and apologize for the delay in testing. Taking responsibility was viewed as an essential step to re-establishing trust in the system. They also wanted assurances that steps were being taken to make sure the rape kit backlog didn't happen again (p. 26).

This point was poignantly illustrated with a quote from one survivor:

He took accountability, saying, 'It's not just them. It's us, and we were wrong, and we're sorry for what we did, but I'm here to try to make it right with you.' That's why I call him my knight in shining armor. I love him to death because of how he just really handled, and he didn't take anything for granted. He thought about my feelings every step of the way, and I appreciate that. I appreciate that because it was long overdue (p. 27).



Example: Apology to Survivor of the 1994 Prospect Park Rape Case in New York City (October 28, 2019)

In October 2018, New York Police Commissioner James P. O'Neill wrote a poignant [letter of apology](#) to the survivor in the 1994 "Prospect Park rape case." In that case, the woman's report of rape was not believed by investigators, and she was maligned in the press who predicted that she would be arrested for

⁷⁸ In Detroit, community leaders grappled with the question of whether or not to issue a public apology for the failure to consistently test sexual assault kits. A national legal ethicist was even bought in to explore the legal ramifications of an apology. The consultation indicated that a public apology would be healing for victims and was unlikely to result in negative legal repercussions for the agencies involved. However, consensus could not be reached about a public apology so one was not issued (Campbell et al., 2015).

falsely reporting.⁷⁹ In his letter, Commissioner O’Neill stated he was “deeply and profoundly sorry” that the NYPD for “let[ting] her down in almost every possible way.” He concluded with a reminder of how law enforcement can meet their noble mission to protect and serve.

Respect is the cornerstone of policing. It goes hand-in-hand with believing survivors, launching honest and thorough investigations, bringing comfort, and caring for those in need. That is why people join the law enforcement profession: to help others. It will always be fundamental to how we safeguard our city — and essential to restoring and building trust, and strengthening relationships with all the people we serve, in every community.

This letter can serve as a model for other law enforcement leaders, both for publicly apologizing to sexual assault survivors who have been wronged by the criminal justice system, and also for proclaiming the values the agency will strive to uphold.

Implementing Reforms

Public outreach is thus a good way to notify the community about any reforms being implemented by the agencies responding to sexual assault. Such reforms are ideally undertaken in the context of a multidisciplinary Sexual Assault Response and Resource Team (SARRT). However, regardless of whether or not there is a SARRT in place, positive reforms could include:

- Working collaboratively with community stakeholders to increase the capacity for DNA testing, investigations, prosecutions, and exonerations.
- Providing training and other resources to prevent gender bias and improve responses to all victims of sexual assault and abuse.
- Ensuring that victim advocates are meaningfully integrated in every phase of the community’s multidisciplinary response protocol.
- Coordinating with health care providers and scientists to evaluate and improve the quality of evidence collected and documented during medical forensic exams.

The possibilities for reform are endless, and by describing them in a public statement, the community can have a sense that positive change is being enacted.

⁷⁹ [Police Commissioner James P. O’Neill’s Apology to the Survivor of the 1994 Prospect Park Rape Case](#), New York Police Department, October 28, 2018.

Enacting Reforms with Multidisciplinary Collaboration

One example of multidisciplinary collaboration is described in a video entitled, [Sexual Assault Kit Initiative](#), which details the problem of untested sexual assault kits in the state of Kentucky and describes how the State Auditor is responding to the problem.

For more discussion of reforms to improve criminal justice and community responses to sexual assault, please see our two [OLTI modules](#) on this topic:

[Sustaining a Coordinated Community Response: Sexual Assault Response and Resource Teams \(SARRT\)](#)

[Sexual Assault Response and Resource Teams \(SARRTs\): A Guide for Rural and Remote Communities](#)

Additional information is also available in the [National Protocol for Sexual Assault Medical Forensic Examinations](#) (2013), published by the Office on Violence Against Women, U.S. Department of Justice.

Education as Reform

In fact, public education itself is a type of reform. In Cleveland, extensive media coverage served to inform residents about the testing initiative and related issues. This education was so successful that a prosecutor conducting voir dire for a sexual assault case in the second year of the program could not identify a single potential juror who did not know what a rape kit was or why they were being tested.

The Cuyahoga County Task Force also developed an educational slideshow for jurors and members of the Grand Jury, to provide basic information about sexual assault evidence kits and DNA, as well as the reasons for the kit testing initiative. This was done to help to answer questions and address concerns regarding why evidence in a particular case had not been tested until years later.



Heating Up Cold Cases

The Cuyahoga County Sexual Assault Kit Task Force was founded by the Cuyahoga County Prosecutor's Office in 2013, combining the expertise of the Prosecutor's Office, the Cleveland Police Department, the Cuyahoga County Sheriff's Department and the Ohio Bureau of Criminal Investigation. Together, these entities handle the influx of sexual assault cases reopened for investigation and prosecution going back to 1993.

In 2013, the Cuyahoga County Prosecutor's Office established what is now known as the Cuyahoga County Sexual Assault Kit Task Force to address the more than 4,000 previously untested sexual assault kits that were being submitted to the Bureau of Criminal Investigation for DNA testing through the Ohio Attorney General's Sexual Assault Kit Initiative.

Investigators, prosecutors and victim advocates have been working together to pursue justice on behalf of the victims whom these kits represent. The Task Force includes members from the Prosecutor's Office, the Cleveland Division of Police, the Cuyahoga County Sheriff's Department, and the Ohio Bureau of Criminal Investigation.

The Task Force aims not just to seek justice on behalf of victims whose cases were left unsolved, but also to protect the public today from violent predators who never had to account for their crimes. The importance of this second goal unfortunately was made starkly clear to the community in 2014.

In late summer of 2014, two women were brutally raped in the early morning hours. These attacks occurred three days and just a few miles apart—one in Lakewood and

one in Cleveland's Edgewater neighborhood. Recognizing the danger and urgency that an unidentified, violent rapist posed to the community, Prosecutor McGinty directed the Task Force to assist the Cleveland Police Sex Crimes Unit and the Lakewood Police in investigating. Weeks later, DNA taken from the pants pockets of one of the victims produced a hit in the Combined DNA Index System (CODIS)—to James W. Daniel, III. The Task Force was dismayed to learn that Daniel had been linked in May to a cold case rape. While detectives with the Task Force were actively investigating the case, they were unable to arrest Daniel before these subsequent attacks took place.

Wanting to prevent other tragic and preventable assaults, Prosecutor McGinty appealed to Cuyahoga County Council and to the Ohio Attorney General to ask for additional funding to accelerate investigators. These additional investigators will allow the Task Force to reduce the time it takes to investigate these cases.

As of December 31, 2014, BCI had completed testing on 3,298 kits, 1,300 of which produced hits in the CODIS system. Once a kit produces a hit, investigators must locate both victims and defendants, conduct victim interviews, secure a search warrant and obtain a verification swab of the defendant's DNA, and finally arrest the defendant (if the

Impact on Future Cases

One final note about the importance of public outreach. As noted earlier in the module, investigators and prosecutors will often face particular challenges when they seek to re-investigate or prosecute cases that were poorly investigated or documented in the first place. Some cases will even have blatant statements of bias or a conclusion that the report was false. The victim may have even been prosecuted for filing a false report.

In these cases, prosecutors will have to overcome the fact that the responding officers or investigators may become powerful witnesses *for the defense*. This challenge might be mitigated to some extent with the type of public statement described here, where the law enforcement agency and prosecutor's office publicly acknowledge the mishandling of past sexual assault cases – and explain that these failures were due to a lack of training, resources, and misunderstandings regarding fundamental sexual assault dynamics. This could require prosecutors to “take on” the law enforcement agency, and the individual officers or investigators involved in the case, which may not realistically happen in many communities. However, it could provide the basis for prosecutors to attempt to un-do the damage from the original response and report.

Examples of Public Response

To provide an example of how law enforcement agencies might craft their public response to the problem of untested kits, we offer the following illustration. On May 19, 2015, the *CBS Evening News* aired a story titled “Justice Denied: Rape Kits Left Untested in Several States.” The anchor opened the segment with the statement that:

At least 5 American cities have mishandled critical evidence in rape investigations.⁸⁰

The five cities were then identified in an accompanying article: Portland, Jacksonville, Charlotte, San Diego and Kansas City. The police department in each city was given a chance to respond to this media scrutiny, and we provide their statements in the Appendix because they offer illustrations of how agencies might inform the public about the many challenges they face and the reform initiatives underway.

Develop a Victim Notification Protocol

Perhaps the most difficult part of the notification process ... was trying to answer survivors' questions as to why – why now, why not then, why did no one believe them years ago, why were they treated the way they were back then? (Campbell et al., 2015, p. 278).

Anytime a case is picked up for renewed investigation – for example, when there is a CODIS hit or a serial offender is identified as a result of reviewing cold cases – this will require contacting the victim (if the victim can be located). This can be disruptive and re-traumatizing for victims, especially if their case was inactive for years, even decades. It

⁸⁰ This episode is archived on the website for the [CBS Evening News](#).

is therefore important to recognize that victim notification is not just an issue for cold cases, but for any case that was inactive for a significant period of time because all leads were exhausted or the victim asked for the investigation to be suspended.

For some victims, testing their evidence will be a welcome development, and may even lead to a breakthrough in their case. For others, the impact may be complicated or fraught with conflict. This contrast is illustrated with examples from Cleveland.

Providing a Sense of Closure

In a number of cold cases investigated in Cleveland, CODIS hits came back to suspects who had died, which provided victims with some sort of closure even if there was no possibility of prosecution. One of those cases involved a woman named Alyssa Allison,⁸¹ who was raped in 1993 after she returned home from work to find the suspect in her apartment. She was drugged, tied up, and raped repeatedly. After reporting the rape, Allison followed up with detectives in her case, sharing her suspicion that her landlord, “Lucky” Brown, was the one who committed the crime. She had recently told him about a broken bathroom window that wasn’t secure, and she thought her attacker sounded familiar, although he was trying to disguise his voice. At the time, police informed her that the landlord’s wife stated he was home all evening.

Allison continued to check on her case by calling the Sex Crimes Unit for years. What she didn’t know was that the evidence from her exam had never been tested. At that time, the use of DNA technology was still quite new, and CODIS was still just a pilot software project by the FBI Laboratory. The program wasn’t formalized until 1994, and it took several years to implement in forensic laboratories across the country. Even more time was then required for states to amend DNA legislation to allow law enforcement to collect DNA standards from suspects, for more types of criminal offenses and prior to conviction, to populate the offender index in CODIS.

When an investigator reached out to her about the case 20 years later, she again shared her suspicions about her landlord. A month went by before the investigator called her back and said: “Well, guess what? You were right. It was him.”

Proving the case took some extra legwork, however, since Brown died in 2005. His DNA profile wasn’t in CODIS, so the investigator approached the suspect’s son and asked him to provide his DNA for analysis. The investigator knew that the DNA in Allison’s evidence kit had already linked to three other unsolved rape cases, and she felt that all of these victims deserved to know who had attacked them.

The cases would never see a courtroom, and Allison agonized over the fact that Brown had attacked other victims after her rape went unsolved. Nonetheless, she said it was a relief to finally know her attacker’s identity after so many years.

⁸¹ Alyssa Allison is named with permission, provided to Rachel Dissell of The Plain Dealer in Cleveland, Ohio.

Anguish and Fear

In contrast, a case from a Cleveland suburb may have caused the victim more anguish as a result of testing. In that case, police informed the victim that a man who invaded her home more than 20 years earlier had been identified. However, the department had delayed sending the kit for testing, even after the Ohio Attorney General requested that all departments send their untested kits to the state laboratory.

By the time a laboratory linked the DNA to the man who had broken into the woman's home, it was too late to prosecute him. Prosecutors indicted him anyway, arguing for an exception to the statute of limitations based on the fact that he had evaded capture on several open warrants in other cases, but a judge dismissed the case.

The victim's assailant therefore walked out of jail and now lives less than two miles from her home. She has seen him multiple times, as she drives to and from work, and she is terrified, because he now knows who she is and where she lives. She considered suing the police department for their failures in the investigation of her case. As she stated to a Cleveland reporter:

Now I know the name and face ... It is like a roller coaster ride ... This is scarring. My normal family life was interrupted.

Developing a Protocol

As the Detroit team began developing their victim notification protocol, they started by formulating "a staggering number of complex issues" (Campbell et al., 2015, p. 233). In fact, they initially gathered for a two-day retreat, to discuss such questions and develop a comprehensive protocol. Some of the key questions they addressed are summarized in an extremely helpful document created by the Sexual Assault Kit Initiative (SAKI) and RTI International. It outlines [12 key questions](#) to guide the development of a protocol:

1. Who will be involved in creating the protocol?
2. What are the protocol's guiding principles?
3. What kind of protocol needs to be developed?
4. When will victims be notified?
5. Why will victims be notified?
6. Who decides whether victims will be notified?
7. What should happen in the notification?
8. Who will conduct the notifications?
9. How will victims be contacted?
10. What information should be given to victims?
11. How will staff be trained to conduct notifications?
12. How will the protocol be monitored and evaluated?

Brief guidance is provided for each of these questions, which must be addressed to ensure that victim well-being remains at the center of any notification plan.⁸²

When to Notify Victims

For example, one issue is when to notify victims that their kit is being tested. Will victims be notified at the point their evidence is submitted for testing? Or only if there are positive findings? Perhaps if the case will be actively pursued with an investigation?

As described in the [guidance](#) from Sexual Assault Kit Testing Initiative (SAKI) and RTI International, two basic types of notification protocols are possible:

Active outreach notification (from practitioners to survivors): Contacting survivors to let them know that there is information to be shared about their previously untested kits.

Opt-in notification (survivors to practitioners): Providing a centralized office or program for survivors to reach out to learn about the status of their kits (e.g., a toll-free number).

Communities may choose one or both strategies. For example, Cleveland and Detroit conducted active outreach, while Houston established a 24-hour hotline for victims to opt-in for information about their case. Then for communities conducting active outreach, different considerations must be taken into account if DNA is identified in the victim's evidence kit or not, and if there is a CODIS hit or not. The [guidance](#) published by SAKI and RTI International is designed to help communities grapple with these questions of whether, when, why, and how to notify victims of their kit testing. However, as one member of the Detroit team noted, the process requires “a gut check every single day to remember what this means for them” (Campbell et al., 2015, p. 233).

Houston Sexual Assault Information Line (SAIL)

The Houston team created a Sexual Assault Information Line (SAIL) for victims (or someone on their behalf) to obtain information about their case. Callers were provided information about the results of their sexual assault kit (if any), offered social service referrals, and connected with an investigator and victim advocate (NIJ, 2016a). In the first half of this [video interview](#), a member of the Houston Team describes how the team made the choice to create a hotline, as well as how it worked. To inform the public about this resource, the Houston team spread the word using “the Internet, news, brochures, presentations, and word-of-mouth, with the assistance of a public information officer” (NIJ, 2016a, p. 10). An informational [brochure](#) was also created in both English and Spanish. For more information about these innovative resources, please see their [Complainant Notification and Information Line Protocols](#).

⁸² A more detailed discussion can be found in Campbell, Fehler-Cabral & Horsford (2017); it provided the basis for the document published by the Sexual Assault Kit Testing Initiative (SAKI) and RTI International.

No News, No Contact?

When deciding when to contact victims, one question is whether to do so before or after testing is conducted – or when a CODIS hit is returned. This debate is discussed in the [Recommendations for Survivor Notification](#) offered by the Oregon Attorney General's Sexual Assault Task Force (SATF). While they do not take a position on notification at the point a foreign DNA profile is identified or a CODIS hit returned, they do say that victims *should not be contacted* if their kit has been tested but no foreign DNA identified:

It is unnecessary to retraumatize survivors when there isn't any news to share or course of action for them to take. We are not aware of any other community which is notifying survivors in instances where no evidence was found after the kit was processed (p. 3).

The Oregon Recommendations thus conclude that, “No single approach will meet the need of every person or community” (p. 3), and they encourage communities to engage in a process of listening to survivors and designing policies and practices that will be responsive to their needs. They also caution that once a decision is made, all messaging needs to be consistent, in terms of public outreach and any media coverage.

Developing a Victim Notification Plan

For detailed guidance on how to develop a victim notification protocol, a number of tools are available. First, some basic recommendations provided by the National Institute of Justice (NIJ) in: [Notifying Sexual Assault Victims After Testing Evidence](#).

Concrete suggestions can also be found in the [Final Report on the Detroit Sexual Assault Kit \(SAK\) Project](#). Particularly relevant are the following sections:

The Step-By-Step Process of Creating the Detroit Victim Notification Protocol (Figure 5.1, 236-244)

Challenges & Solutions Encountered in the Implementation of the Detroit SAK ARP Victim Notification Protocol (Figure 5-3, p. 251-255).

Lessons Learned: Conducting Victim Notifications (p. 320-323)

Victim Notification Retreat Planning Guide (Appendix C1, p. 450-473)

This last resource offers 23 pages of concrete recommendations for planning and facilitating a retreat for a collaborative team to develop a comprehensive victim notification plan. The guide includes discussion questions, ground rules, and other tips.

Selecting Cases for Victim Notification

If active outreach is going to be conducted, one of the main questions is how to select cases. Detroit and Houston took different approaches. In Detroit, the project team established a multidisciplinary Notification Review Team (NRT) to determine which cases to pursue once a CODIS hit was returned. The NRT included representatives

from law enforcement, prosecution, system-based advocacy, community-based advocacy, and the SANE/forensic examiner program.

First, the prosecutor's office reviewed any cases with a CODIS hit and determined which ones to present to the NRT for further consideration. The Detroit team generally agreed that time-sensitive cases would have priority over others (e.g., if they were nearing the end of the statute of limitations, the offender was about to be released from prison, etc.). Otherwise, the NRT discussed the facts of each case and made decisions regarding whether, when, where, and how to reach out to the victim. In other words, victims were not notified at the point the evidence in their case was *tested*. They were only notified if there was a CODIS hit *and* it was selected by the NRT for additional follow-up, based on a number of specified criteria.

In Houston, victims were notified when a CODIS hit identified a suspect in a case where the statute of limitations had not yet expired – or when the statute of limitations had already expired, but the CODIS hit identified a suspect “who was on trial or in the punishment phase of a trial for another sexual assault” (Ritter, 2016, p. 25).

Victims whose cases did not meet these criteria were not contacted, unless they reached out using the hotline created specifically for this purpose, or through some other means (Ritter, 2016). Otherwise, if there was no DNA or CODIS hit, a case file review was conducted “to determine whether there were leads that should have been (but were not) investigated at the time of the assault” (Ritter, 2016, p. 25).

Locating Victims

As communities prepare to contact victims, it is helpful to learn from prior efforts regarding how difficult this was. In Detroit, for example, the initial decision was made to contact 41 victims, and most were located rather easily. This is remarkable given that the average time between the sexual assault and victim notification was 9 years.

This same conclusion was reached in Cleveland. After investigating thousands of cases, only a handful of victims could not be located. Most were found quite easily.

However, the Detroit team identified three different categories of victims, based on the ease of making contact with them.

- First, 65% of victims were categorized as having been contacted with *relatively low effort*, including a database search, 0-4 phone calls, and 0-1 in-person visits to a single address.
- An additional 19% were contacted with *moderate effort*. For example, after conducting a database search and unsuccessfully visiting an old address, additional investigation might reveal a new possible address. Contacts in this category required 0-1 phone calls and 2-3 in-person visits to 1-2 addresses.
- Only 16% of victims required *high effort* to contact, including database searches, plus up to 12 phone calls and/or 4-6 in-person visits.

Similar patterns may be seen in other communities, which can help to inform decisions about how to allocate personnel and resources.

Timing of Initial Contact

Then there is the question of how to time the initial contact with victims. The Oregon Recommendations highlight the importance of notifying victims in “a timely manner, to avoid the survivor first learning about the new case activity from other sources, including the media” (p. 4). On the other hand, they also note that “contacting a survivor too early can potentially interfere with the investigation (p. 4). Timing of the initial contact is obviously critical, and the decision should therefore be made after thoughtful consideration as a multidisciplinary team.

Once again, lessons learned from the trailblazers may be helpful for communities planning their notification efforts. In Detroit, the initial victim contact was made by an investigator in the Wayne County prosecutor’s office. This was done in person, with a “discreet” vehicle and attire, so they could meet victims “on their terms” (Campbell et al., 2015, p. 276). They also took steps to ensure that the police department and prosecutor’s office were prepared to take immediate action by initiating an investigation at the time notification was made. Initial contact was only made with victims once these measures were in place.

How to Make Contact?

In Detroit, there was some discussion about whether this initial contact should be made by a member of the police department, as in the Houston protocol. Or by a victim advocate, or a paired investigator and advocate, as suggested in the Oregon Recommendations. However, the Detroit team ultimately decided that – for safety reasons, as well as other factors – this contact needed to be made by an investigator. It was also decided that this investigator should be from the prosecutor’s office, not the police department that originally handled the investigation. However, they made sure that a victim advocate was available to be called out any time a notification was made.

The initial contact in Detroit was brief and supportive, with the goal of establishing contact, confirming the location of the victim, introducing the investigator, and explaining the purpose of the collaborative project. The investigator also took the opportunity to apologize for any failures in the original response and investigation. This was an issue that the collaborative team discussed at great length before including in the protocol.

In Houston, the first attempt at contact was made by phone, and then in-person at the victim’s home. If these were not successful a certified letter was sent (Ritter, 2016).

A number of strategies are thus available for notifying victims, including phone, in-person, and letter. In the [guidance](#) published by the Sexual Assault Kit Initiative (SAKI) and RTI International, the strengths and limitations of each are clearly outlined.

Sample Notification Letter

The [Oregon Recommendations for Survivor Notification](#) provide detailed guidance on a variety of strategies for initial contact, including in-person contact, telephone, letter, email, and notification to the survivor's designated third party. The recommendations also include sample letters for victim notification. One example is as follows:

Dear {Survivor Name},

My name is {Advocate name} and I am an Advocate with the {Name of County} District Attorney's Office. I have some new information about a case that occurred in {year}.

Please contact me at your earliest convenience. I can be reached by email at {email address} or by phone at {phone number}. Our office is open Monday - Friday 8:00 am to 5:00 pm.

If I miss your call, please feel free to leave a message with your contact information and whether or not I have permission to leave a message at that number.

Thank you.

Sincerely, {Advocate name}

Preparing for Emotional Reactions

While the examples from Cleveland provide a sense of possible victim reactions, the Detroit team conducted research to document them. As in Cleveland, some victims in Detroit had strong negative reactions to being contacted and did not want to discuss their case with investigators. Others had strong positive reactions, and were enthusiastic about pursuing their case. Still others exhibited no strong reaction, and were "matter of fact" in their response (Campbell et al., 2015).

Perhaps not surprisingly, victims in Detroit were more likely to have a strong negative reaction if they were younger at the time of the assault (age 16-24) or if their case languished for a longer period of time (Campbell et al., 2015). Of course, no two victims are exactly the same, nor are the circumstances of their original report or the initial police response. Therefore, it may be that victims' reactions at the time of notification depend a great deal on how they were treated when they reported their assault.

Regardless of the victim's reaction, there is no standard "playbook" for how to respond. Members of the Detroit team spoke poignantly about the emotional challenges they faced and the personal toll it took on them. Thus, it is critical to take the emotional aspects of this process into account, not only for survivors, but also for the professionals involved. Training and ongoing support are needed for professionals to understand traumatic responses and develop strategies for responding appropriately.

Next Steps

Following the initial contact, decisions must be made about what the next steps will be. In Detroit, victims were asked if they were interested in having a follow-up meeting with an investigator and an advocate to discuss what next steps might be. If they agreed, the follow-up meeting was scheduled. At that meeting, they discussed the meaning of DNA testing results and explained what an investigation might look like. However, the Detroit team also recognized the need for flexibility. Some victims wanted to have the detailed meeting at the time of the initial contact, and this request was accommodated whenever possible.

The investigator then provided the survivor with a packet of community resources specifically developed for this purpose. The survivor was also offered an opportunity to meet with the advocate privately. The importance of such a “warm handoff” is highlighted in the Oregon Recommendations for survivor notification, if a community-based victim advocate will not be involved in the initial contact. However, in Oregon, this required obtaining the victim’s consent before passing along their information.

Rights and Resources for Survivors

The resource packet that was given to victims by members of the Detroit team appears in the [*Final Report for the Detroit Sexual Assault Kit \(SAK\) Project*](#) along with Frequently Asked Questions (Appendix C2). These materials can help professionals prepare to answer some of the difficult questions survivors are likely to ask.



Photo Credit: Office for Victims of Crime

In addition, the [*Recommendations for Survivor Notification*](#) published by the Oregon Attorney General’s Sexual Assault Task Force (SATF) outline the types of information that should be provided to victims about their rights and resources, with appropriate referrals. They also provide concrete guidance on how to offer victims a straightforward apology for past failures and how to take steps to protect the victim’s safety and privacy.

The National Center for Victims of Crime hosted a webinar on the application of crime victims’ rights to cold cases, with examples from various jurisdictions. Materials are available at their website. EVAWI also offers a 3-part series of Training Bulletins on [*Protecting Crime Victim Rights*](#), which provide detailed information on this topic.

Investigative Follow-Up

At the time the final report on the Detroit project was written, 28 of the 41 victims originally selected for notification had been located, and 18 (64%) had a follow-up meeting scheduled to discuss next steps in more detail. During this second meeting, the investigator(s) and an advocate explained the next steps and, depending on the case

facts, asked the victim to confirm their original statement to police, presented them with a photo lineup, and/or asked for permission to obtain medical records.

Most of these victims (16 of 18) agreed to participate with the criminal justice process, and members of the team said that this was a positive and successful feeling for them. One investigator described the experience:

Felt a small sense of accomplishment. It felt good to be the individual that made the notification and start[ed] the process (Campbell et al., 2015, p. 275).

In sum, the Detroit team learned that “Most victims did not have strong negative reactions to being contacted by officials after so many years, and “Most victims decided to stay in contact with the criminal justice system” (Ritter, 2016, pp. 22-23). These are encouraging lessons for any other community seeking to follow a similar path.

Additional Resources for Victim Notification

Many tools are available for victim notification, including a free webinar series offered by the [University of Texas School of Social Work](#). The webinars present information based on “lessons learned” from the Houston Sexual Assault Kit (SAK) project.

Also available is a report by the Joyful Heart Foundation, entitled [Navigating Notification: A Guide to Re-Engaging Sexual Assault Survivors Affected by the Untested Rape Kit Backlog](#). This report summarizes findings from interviews with 19 sexual assault survivors and 79 professionals from a variety of involved disciplines.

Employ Best Practices for Sexual Assault Investigation

Once a victim has been notified, many of the recommendations for best practice will apply to any sexual assault investigation, regardless of whether a case is new or old. However, there are some unique aspects of cold case investigation worth highlighting.

Use a Trauma-Informed Approach

For example, a great deal of attention has focused on the importance of following trauma-informed approaches to sexual assault response and investigation – particularly with victim interviews. However, it is critical to note that this applies just as much to cold cases as it does to ongoing investigations. In fact, contacting victims to re-activate their cold case can trigger a trauma response, just as if it were a new report.

Among other impacts on a victim’s brain and body, trauma can cause the memories of victims to be fragmented, non-linear, and sensory-based. Unfortunately, this is all too often seen as an indication that they are lying. Research indicates that victims’ memories of sexual assault will typically be accurate, but it may take time, patience and an understanding of proper interview techniques for them to come together coherently.

Investigators and prosecutors pursuing sexual assault cold cases should therefore ensure that they are well-educated about how to conduct trauma-informed interviews.

Resources on Trauma Informed Interviewing

EVAWI offers several resources to help law enforcement conduct victim interviews that are truly trauma-informed. First, EVAWI offer an Online Training Institute (OLTI) module entitled: [Effective Victim Interviewing: Helping Victims Retrieve and Disclose Memories of Sexual Assault](#).

EVAWI also offers several training bulletins on this topic, including:

A three-part series entitled: *Important Things to Get Right about the Neurobiology of Trauma*

[Part 1: Benefits of Understanding the Science](#)

[Part 2: Victim Responses During the Assault](#)

[Part 3: Memory Processes](#)

[Understanding the Neurobiology of Trauma and Implications for Interviewing Sexual Assault Victims](#)

[Becoming Trauma Informed: Learning and Appropriately Applying the Neurobiology of Trauma to Victim Interviews](#)

[Trauma-Informed Interviewing and the criminal Sexual Assault Case: Where Investigative Technique Meets Evidentiary Value](#)

We also offer several recorded webinars in our [Webinar Archive](#):

A two-part series on the Neurobiology of Sexual Assault is presented by Dr. Jim Hopper of Harvard University. In Part 1, Dr. Hopper focuses on the topic of [Experience and Behavior](#), while Part 2 emphasizes [Experience and Memory](#).

Finally, we offer an archived webinar on [Effective Victim Interviewing](#), by prosecution expert Roger Canaff and EVAWI's Sergeant Joanne Archambault. While it does not specifically address the impact of trauma on neurobiology, valuable guidance is provided for how to plan and conduct successful interviews with sexual assault victims.

Solving Rapes – and Maybe Murders

The investigation of any cold case can take unexpected turns, even if DNA was never a key to solving the case. This is powerfully illustrated in a case from Cuyahoga County.

In 1993, an 18-year-old woman reported that her brother-in-law raped her repeatedly in a field. She told police he strangled her until she lost consciousness. The woman initially participated in the investigation but later said she didn't want her brother-in-law charged because his wife was pregnant with twins.

Nearly 20 years later, investigators contacted the victim based on a CODIS hit linking the rape to her brother-in-law, Elias Acevedo. The victim said she had originally been threatened and pressured by family members not to prosecute, but with the passage of time, she agreed to pursue the case, and Acevedo was indicted on rape charges.

Since the 1993 rape, Acevedo served a prison sentence for sexually assaulting a teen neighbor. Yet, when she was interviewed 20 years later, the victim in the 1993 case told investigators that he had sexually abused several of his daughters. A report about the girls' abuse had already been made to child welfare agencies, and it was referred to police at the time, but it was never investigated.

Cold Case Investigators thus interviewed three of Acevedo's daughters, and they said they believed their father was also involved in the rape and possibly the disappearances of additional women. Investigators used that information to review additional cases that might be linked to Acevedo. Their investigation led them to an unsolved murder of a woman named Pamela Pemberton, Acevedo's former neighbor who was found in the same field where he raped his sister-in-law. They also realized he was one of the last people who saw an 18-year-old pregnant woman who vanished in 1995. Local investigators and the FBI confronted Acevedo, since none of the information they had gathered was enough to connect him to the cases.



Elias Acevedo
Photo Credit: www.wlwt.com

Acevedo invoked his right to an attorney in the 1993 rape case, which prevented him from being interviewed by police. However, investigators later had an opportunity to question Acevedo after DNA proved that he had fathered his own grandchild with one of his daughters.

At that point, Acevedo was given an ultimatum, since he was already looking at a life sentence for raping his daughters. He was advised that anything he told them by 6 p.m. would result in a life sentence, and this would spare him the possibility of the death penalty. After calling his son, Acevedo confessed to raping and killing Pemberton in 1994. He also admitted to strangling Christina Adkins to death and placing her body in an unused sewer manhole tucked under several highway overpasses. Acevedo eventually led a team to Adkins' body, her clothes, and identification.

Acevedo pleaded guilty to the sexual assault of his daughters as well as the two murders and is now serving life in prison without the possibility of parole.⁸³

⁸³ ["The longest of long shots: How authorities got Elias Acevedo to confess to two murders."](#) By Rachel Dissell, *The Plain Dealer*, October 18, 2013.

Training in Sexual Assault Investigation

EVAWI offers a wealth of training and technical assistance resources designed to assist law enforcement professionals in sexual assault response and investigation.

In our [OnLine Training Institute \(OLTI\)](#), we offer modules on topics such as:

[Preliminary Investigation: Guidelines for First Responders](#)

[Effective Victim Interviewing: Helping Victims Retrieve and Disclose Memories of Sexual Assault](#)

[Law and Investigative Strategy: What Kind of Sexual Assault is This?](#)

[Successfully Investigating Sexual Assault Against Victims with Disabilities](#)

[Sustaining a Coordinated Community Response: Sexual Assault Response and Resource Teams \(SARRT\)](#)

We also offer Training Bulletins on subjects such as [Recording Victim Interviews](#), [Sworn Statements](#), and many others.

Our [Webinar Archive](#) includes presentations from experts in a range of fields. They can be accessed anytime, and they include both the recording and any handout materials. The Best Practice section of our website offers countless [Resources](#), [FAQs](#), and other tools – all designed to help law enforcement and allied professionals improve their responses to sexual assault victims and cases.

Hope for the Future

As we highlighted in the graphic on case attrition, only a small fraction of the sexual assaults committed in this country lead to the conviction and incarceration of the perpetrator. The problem of untested evidence is both a cause and a symptom of this failure. By widening our view of the problem, and enacting the practices recommended in this training module, we can begin to address both symptoms and causes. This is the only way to create real and lasting change.

In many jurisdictions, *Scanning and Analysis* have already led to *Responses* designed to address the problem as it has been defined. For these communities, it will be important to *Assess* these initiatives to see if there has been any improvement, not only with respect to untested evidence but also for ongoing sexual assault investigations. In fact, this type of systemic reform will require changes in agency policies, procedures, and the daily practices of responding professionals. It will also require hearing from survivors, whether through the use of victim satisfaction surveys or other means, to see how these reforms are working in the eyes of those most affected. None of this is a one-time effort: It is an ongoing approach to continue advancing meaningful reforms.

Changing the Way We Think

This type of process is currently being pursued in communities such as New York, Detroit, Houston, Cleveland, Memphis, and others. Through their experiences, they have led the way toward developing comprehensive *Responses*. Perhaps one of the most powerful lessons has been how this changes the way we think about sexual assault. This was described by practitioners involved in the Detroit team:

[The results] were not what I was expecting. That many hits for the known offenders? ... I was one of those people thinking, no point in testing those. Save our money, no point ... but look at the hits, look at the serials in that group ... I admit it, I thought about these as he-said/she-said's ... it probably wasn't rape, it was a misunderstanding about who wanted what ... it's not a misunderstanding when you see the pattern ... this totally changed how I think about these rapes (Campbell et al., 2015, p. 341).

Remember, these were the ones not tested, because whatever, they didn't matter, the victims were lying, the victims were this or that, and then bam, every month brings the update to the meeting ... we've got this many hits, this many serials. All of these should have been nothing, no hits, right? Because these were toss away's, the ones not worth it, there wasn't anything to find ... we tested them and guess what, there are some seriously dangerous people out there. Still out there ... If that doesn't change the way you think about this, I don't know what would ... it was a huge wake up call ... the proof was in that chart, every month, showing the numbers, showing that the way we've been thinking about this was wrong. Flat-out wrong (Campbell et al., 2015, p. 340).

This is exactly the type of change we need to see on a national level.

The Way Forward

As we have watched the media coverage and public discourse unfold, we have seen the terminology evolve from a focus on the “rape kit backlog” to “untested kits” and eventually “unsubmitted evidence in sexual assault cases.” This evolution in terminology reflects a widening focus on the problem, which demonstrates a maturing view of the issue. However, the time has come to widen the focus even further, and frame the discussion in terms of improving law enforcement investigations to include or exclude suspects, enhance criminal prosecutions, and obtain more timely exonerations.

Many of us can agree that our ultimate goal is to improve the response to *all cases of sexual assault*, but meeting this goal requires a commitment of resources far beyond testing kits. Solving this problem will require sufficient funding for personnel, training, supervision, and leadership – to ensure that criminal justice professionals and others have the resources they need to properly handle these challenging cases. It will also require significant investments in our forensic laboratories, so criminalists can conduct the intensive bench work needed to develop DNA profiles from crime scene evidence and clothing submitted during the course of an ongoing investigation. The goal should

therefore be “capacity enhancement” for our forensic laboratories, rather than “eliminating the backlog,” because laboratories will continue to receive submissions, not just for sexual assaults but also for many other types of crime with biological evidence.



Photo Credit: Karen Roe via Foter.com / CC BY

A comprehensive solution also requires extensive coordination between all of the professionals involved in responding to sexual assault, to ensure that victims have the support they need to remain engaged in the criminal justice process. This may be particularly true for victims who are contacted in cases that have languished for years, if not decades – because they may be faced with the heartbreaking prospect of re-engaging with a system that failed them profoundly. This means that victim advocacy agencies will also need additional funding to meet the higher demands of an increased caseload. Again, these measures go far beyond testing kits to improving the entire criminal justice and community response system.

Fortunately, there is reason to be hopeful that this broadened focus can be achieved.

We have already mentioned that the U.S. Department of Justice has funded numerous communities to support testing of sexual assault evidence kits. However, it is worth highlighting that this funding also covers the associated costs of investigating and prosecuting these cases, as well as inventorying evidence kits, and creating data- or information-sharing systems. Funding can even be used to fund multidisciplinary community response teams engaged in the comprehensive reform of jurisdictions’ approaches to sexual assault cases. Communities receiving this funding have the potential to lead the next wave of reforms, with the lessons they learn about testing evidence, investigating and prosecuting cases, notifying victims, and supporting victims’ re-engagement throughout this extremely difficult and disruptive process.

We are hopeful that this is just one of many future funding initiatives dedicated to improving our responses to sexual assault. Armed with sufficient funding, dedicated focus, and advancing knowledge, we are faced with an unprecedented opportunity to promote justice and healing for survivors, and safer communities for everyone.

Example: Las Vegas

Las Vegas, Nevada is one example of a community that has received funding from the National Institute of Justice to support testing sexual assault evidence kits. This [webpage](#) and this [video](#) provide an excellent overview of how the Las Vegas

Metropolitan Police Department and the state of Nevada teamed up to reduce the backlog of untested sexual assault kits.

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Appendix List

Appendix A: [More Information on San Diego County's Computerized Tracking System for CODIS Hits](#)

Appendix B: [Sample Projection Report from Cuyahoga County Prosecutor's Office](#)

Appendix C: [Examples of Police Department Press Releases](#)

