



**Understanding DNA: Policy Responses,  
Assessment, and Recommendations for Practice**

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This training bulletin is the fifth installment in our series dedicated to explaining the role of DNA evidence in a sexual assault investigation. In it, we explore current policy responses and examine available data regarding their impact, using a “SARA” model drawn from the field of Problem Oriented Policing (POP). We then offer a number of recommendations for practice with the hope of advancing discussion and charting a course for future reform.

**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 crime reduction. Within this framework, crime and disorder problems are examined carefully to develop a comprehensive understanding of the nature of each problem.

A fundamental premise of this model is that effective solutions can only be found when the problem is defined correctly and analyzed; far too often we design solutions that only address perceived symptoms of a problem, rather than the problem itself. POP was designed to avoid this dilemma, by teaching officers to approach problems in their community using the “SARA” model, which stands for Scanning - Analysis - Response - Assessment.

**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, incidents or other issues in a particular area of the community. In this training bulletin, we focus on the problem of unanalyzed evidence in sexual assault cases. The next step is then to *analyze* any available data; much of this training bulletin will be dedicated to presenting this data analysis.

The third step is implementation of a *response* or *responses*, which is followed by an *assessment* or *evaluation*. The importance of assessment is to determine what, if any, impact the responses have had on the problem. This information should be gathered from a variety of sources, to evaluate both quantitative as well as qualitative impact.





Finally, if no change is seen as a result of the response(s), the SARA model recommends that the problem be analyzed again from additional angles to determine if something was missed in the original analysis that would lead to different responses (or more faithful implementation of the responses that were designed).

### **An Illustration**

To illustrate the application of the SARA model to a problem of community crime and disorder, 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 were significantly reduced. However, this would not have happened if we simply continued to respond to calls of robberies at the station rather than analyze why offenders picked this station for repeated robberies.*

### **Critical Role of Evaluation**

Within a POP approach, it is critical to conduct a reliable and valid evaluation, yet not all law enforcement agencies are staffed for this task. Many medium- and large-sized police departments now have crime analysts with advanced degrees who should be involved in the analysis and assessment. Smaller agencies may not have this resource, but other community organizations concerned with crime problems may have staff members with the skills needed to help with such an analysis and assessment. Such critical stakeholders should be invited to bring their perspectives of the problem to the table.





It is also possible for law enforcement agencies to seek assistance from universities that have graduate students or interns who can 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 by no means always a given, but it is the type of possibility that can be explored using this type of analytic strategy and community partnerships.

An assessment of police response is critical, because it will be used to determine whether the problem has been resolved or at least improved. Equally important, the results can be used to influence managerial decision making and guide policy decisions. The goal is to enact policies and practices that are driven by data, to identify what actually might work to address a particular problem – not just what looks good or feels good. Engaging management is also crucial because it would be unfair and counterproductive for police departments to develop a response that is not adequately supported by the organization.

Herman Goldstein, often referred to as the “Father of Problem-Oriented Policing,” captured many of these concerns in his description of an effective evaluation. In his book, Goldstein (1990) explains that any evaluation of police response will only be effective if it includes all of the following components:

- *A clear understanding of the problem*
- *Agreement on the specific interest(s) to be served in dealing with the problem, and their order of importance*
- *Agreement on the method to be used to determine the extent to which these interests (or goals) are reached*
- *A realistic assessment of what is expected of the police (e.g., solving the problem versus improving the quality of police management of the problem)*
- *Determination of the relative importance of short-term vs. long-term impact, and*
- *A clear understanding of the legality and fairness of the response (p. 145-156).*

We believe the time has come to apply this framework to the problems associated with forensic evidence in sexual assault cases. With a strategy of scanning, analysis, response, and assessment, we hope to advance our discussion of the problem, to ensure that our responses address its underlying causes as well as its symptoms.





## **SCANNING AND ANALYSIS**

### **Problem: Unanalyzed Forensic Evidence in Sexual Assault Cases**

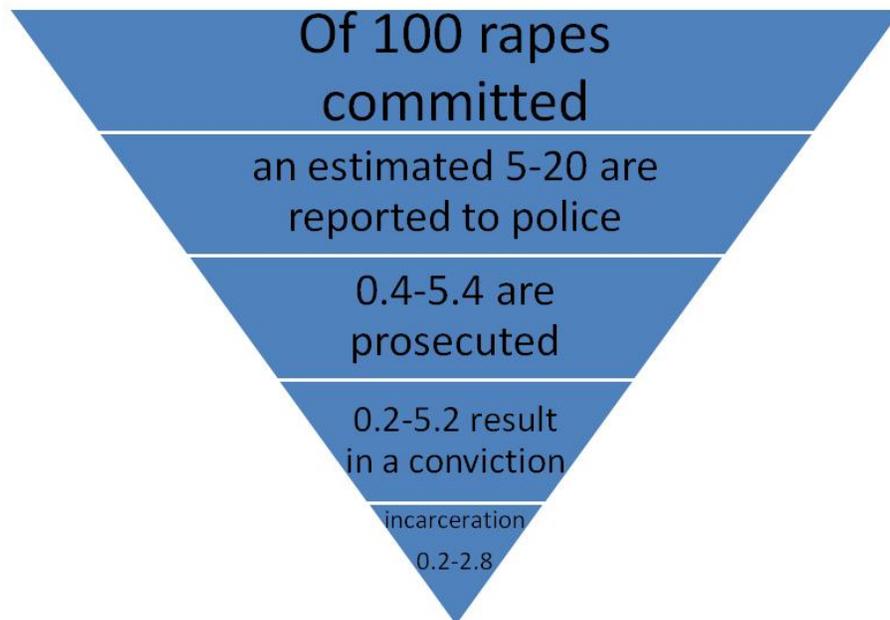
In media coverage, there is no doubt that this problem is typically defined by the images of thousands of evidentiary kits piled up in police property rooms – never submitted for analysis and never used to support a sexual assault investigation or prosecution. It is no wonder that professionals as well as the public are outraged. Many of these kits may indeed represent a missed opportunity for justice and a profound failure on the part of our criminal justice system. However, the piles of evidence kits could also be seen as symptomatic of larger and more complex problems. If the images of stacked-up kits define the problem for us, we may not address the full range of associated issues.

In recent years, for example, several states have enacted laws requiring law enforcement to submit forensic evidence to crime laboratories in all cases of sexual assault, typically within a specified timeframe. This is generally consistent with the practice we have recommended repeatedly throughout this series of training bulletins, to submit evidence in all cases of reported sexual assault. However, challenges will arise if these initiatives are not supported with other measures designed to meaningfully advance the investigation and prosecution of sexual assault cases.

### **Gathering and Reviewing Data**

By scanning and analyzing available data, an alternative definition of the problem could be the fact that a very small percentage of sexual assaults ultimately lead to the conviction and incarceration of a perpetrator. This is illustrated in the graph below, which originally appeared in *Violence Against Women*. It offers a visual representation of data from a number of sources on the attrition of sexual assault cases within the U.S. criminal justice system (for more information, see Lonsway & Archambault, 2012; see also McEwan, 2011 and Spohn & Tellis (2012) for sexual assault attrition data).





As the graph illustrates, the available data suggest that:

*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).*

If the problem is defined in this way, we can use an approach of Problem Oriented Policing to delve further into the data analysis and craft alternative responses.

### **Attrition Point #1: Non-Reporting**

For example, given the high percentage of cases that fall out of the criminal justice process, one of our first questions should be where the most significant point of attrition is taking place. Based on the research findings depicted above, we know this is actually the very first step in the process, when victims decide that they are unable or unwilling to engage with the criminal justice process at all. One part of a comprehensive response should therefore be to encourage victim reporting, by improving societal responses to victim disclosures and offering support for victims as they contact law enforcement and begin their participation in the criminal justice process.<sup>1</sup>

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<sup>1</sup> Research clearly documents that victims reap a variety of benefits in their well-being if they access formal support services, such as primary care by a physician, forensic medical care by a specially trained nurse, victim advocacy services, and other services such as counseling, therapy, and support groups. By





## **Attrition Point #2: Police Department**

The graph then illustrates that the second most significant point of attrition occurs shortly after reporting. To illustrate, data collected by Dr. Rebecca Campbell and colleagues representing six jurisdictions over 12 years, demonstrated that 86% of sexual assault cases with a medical forensic examination never went any further than the police department. They were not referred to the prosecutor's office, and no formal charges were filed (Campbell, Townsend, Bybee, Shaw, & Markowitz, 2013).

A comprehensive response will also include efforts to improve the law enforcement response to sexual assault, and to ensure that sexual assaults are thoroughly investigated with a goal of supporting criminal prosecution where appropriate.

## **Attrition Point #3: Victim Withdrawal**

Yet sustained effort will need to focus on ensuring that victims are consistently supported throughout the process. As many as one-third to one-half of all sexual assault victims withdraw from participating in the investigation at some point after reporting, with cases resolved unsuccessfully as a "VDP" for "victim declines prosecution."<sup>2</sup> The key to increasing victim participation lies in improving their support.<sup>3</sup>

A comprehensive response will therefore include models for providing consistent support for victims at every stage of the criminal justice process, so they can remain engaged and help law enforcement and prosecutors hold offenders accountable.<sup>4</sup>

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accessing the services of just one professional, this can also increase the likelihood that victims will engage others. Victims can also benefit from the support of loved ones, such as family members, friends, and intimate partners. Yet positive social support is not only critical for assisting in victim recovery, it is also a key requirement for victims to engage the criminal justice system – and stay engaged – to hold offenders accountable for their crimes (for a review, see Lonsway & Archambault, 2013).

<sup>2</sup> See, for example: Frazier, Candell, Arikian & Tofteland, 1994; Spohn, Rodriguez & Koss, 2008; Tellis & Spohn, 2008.

<sup>3</sup> As Campbell et al. (2009) concluded from another evaluation study, "Our interviews with both survivors and police revealed that 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" (p. 121). See also Campbell et al. (2011).

<sup>4</sup> For a description of the critical role of victim advocates in this process, please see the [OnLine Training Institute \(OLTI\)](#) modules entitled, *Effective Victim Advocacy Within the Criminal Justice System* and *Breaking Barriers: The Role of Community-Based and System-Based Victim Advocates*. Also helpful are the two modules on Sexual Assault Response and Resource Teams (SARRTs), one specifically designed for rural and remote communities and one for sustaining a coordinated community response using a SARRT approach.





#### **Attrition Point #4: Prosecutor's Office**

Finally, the graph reveals that significant attrition continues even after cases have been referred to prosecutors after the police investigation has concluded. A comprehensive response will also need to address the question of whether prosecutors have the evidence, skills, and training they need to vigorously pursue these challenging cases.

In the evaluation study conducted by Campbell et al. (2013), for example, forensic examiners were reportedly disheartened to learn that the vast majority of their cases never went further than the police department: "They had been operating under the assumption that the majority of sexual assault cases treated by their SANE program progressed through the criminal justice system" (p. 56).<sup>5</sup> In fact, the authors concluded that:

*The under-prosecution of sexual assault is a national problem, and even the strongest, most well-established SANE programs are not 'the fix' to a problem so complex (Campbell et al., 2013, p. 57).<sup>6</sup>*

Indeed, these evaluation findings "prompted useful reflection about the importance of a systemic, multidisciplinary approach, as one program or one service is not nearly sufficient in size or scope to tackle the problem of under-prosecution (p. 58-59).

In this training bulletin, we offer a number of recommendations for practices to begin addressing "a problem this complex." By broadening our view of the issues, we hope to address both the symptoms and the root cause of problems associated with forensic evidence in sexual assault cases. This includes the full picture of case attrition.

### **RESPONSES TO THE PROBLEM**

#### **One Response: "Test All Kits" Legislation**

To date, three states (Illinois, Texas, and Colorado) have responded to the problem of unanalyzed evidence by passing laws requiring forensic evidence to be submitted for analysis in all cases of sexual assault. Ohio has accomplished the same means through

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<sup>5</sup> A sexual assault nurse examiner interviewed by Human Rights Watch offered a similarly discouraging view: "In my 10 years doing this work, I have collected at least 500 kits and only heard back from the police about one" (Tofte, 2010, p. 31).

<sup>6</sup> The findings did suggest that the creation of a Sexual Assault Nurse Examiner (SANE) program significantly increased the number of cases progressing further through the criminal justice system, but the effect was rather modest (Campbell et al., 2013).





a directive issued from the State Attorney General, and similar efforts are underway in several local communities as well (see [www.endthebacklog.org](http://www.endthebacklog.org)).<sup>7</sup>

This "test all kits" approach is frequently advocated in the media,<sup>8</sup> and for a general public who does not understand the complex issues involved, this solution may appear relatively simple and straightforward to implement. The primary barrier is cost.<sup>9</sup> Therefore, as long as funding is increasingly directed toward the task on a local, statewide, and even federal level, it can feel like we are fixing the problem. Yet the SARA model and a POP approach would guide us to conduct a broader evaluation and assessment of any chosen response. Has it led to improvements in the reporting, investigation, and prosecution of sexual assault? Are we reducing the funnel of attrition depicted in the graph above? Are we actually holding more offenders accountable?

Some of the answers can be found in two communities that have implemented this approach: Los Angeles and New York City.

- In New York City, officials used a self-described "forklift approach" to analyze evidence in approximately 17,000 untested kits that were stored citywide from cases reported from 1989-1998. This process was complete as of January 2009.
- In the fall of 2008, the chief executives of the Los Angeles Police Department and Los Angeles Sheriff's Department publicly committed to analyzing all of the 10,896 "backlogged" sexual assault evidence kits estimated to be in their storage facilities. Their analysis was completed in April 2011.

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<sup>7</sup> These initiatives also frequently involve a requirement that law enforcement agencies inventory the unanalyzed evidence kits they have in storage, and develop a plan for submitting them for analysis.

<sup>8</sup> See for example, media stories with titles such as: "[Illinois to test every rape kit.](#)" (*Chicago Tribune*, July 6, 2010), "[Memphis council to fund testing backlogged rape kits](#)" (*WHBQ Fox 13 Memphis*, September 3, 2013) "[Finally, thousands of old rape-evidence kits are to be tested](#)" (*New York Times*, August 3, 2013), "[Cleveland tackles decades-old rape kit backlog](#)" (*MSN News*, June 19, 2013), "[LA County sends 4,763 rape kits out for testing](#)" (*Los Angeles Times*, October 17, 2010), "[More than 10,000 forgotten Detroit rape kits to be tested](#)" (*NBC News*, June 5, 2013), and "[HPD eliminates rape kit backlog](#)" (*Houston Chronicle*, August 22, 2013).

<sup>9</sup> Identifying funding sources can also be a significant challenge, not only for the actual laboratory work but also to expand the capacity of crime laboratories by hiring and training criminalists. As jurisdictions have implemented this approach, they have often had to expand their crime laboratory facilities and work through a lengthy accreditation process to ensure that they are meeting established standards.





## **Assessment: Two Examples**

The existing data does indeed suggest that a “test all kits” approach can dramatically increase the number of DNA profiles identified in sexual assault cases. This effect was seen in Los Angeles<sup>10</sup> as well as New York City.<sup>11</sup> These uploaded profiles have also produced a significant number of DNA matches in the national DNA databank known as [CODIS](#) (Combined DNA Index System).<sup>12</sup>

Yet challenges remain to investigate these cases and bring them to a successful resolution. Keep in mind that any match in a DNA database such as CODIS is only the first step in a lengthy process. Once a suspect is identified, the case will almost always require additional victim interviews as well as witness and suspect interviews and other evidence-gathering procedures. If the evidence supports a conclusion that the suspect did in fact commit the crime and there is probable cause, an arrest may be made or a warrant executed on the suspect to obtain a reference standard to confirm the match to the forensic profile developed from the evidence in the sexual assault. As the investigation moves forward, additional evidence may also need to be analyzed before the case can be successfully presented to a prosecutor. Further analyses will almost certainly be needed before a case can be tried in court. A competent investigation is also needed to exonerate a suspect when the facts of the case support this conclusion.

This more complex picture explains why so few of the cases in a “test all kits” approach will result in a criminal resolution. Again, this point is illustrated in the two examples.

## **New York Example**

In Manhattan, for example, the analysis of 3,490 sexual assault evidence kits resulted in a total of 49 criminal prosecutions and one exoneration to date (Bashford, 2012). This represents only 1.4% of the cases submitted for analysis, but it is important to keep in mind that prosecution was precluded in many cases because the statute of limitations had run out. In addition, future hits with the “John Doe” profiles could still yield successful investigations and prosecutions (Bashford, 2012).

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<sup>10</sup> In a study funded by the National Institute of Justice, Peterson et al. (2012) tracked the outcomes of 1,948 randomly sampled kits in the Los Angeles Police Department and Sheriff’s Department and found that foreign DNA was identified in 55% (1,070 cases). However, only 36% (699 cases) yielded a profile that was eligible for CODIS (Peterson et al., 2012; see also Ritter, 2012 for a detailed summary).

<sup>11</sup> Of the 3,490 evidence kits submitted from Manhattan, 68% (1,329 cases) resulted in a foreign DNA profile being developed and submitted to CODIS (Bashford, 2012).

<sup>12</sup> In Los Angeles, half of the DNA profiles uploaded in CODIS were found to result in a hit (347 cases). The vast majority of these DNA matches were from the Offender Index (92%). Only 8% matched to another case based on forensic evidence (Peterson et al., 2012). 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 (Tofte, 2009, p. 55). Martha Bashford confirmed in a personal communication that these numbers remain current up to December 2013.





Yet even these relatively small numbers reflect an enormous financial investment and years of painstaking effort on the part of New York City officials, including members of a specialized cold case unit established specifically for this purpose. The unit was staffed with two senior attorneys from the District Attorney's Office who worked with members of the New York City Police Department, to ensure that any leads identified in these cases were properly investigated and vigorously pursued. The crime laboratory also 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 cold hits: "When the DNA profile from a tested rape kit matches a profile in the DNA database, an electronic system ensures that the crime lab, police, and District Attorney's Office are all notified at the same time" (Tofte, 2009, p. 55).<sup>13</sup>

### **Los Angeles Example**

In Los Angeles, only two convictions were documented following the analysis of almost 11,000 "backlogged" sexual assault evidence kits, and researchers concluded that these were not the result of the crime laboratory analysis: "We determined that neither of the two new convictions involved helpful DNA testing (Peterson et al., 2012, p. iv).

In fairness, this evaluation was conducted only six months after the analysis was completed, so Los Angeles officials would most likely 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 evaluation study was not extended beyond this 6-month timeframe and there is no evidence that resources were specifically dedicated to the task of pursuing these cases or tracking legal outcomes.

### **Conclusions from Assessment**

These numbers therefore highlight the challenge. 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 increase. In fact, this is a pattern we are already seeing with agencies establishing cold case units –

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<sup>13</sup> These efforts were all undertaken at the direction of Mayor Rudolph Giuliani and Police Chief Howard Safir, with budgetary support from the new York City Council (Bashford, 2012). The financial investment was significant. but now that they have submitted all of the "backlogged kits" from 1993-1998, the policy of submitting all evidence kits remains in place. As a result, the crime laboratory is now processing as many as 10,000 DNA cases a year (Tofte, 2009) yet they have still reduced their turnaround time to six weeks (Reiss, 2012). Perhaps even more important, the New York Police Department's arrest rate for rape has increased dramatically, from 40% to 70%, and there are "increased numbers of prosecutions and convictions for rape" (Tofte, 2009, p. 55). As one sex crime prosecutor concluded, "We had the political will to do it, and now, the policy is a no-brainer given all the rapes we have been able to solve and prosecute" (Tofte, 2009, p. 55).





with an increasing number of CODIS hits in our maturing DNA databases, a new "backlog" has been created by the lack of investigative resources rather than laboratory analyses.<sup>14</sup> This is particularly true for cases that were poorly investigated or documented in the first place, making them difficult to evaluate for further investigation.

In addition, if victims did not feel that they were treated fairly during their initial contacts with the criminal justice system, they may be even more hesitant to re-engage years later. Again, this suggests that the large volume of unanalyzed evidence may be a symptom of a larger and more complex problem, which is the historic failure in some agencies to thoroughly investigate and vigorously prosecute sexual assault cases. While a "test all kits" approach will not solve these more complex problems, New York City has demonstrated that it can be used to focus resources and attention on the issue.

At this point, we would like to continue our application of the POP approach and SARA model to the problems associated with forensic evidence by offering recommendations for practice – not only for law enforcement agencies, but also for the many other multidisciplinary professionals involved in the criminal justice and community response system for sexual assault. We hope the following recommendations will contribute to the ongoing scanning and analysis of the problem, development of alternative responses, and an assessment of their impact – all with the goal of charting a course toward meaningful future reforms that will address the larger funnel of attrition.

### **ALTERNATIVE RESPONSES: RECOMMENDATIONS FOR PRACTICE**

#### **1. Allow Sufficient Time to Conduct a Thorough Investigation**

As previously stated, several states have enacted laws or directives requiring that evidence be submitted to the crime laboratory for analysis in all sexual assault cases. So far, they have also included deadlines for evidence submission. In Texas, for example, law enforcement is required to submit evidence to the crime laboratory within 30 days; the timeline is 21 days in Colorado, and only 10 days in Illinois.<sup>15</sup>

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<sup>14</sup> To illustrate, the Phoenix Police Department Cold Case Team realized this was a concern in 2005. After four years of reviewing, prioritizing, and submitting evidence in cold cases, the team saw a "slow stream" of CODIS hits from 2000-2004. However, in the fifth year, offender CODIS hits nearly tripled. To avoid a second "backlog" of cases requiring investigation and follow-up, agency leadership responded to this growing concern by assigning additional detectives to the team that also included forensic scientists, advocates and prosecutors (Jim Markey, personal communication, November 23, 2013).

<sup>15</sup> Some of these statutes also include a timeframe for analysis to be completed by the crime laboratory. In Illinois, for example, the law requires evidence to be analyzed by the crime laboratory within 6 months but only "if sufficient staffing and resources are available." Almost identical language is included in the Texas law. In Illinois, considerable effort has been taken to secure these resources. As of June, 2012, Chicago media reported that 2,049 of the 4,008 cases expected to be submitted to the Illinois State Police Crime Lab system had already been processed, resulting in 445 CODIS hits. This represents a "hit rate" of





For some sexual assault cases, 30 days will be sufficient time to conduct enough of an investigation to determine what sexual assault acts may have been committed and to decide which evidence is most likely to be probative. However, there are many situations where this will not be possible. For example, many victims are initially hesitant to participate in a law enforcement investigation beyond the first contact. The follow-up interview may therefore have to be postponed, delaying many of the investigative steps that can only be completed after a comprehensive follow-up interview has been conducted with the victim. In other cases such as drug facilitated sexual assault, it is critical to interview – not only the victim – but also the suspect and any potential witnesses, to determine what crimes may have been committed and the evidence that might be available. This will take additional time as well.

In still other cases, particularly when the victim has an incomplete memory of the assault due to drugs or alcohol or when the consent defense may be raised, law enforcement may need time to utilize other investigative techniques in order to determine what DNA evidence might be available and where it might be found. This could include conducting a pretext (monitored) phone call with the suspect or examining electronic evidence (such as texts, photos, social media). If evidence must be submitted to the crime laboratory within 21 days, let alone 10, investigators may find themselves in a situation where they have to submit the evidence without the information they need to determine which analyses will advance their case.<sup>16</sup>

The urge to set a deadline for evidence submission is certainly understandable. No concerned party wants to see a sexual assault investigation drag on indefinitely, and we all want to avoid unnecessary delays. However, concern is warranted if any such deadline does not allow sufficient time to conduct a thorough investigation, because sexual assault investigations are often the most difficult type conducted by law enforcement. It is critical to ensure that investigators have enough time to collect the evidence they need, and strategize their laboratory requests to prioritize the analyses most likely to advance their case toward successful resolution. When investigators do *not* have sufficient time to conduct such a review, they may find themselves submitting lab service requests for analyses that are overbroad and potentially redundant, thereby creating an unnecessary drain on precious crime laboratory resources.

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about 22%. However, the Commander of the Illinois State Police Forensic Laboratory System, Arlene Hall was quoted as saying that the significance of any CODIS hit “can only be determined through additional investigation by the law enforcement agency” that originally handled the case (Reiss, 2012).

<sup>16</sup> There is evidence to suggest that rape investigations will often take longer to complete. In one study of felony cases in five jurisdictions, for example, McEwan (2011) examined a random sample of 602 rape cases. When an arrest was made in these cases, the average time elapsed between the rape and the arrest was 53.1 days. This includes the average of 7.6 days between the rape and the report, meaning that the investigation took 45.5 days before the arrest was made.





The question is this: What purpose is served by rushing a sexual assault investigation or requiring that investigators submit their evidence for analysis – if they may not yet know what they are looking for, where it might be found, and what it may mean?

Our first recommendation is therefore to avoid imposing arbitrary deadlines for submitting the evidence in a sexual assault case, or at least ensuring that the time period is sufficient to conduct a thorough investigation in most situations. Equally important, we recommend that any such requirement include some flexibility to allow for investigations that may take more time than usual. A number of factors might legitimately slow down an investigation, including concerns of the victim, investigator, or other parties. Some of the newer investigative techniques, particularly those involving the collection and analysis of electronic evidence, may be particularly time consuming. Thus, if a deadline is established for submitting evidence in a sexual assault case, we recommend that it be accompanied by a procedural mechanism that can be used to extend the timeframe in cases where this is appropriate.

## **2. Keep Victims Informed on the Status of their Case**

Our second recommendation is for law enforcement investigators to keep victims informed in an ongoing way of the status of their case, even when – and perhaps especially when – there are no significant developments. One of the most frustrating dynamics described by many sexual assault victims is a lack of contact from the police officer investigating their case and a lack of response to their requests for information on the current status or any developments in their case. This is not limited to the evidence collected during their medical forensic exam, if they had one. Rather, it pertains to the whole process of the investigation and possible prosecution. This recommendation was also offered by participants at a Roundtable discussion hosted by the Office on Violence Against Women (OVW) on *Eliminating the Rape Kit Backlog*:

*Victim advocates recommended that victims should have access to real-time information on their case so they can stay informed on the latest developments. Access to timely information allows the victim to better understand the criminal justice process and how her [or his] specific case is being processed (Office on Violence Against Women, 2010, p. 24).*

Investigators can sometimes be reluctant to provide information to victims, because they might want to protect them from unpleasant news, or the fact that there is no news at all. However, victims typically want to be kept informed of what is happening with their case, even if it is not what they hoped would happen. Again, this extends far beyond the question of whether the evidence from their medical forensic exam was submitted for analysis. As one sexual assault victim reported to Human Rights Watch:





*They may have had a reason not to test my kit, but I wouldn't know because I didn't get any information about my case, much less information about why certain investigative decisions were made. Just knowing the reasoning behind the police's decision not to move my case forward, may have helped me a little (Tofte, 2010, p. 33).<sup>17</sup>*

Especially when their case is being closed or inactivated, victims need to be notified of this fact, in order to achieve some closure in their own lives. In fact, keeping victims informed is critical for their emotional well-being, but it can also facilitate their ongoing participation in the law enforcement investigation and potentially reduce the funnel of attrition for sexual assault cases. Research documents that victims who are provided with more information are more likely to participate in the criminal justice process and to be satisfied -- both with the outcomes of their case as well as the professionals who assisted them (Kilpatrick, Beatty & Smith Howley, 1998). It is therefore yet another component of a solution addressing the funnel of attrition for sexual assault cases.

Because it can be difficult for law enforcement to keep in contact with victims as often as they would like, advocates can play an important role in keeping them informed throughout the investigation. However, this is only appropriate if it reflects the wishes of the victim. For advocates to play this role, victims must sign a release waiver indicating that the advocate can contact law enforcement on their behalf to discuss the status of their case. Criminal justice and community professionals can work together to ensure that such measures are taken to keep victims apprised of the status of their case and offered resources to assist them in navigating this difficult experience.<sup>18</sup>

### **3. Provide Support for Victims Throughout the Process**

Our third recommendation is to ensure that victims receive consistent support throughout the criminal justice process. One way to accomplish this is to ensure that victims have access to advocacy services, if they want them, every step of the way.

Even if all of the professionals involved in the criminal justice system perform their jobs competently and with compassion, it will still be difficult for victims to participate and remain engaged in the process. In fact, some have described the role of an advocate in the criminal justice process as “holding the victim’s hand on a walk through hell” (Weisz, 1999; cited in Koss, 2006). Victim advocates can be extremely effective in helping

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<sup>17</sup> Human Rights Watch has published several investigative reports on the criminal justice response to sexual assault in several communities, with a particular focus on the law enforcement investigation and the volume of unanalyzed evidentiary kits. For more information and a copy of these reports, please see <http://www.hrw.org/>.

<sup>18</sup> For more information, please see the [OnLine Training Institute \(OLTI\)](#) modules entitled, *Effective Victim Advocacy Within the Criminal Justice System* and *Breaking Barriers: The Role of Community-Based and System-Based Victim Advocates*.





victims overcome the many barriers they will inevitably face, by providing them with the information, emotional support, and proactive assistance they need at each stage.<sup>19</sup>

While these recommendations may not seem directly related to the challenges surrounding the use of DNA in a sexual assault investigation and untested forensic evidence, we believe they are central to the larger issue of sexual assault case attrition. This is because we will only be able to pursue those cases that are reported and investigated if victims can withstand the process. Any of the other recommendations we offer for investigating and prosecuting sexual assault cases will only be relevant if victims can become engaged – and remain engaged – in the criminal justice process.

It is the only path toward holding more offenders accountable for their crimes.

#### **4. Dedicate Sufficient Resources to Support Investigations and Prosecutions**

Competent, high quality investigations not only take time to complete, but also require sufficient resources, including personnel, time, training, and supervision. The same is true for prosecutions. Our fourth recommendation is therefore to ensure that investigators and prosecutors have the resources needed to achieve these standards.

This will be a challenge for jurisdictions that enact laws or other policy initiatives requiring evidence to be submitted for analysis without allocating the funding needed to support the resource-intensive investigations and prosecutions that will inevitably result. As the example of New York City illustrates, the cost of laboratory analysis represents only a fraction of the total resources expended to bring a case to successful resolution. It is the very rare sexual assault case that can proceed to trial with the results from a crime lab analysis alone, and investigators should never expect that theirs will be that rare case. Successful prosecution of a sexual assault case requires a range of evidence that can only be gathered during the course of a thorough investigation.

Success will depend not only on the level of resources that are available to crime laboratories so they can conduct analyses – but also on the resources provided to law enforcement agencies so they can conduct investigations, and for prosecutors' offices to vigorously pursue charges when appropriate. Prosecutors may even need to call investigators and/or DNA analysts to testify at trial to explain what evidence was *not tested* and *why not*. Each of these additional tasks will require time and resources, as well as meaningful collaboration between all of the professionals involved in responding

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<sup>19</sup> For a description of the critical role of victim advocates in this process, please see the [OnLine Training Institute \(OLTI\)](#) modules entitled, *Effective Victim Advocacy Within the Criminal Justice System* and *Breaking Barriers: The Role of Community-Based and System-Based Victim Advocates*. Also helpful are the two modules on Sexual Assault Response and Resource Teams (SARRTs), one specifically designed for rural and remote communities and one for sustaining a coordinated community response using a SARRT approach.





to sexual assault. This includes representatives from law enforcement, prosecution, and the crime laboratory, as well as health care providers, victim advocates, and other social service professionals who can provide support for victims throughout the process. Armed with this knowledge, community professionals can push for needed reforms as well as the resources that are required to successfully implement them.

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