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The National Center for Victims of Crime is pleased to provide the slides used in our June 27, 2012 Webinar, “Untested Sexual Assault Kits: Improving the Response to Victims Through Research and Technical Assistance Projects

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Untested Sexual Assault Kits: Improving the Response to Victims Through Research and Technical Assistance Projects

June 27, 2012

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National Center for Victims of Crime
Our Mission

To forge a national commitment to help victims of crime rebuild their lives.
Training and technical assistance.

Advocacy to secure resources, rights, and protections for victims.
Project goal:

- to ensure that communities have the tools to create a victim-sensitive approach to sexual assault kit backlog reduction.
Objective #1

- Webinar Series
  - Appx. 12, 60-90 minute webinars.
  - Developing victim-centered response to backlogs.
Objective #1 cont.

- **Proposed Webinar Topics**
  - Victim notification
  - Victim’s right to be heard.
  - Explaining evidence processing
  - Trauma response and impact on victim participation
  - Effective support services
  - Ensuring culturally informed responses
  - Benefits of processing evidence in non-stranger cases.
  - Victim-sensitive investigation and prosecution
Objective #2

- **Online Resource Library**
  - Create and collect resources to help jurisdictions develop and strengthen their support of victims in relation to Sexual Assault Kit (SAK) evidence.
  - Sample policies and protocols.
  - Statutory comparisons on victims’ rights.
  - Related legislation.
Objective #3

- Public Website
  - Build on NCVC’s DNA Resource Center website, at www.ncvc.org/DNA.
  - Include statutory comparisons of victims’ rights, sample policies, protocols, other resources.
Objective #4

- Provide Technical Assistance
  - Via email, phone, and other contacts.
  - Provide consultation to select communities.
Objective #5

- Victim Roundtable and Interviews
  - To understand victim needs in backlogged cases.
  - Roundtable of 8-10 victims.
  - Discuss experiences, what worked, what could be better.
  - Interview up to 6 individual victims for additional input.
February 16, 2012
11 survivors
Inquired about:
  - Notification
  - Right to be heard/provide input
  - Justice
Roundtable

- Report will be available on our Website soon
- Webinar on notification will cover findings from roundtable
To identify written policies and protocols regarding victim notification.

- Call to the field for written policies.
- Interviewed cold case units regarding their process.
- All policies and protocols will be on our Website.
Policies and protocols on notification

- Who?
  - LE, advocate
- How?
  - In person, phone, letter
- When?
  - When kit is forwarded? When profile is extracted? When hit is made?
Policies and protocols on notification

Please send us yours!

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These cases are unique - in the "mushy middle."

Few laws apply *specifically* to these cases.
- CA Sexual Assault Victims DNA Bill of Rights
CA § 680. Sexual Assault Victims' DNA Bill of Rights

(1) Upon the request of a sexual assault victim the law enforcement agency investigating a violation of Section 261, 261.5, 262, 286, 288a, or 289 may inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case.
Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims have the following rights:

(A) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from their case.

(B) The right to be informed whether or not the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence has been entered into the Department of Justice Data Bank of case evidence.

(C) The right to be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence
Some victims’ rights laws *may* be interpreted to apply.

- See examples on our DNA Resource Center at www.ncvc.org/dna.
- In a few weeks, the address will change to www.victimsofcrime.org/dna.
Victims’ Rights

Victims’ Rights and Backlog Reduction Laws

Communities around the country are grappling with how to properly process large numbers of sexual assault forensic examination kits (SAFEs) that have remained untested for 10, 15, 20 years or more. Determining what rights victims have in these cases is an important obligation for these jurisdictions. Survivors of these old, unsolved crimes deserve fair and sensitive treatment throughout the backlog reduction process.

States are just beginning to adopt victims’ rights laws that will apply specifically to these cases (see box on the right). In the meantime, many existing victims’ rights laws may be interpreted to apply in this context. These include:

- Right to be treated with fairness, dignity, and respect;
- Right to be informed;
- Right to be heard and participate in the criminal justice process;
- Right to timely disposition of the case;
- Right to notice about the status of the case; and
- Right to apply for compensation.

In 2013, California passed the “Sexual Assault Victims DNA Bill of Rights,” the first law of its kind in the nation. This legislation addresses the issue of the importance of timely DNA analysis of rape kit evidence and provides sexual assault victims with the right to be informed of the status of the testing of their kits and whether or not a match has been identified.

Please note:
The information provided on this Web site is informational only and does not apply to a particular case. As legal advice must be tailored to the specific circumstances of each case, and laws are constantly changing, nothing provided on this Website should be used or construed as a substitute for the advice of an independent, licensed attorney.
We are researching:

- Victims’ constitutional right to fairness, dignity and respect.
- Victims’ bills of rights – some apply before charging.
  - Right to notice of rights/Right to be informed
  - Right to be heard
  - Right to timely disposition
  - Right to notice about status of the case
RHODE ISLAND

§ 12-28-3. General rights

(a) Each victim of a criminal offense who makes a timely report of the crime and who cooperates with law enforcement authorities in the investigation and prosecution of the offense shall have the following rights:
Texas

“(a) A crime victim has the following rights:

(1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; “
Studies show that victims rate being kept informed of the various developments of the case as more important than the actual outcome.
The threshold right.

Very important to victims to be informed:

- Notice of other rights, available resources
- Notice of events and proceedings
Notice of Rights

Oregon
§ 147.417 Victim to be notified of constitutional rights.

(1) As soon as is reasonably practicable in a criminal action in which there is a victim, a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense of the person's rights under section 42, Article I of the Oregon Constitution.
Right to be Heard

- Key element in a system that treats victims with dignity and respect.
  - Right to consult with key officials.
  - Right to address or submit statement.
Once cases are in the CJS, all statutory victims’ rights apply.

Creative ways to afford right to be heard:
- Looking at cases that are past the SOL
- VIS at trial in other cases
- Parole
ALASKA ADMIN. CODE tit. 22, §20-095
(a) Except as provided in this chapter, parole board hearings are closed to the public. *Any person, group, or agency may submit written information to the board for consideration.*

(c) *Upon written request, the board will, in its discretion,* permit other government employees or *other persons having a legitimate interest in a board hearing,* to attend and observe a hearing. A request to attend a hearing must be made to the board before the hearing.
“Victims should be treated with courtesy, compassion and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.”
The Legislature finds and declares that crime victims and witnesses are entitled to the following rights:

k. *To be advised of case progress* and final disposition...
Victim Compensation

- Right to apply for victim compensation.
- Applications generally must be filed within 1 year.
- Many states have a “good cause” exception to late filing of claims.
- Good cause is determined by the compensation board.
Victim Compensation

- NCVC conducted survey of comp administrators.
- 78% said they would be “very likely” or “likely” to consider a claim for compensation in cases in which a SAK was tested past the filing deadline.
- One state has a cold cases policy allowing for compensation for these victims.
Related Policy Issues

- John Doe warrants.
- Statute of limitations.
- “Test every kit” laws.
- Mandatory turnaround times.
- All arrestee laws.
- TX law allowing cold hits on criminal record.
Looking at creative ways to help victims find justice!

- Cases past the SOL
- Cases in which a perpetrator is never identified or is dead.
“The process is just as important as the outcome.”
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DNA Resource Center