



Sexual Assault Kit Backlogs: Survivor Perspectives

On February 16, 2012, the National Center for Victims of Crime convened a roundtable discussion with sexual assault survivors whose sexual assault kits (SAK) were untested for many years or decades. This roundtable was part of *Sexual Assault Kit Backlogs: Making Victims Part of the Solution*, a project funded through a cooperative agreement with the Office on Violence Against Women, U.S. Department of Justice, to create tools and resources that communities can use to ensure that backlog reduction efforts are informed by survivors and developed around their needs. This three-year project is producing webinars for law enforcement, victim advocates, and other professionals; developing an online resource library; and offering customized technical assistance.

The purpose of the roundtable was to better understand what survivors' needs are through the criminal justice process, particularly in cases in which there is backlogged DNA evidence, cold cases that are reopened years or even decades later, and cases that fall outside the statute of limitations. Eleven survivors from around the country participated, and representatives from OVW, NIJ, and OVC attended as observers. Each survivor's unique story and perspective offered new insight into this complex issue.

The survivor discussion focused on the following topics:

- **Survivor notification** – How were the participants notified of changes (or lack of changes) in their cases? Who notified them? When were they notified? Were they satisfied with the notification process?
- **Survivor input into the criminal justice process** – Were the survivors given a say in how their cases were handled? Would they have liked to have greater or fewer opportunities to be involved?
- **Notions of justice** – What does justice mean to a sexual assault survivor whose case was or remains part of the DNA backlog? Do survivors feel that justice was served in their cases? Why or why not? What do they think about testing kits that are beyond the statute of limitations?

As jurisdictions across the country work to eliminate their backlogs, it is vital that they keep survivors' rights and needs at the center of their approaches. The answers survivors gave to these and other questions will inform efforts to develop victim-centered strategies for eliminating the backlog of untested sexual assault kits. Some of the key themes that emerged from the discussion are summarized below.

- **Survivors have varied opinions on the best approach to working with survivors in untested kit cases.** The survivors shared vastly different perspectives on what did and did not work in their respective cases, and what their preferences would have been for

notification and involvement in the criminal justice process. What empowers one survivor might infuriate another; what promotes one survivor's healing might set another survivor back in her recovery. A theme that was consistent throughout the discussion was that justice, as defined by the criminal justice system, can differ tremendously from a rape survivor's definition of justice. The group spent a lot of time on the issues of notification and input into the process. Some topics of discussion included:

- *Manner of notification* – Survivors had varying ideas about whether email, mail, telephone, or in-person notification is most appropriate, and under what circumstances – or *when* - a survivor should be contacted. All agreed that notification should be made in the most sensitive and confidential manner possible. Most important was that the contact felt personal. Most agreed that email is not an appropriate form of outreach. Many felt the same about letters. There was disagreement about whether an in-person visit is better than the phone, as both have their pros and cons. Many suggested that the first meeting, however it is accomplished, should be very general (e.g. “we have some news about your case”), with a follow-up meeting, time and place of the victim's choosing, with support available, either in the form of an advocate or significant other.
 - *When to notify* - The roundtable survivors disagreed on the circumstances under which they would like to be contacted. Some would want to be notified if their kits were processed and a hit was *not* obtained. One survivor whose kit was tested and to date has not hit to an offender on the DNA database noted, “Any answer is better than no answer and it shows that someone cared enough about what happened to me to test the kit.” Another survivor cautioned that survivors in these instances “deserve the same amount of respect as someone with a hit” and urged that follow-up with these victims is important. A few survivors said that they would rather only be notified if there was a significant development in the case (i.e., a CODIS match). One survivor said she would like to have been informed that a DNA profile had been found when her kit was tested. She remarked, “I would have welcomed a cold call that a profile had been discovered. I believe ‘progress’ will always trump inactivity when a victim seeks justice.”
 - *Survivor reaction to notification* - Survivors described the shock, anger, disbelief, fear, happiness, relief, and a whole host of other emotions that they experienced when they were notified. They relayed that it is inherently a traumatic experience to be notified of a DNA hit 10 or 20 years later, but this can be done in a victim-centered way that mitigates the trauma and lets victims know they are going to be treated with respect. One survivor said, “It did open old wounds, but that was good because I discovered that I never dealt with my assault in 1986.”
- **Survivor involvement in law enforcement decision-making**
 - *What evidence to test, and when.* Survivors were split on whether they would have liked to have been asked about their kits being tested and having the results uploaded to the Combined DNA Index System (CODIS). A majority of the survivors said that in a “perfect world” survivors would be involved in the decision to test their kit. One survivor said: “If you have a choice if you're assaulted today [about having your kit processed or not], then you should have a choice to have it tested even if your assault

happened 20 years ago.”

Another survivor said she would like to be informed earlier in the process (when the kit is being forwarded for testing) because “getting that call is easier than being informed about the hit. It gives you time to prepare. You can’t prepare for a rape but you can prepare for everything else.”

Others thought that all backlogged rape kits should be tested without survivor approval as a way to link cases and identify serial offenders. In fact, several of the survivors’ cases were solved by being linked to other cases. Though some survivors argued that this approach could prioritize the criminal justice system’s objectives at the expense of individual survivors’ privacy and needs. “We get lost when we look at what we do for the sake of everyone as opposed to victim.”

- *Other ways to be involved.* When asked about other ways that they would like to be involved, many survivors said that they wanted their voices heard on matters such as charging decisions, and they wanted an opportunity to provide input regarding sentencing. One survivor described having “drawn a line in the sand” by threatening to refuse to cooperate with prosecutors when they were considering charging her assailant with a much lesser offense than rape. Another survivor who had virtually no opportunity to speak during the criminal justice process said, “I had no input into the most life-altering experience of my life, and he got away with the rape and the death of the little girl I was.”
- *Testing kits that are beyond the statute of limitations* – Some survivors whose kits were processed found a certain comfort in simply knowing the name of the person who had raped them, regardless of whether the perpetrator was held accountable in the criminal justice system. Some of those survivors also found other ways to seek a sense of “justice” in their case (see the discussion on “justice” below).

Others saw no value in processing kits from cases that are past the statute of limitations. One survivor said: “I was just grateful to be left alone.”

Finally, several of the survivors voiced support for efforts to extend the statute of limitations for backlogged cases. And many survivors said they would support the elimination of the statute of limitations for rape. Some jurisdictions have used “John Doe indictments” to essentially stop the clock in cases in which DNA was recovered but the perpetrator’s identity remains unknown. One woman noted, “A rape is a rape no matter when it happened.”

- **Many survivors had terrible experiences with law enforcement when they first reported their assaults. This reality must be accounted for when contacting survivors years and even decades later.** The majority of the survivors at the roundtable recounted having been discredited, humiliated, lied to, and/or ignored by police after reporting their assaults. A woman who was brutally beaten and raped in her home by an unknown assailant when she was a teenager recalled that a police officer accused her of lying to cover up having been out with her boyfriend. Another survivor, the victim of a serial rapist, told police that her assailant could be found at the location of her abduction, but they apparently never tried to find him and closed out her case two days later. Several survivors recalled being left on

gurneys in crowded hospital hallways while waiting for a medical forensic exam. Yet another survivor who was treated with skepticism by police described the horror of finding out that the man convicted of her assault was not the man who raped her. These experiences compounded trauma upon trauma for the survivors. For some of the survivors, being contacted by law enforcement much later brought back pain and anger related not just to the assault, but also the abysmal mistreatment by people who were supposed to help them.

Many of the survivors at the roundtable said that the treatment they got in their recent interaction (after a DNA “cold hit” was obtained) with law enforcement and the criminal justice system was significantly better than at the time when they were assaulted. Several survivors said it meant a lot to her when the detective who notified her of the hit seemed “truly sorry” that it had taken so long. Across the board, survivors said they wanted someone to acknowledge the “mess-ups” and apologize for how they were treated.

We asked survivors their thoughts on ensuring that the “right” people are in the role of making notifications and they all agreed that training is important. But they also asserted, “You can’t teach compassion.” Many agreed a policy or protocol regarding how victims should be contacted would be good. “What we need to do is come up with a process that works most of the time.”

- **Public awareness campaigns can be mutually beneficial for survivors and the criminal justice system.** Communities must use aggressive outreach strategies to inform the public when backlog elimination efforts are launched. Several of the survivors contacted law enforcement after reading in the newspaper that a new program to test backlogged kits was underway. They emphasized the importance of getting the word out through various media and through community-based organizations (rape crisis centers and others) so that survivors can initiate contact if they wish.
- **Survivors in these cases have a need for certain information that law enforcement and/or the district attorney should provide.** As one survivor remarked: “We didn’t read up in advance on what someone should do when she’s raped.” Some of the survivors explained that they were given inadequate information both when the assault first happened and when they were contacted years later. Survivors explained that they would have benefited from knowing about services available through rape crisis centers, victim compensation, and an approximate timeline for what to expect during an investigation and prosecution. One survivor, who was deceived into answering questions by her perpetrator’s attorney and wished she had been given forewarning that this could happen, said: “The prosecutor needs to make sure that the victim is given the chance to be the best witness she can be. We need information to do that.”
- **There are many “versions” of justice.** We learned a lot about what the survivors regard as “justice.” Many felt justice had been served when their assailant was tried and convicted. But for some, they didn’t get to experience that justice because either the perpetrator had not been found or couldn’t be prosecuted because the statute of limitations had expired. In some of these case, the survivors had found other ways to find a sense of justice. One survivor was able to give a victim impact statement in another case against her rapist. A few of the women had worked on a law that allows DNA cold hit information to be put on a person’s criminal record even if the case is not prosecutable. One survivor was able to give an impact statement to the parole board so the offender could be considered for sex offender status and for stricter

parole parameters. For some, just knowing that “he knows I know who he is” and “now they believe me” felt like justice. One survivor said, “Justice is about being heard, valued, respected. It is about being exonerated of the guilt, shame and blame imposed on victims.” Some shared that the fact that their kit was tested, that they were treated well by law enforcement and the prosecutor, and that they had some answers, was “justice.” One survivor noted, “Justice can be as much about process as it is about outcome.”

The survivors brought diverse and even contradictory perspectives to the roundtable. However, one matter on which they seemed to agree is that victims of sexual assault need more opportunities to voice their experiences, needs, and preferences when it comes to DNA backlogs. One survivor remarked that too often system players—including advocates—claim to speak on behalf of survivors, yet it is rare that survivors are asked directly for their thoughts on this issue.

Across the board survivors at our roundtable expressed that they were, in the end, pleased that the system “had not forgotten them.” One said, “I thought I was the only person who remembered this.”

We hope that this roundtable will serve as a building block for ongoing efforts to eliminate sexual assault kit backlogs in a way that accounts for rights and needs of victims.

For more information, contact Ilse Knecht, project manager, at iknecht@ncvc.org

This project was supported by Grant No. 2011-TA-AX-K048 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.