

Practical Considerations for Victim Advocates: Offering Support When Cases Are Declined for Prosecution

Many victims have waited years not only for their sexual assault kit (SAK) to be tested but also to learn what will happen to their criminal complaint. Once their SAK has been tested, a victim may expect that their case will progress through the criminal justice system rather quickly. During the initial outreach to a victim, the notification team should refrain from making any promises about the potential outcome of the criminal matter; instead, the team should maintain focus on providing objective information about the steps for SAK testing and case review.

Unfortunately, not all criminal complaints will be prosecuted—even if a SAK returns a positive DNA match. *Case declination* occurs when the prosecutor with charging authority decides not to pursue a criminal prosecution. Victim advocates should be prepared to support individuals whose criminal complaint has been declined. This news can lead to retraumatization and produce strong emotions, including disillusionment with the criminal justice process.

SAK Cold Case Charging Decisions

As in the investigative stage, the charging stage (i.e., when a prosecutor decides to formally file criminal charges to proceed with prosecution) should take a victim-centered, trauma-informed, multidisciplinary approach. This includes the observations and recommendations from

law enforcement, as well as from victim advocates. A victim advocate has the right to clearly state their opinion to the prosecutor about moving forward with a case; a victim advocate also has the right to promote the victim's best interest.

Additionally, many jurisdictions have crime victims' rights laws. These laws may be part of the state's constitution or its legal code. These laws may establish victims' rights to receive information and to be notified of the prosecutor's decision to charge a prospective criminal defendant. However, victims must understand that the final decision to advance a case to prosecution in the criminal justice system belongs ultimately to the prosecutor. If the prosecutor declines to file charges, the victim advocate should be made aware of this decision prior to the prosecutor's disclosure to the victim. Furthermore, the prosecutor and victim advocate should strategize together about how to provide this news to the victim in a way that lessens the risk of retraumatizing the victim.

As a best practice, prosecutors should notify victims of case declination either face-to-face or over the phone. Prosecutors should also offer their explanation with the support of the multidisciplinary team (MDT) members who worked the cold case investigation; the victim will be familiar with these individuals and should have a basic level of trust with them.

A Note on The Legal Standards for Arrest Versus Prosecution Charging Decisions

Victim advocates should be aware of the legal standards that law enforcement officials consider in arrests and that prosecutors are obligated to consider when deciding whether to prosecute a defendant. Following is a basic primer.

Law enforcement officials must consider whether there is "probable cause" to believe that a crime was committed and that the alleged perpetrator was the person responsible for committing the crime. If there is probable cause to support allegations, then the prosecutor may request that a judge provide an arrest warrant for the alleged perpetrator. This standard of evidence is much lower than the standard of evidence that must be met to prosecute a criminal case.

The standards that prosecutors must consider in their charging decisions are established by (1) a jurisdiction's rules of ethics or professional responsibility for prosecutors

and (2) the state's case law. There are common practice standards that guide prosecutors (e.g., the American Bar Association's Model Rules of Professional Responsibility) regarding whether to file criminal arrest charges, namely whether sufficient evidence exists to prove to a jury "beyond a reasonable doubt" that the alleged perpetrator committed every element of a criminal charge.

There may be sufficient evidence in a cold case investigation to meet the requirement of "probable cause" to arrest an alleged perpetrator, but there is not sufficient evidence to prove the defendant committed the crime "beyond a reasonable doubt" required for a criminal conviction. The victim advocate should be familiar with the difference, especially because this distinction can be confusing to a victim.

Helping Victims Handle Disappointment

Because grief and disappointment are unique to every individual, victims will respond in a variety of ways; advocates should adapt their responses to be as supportive as possible. Prepare MDT members and the prosecutor for the various ways in which the victim may respond and inform them about how to provide the most calm and supportive environment. The victim may react to the prosecutor's decision. Feel free to step in and ask for a break as needed during the meeting. Following are additional best practices to consider when supporting victims after a charging decision.

Offer a Safe Space—Prepare a separate area for the victim (e.g., a separate conference room or another quiet space) where they can go to process the information after the charging decision has been shared; the victim may also choose to leave the meeting in the middle of the charging decision to compose themselves or to grieve privately. Remind the victim that they may leave at any time and return to the meeting if they so choose.

Support the Continuation of Care—Determine if the victim has already engaged with therapeutic and/or supportive services. If the victim has not, then share a list of appropriate service providers with them. Encourage the victim to engage (or continue engaging) with these services for help with processing their feelings related to the charging decision.

Let the Victim Express Themselves—Listen to the victim at all stages in the process; this action is the most important thing that you can do, especially during this stage. Justice can have different meanings to different people. A survivor who feels supported by law enforcement and their victim advocate may feel that the dedication and care shown to them during the process is a form of justice. Acknowledging the sexual assault and accepting the victim's story are other examples of justice. Some victims may want to see the perpetrator brought to court, which is yet another form of justice. As a victim advocate, you should acknowledge each step of the process and the potential it brings for more justice.

Further, depending on the case and your jurisdiction, there may be alternative venues in the criminal justice system in which the victim can "have their day in court." For example, your state's laws may permit the victim to provide an impact statement at parole hearings. Or you may check to see if the victim is permitted to testify as a corroborating witness, or in sentencing hearings, for other open criminal cases against the alleged perpetrator.

Author:

RAINN (Rape, Abuse & Incest National Network) is a dynamic organization comprising experts to provide the best-in-class services for survivors, inform and educate the nation about sexual violence, and improve the public policy and criminal justice response to sexual violence. The victim services experts at RAINN take a victim-centered, trauma-informed approach to developing programs and services that support survivors of sexual violence and their loved ones.