

**Wisconsin Department of Justice
Sexual Assault Kit Initiative
Post Sexual Assault Kit Testing
Survivor Notification Protocol**



November 2017

This project was supported by Grant No. 2015-AK-BX-K014 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Table of Contents

	Page
Protocol Creation and Implementation	2
Principles Guiding Survivor Notification	2
Notification Goals	2-3
Ensuring Survivor Safety	3
Results Generated from Sexual Assault Kit Analysis	3
Notification Types	3-4
Notifying the Survivor	4
Notification Methods	4
Survivor Notification Process	5
Survivor Notification Process – Special Circumstances	5-6
Initial Notification	6
Contact by mail	6
Contact by phone	6-7
Contact in person	7-8
Initial Face to Face Contact	8
Follow-Up After the Initial Face to Face Contact	8
Reasonable Efforts to Contact the Survivor	9
Monitoring and Evaluating the Protocol	9
Training for Staff Conducting Notifications	9
Conducting Survivor Notifications	10
SAKI SART Training Requirements	10-12
Crime Victim Rights in WI	12

Protocol Creation and Implementation

Members of the Attorney General's Sexual Assault Response Team (AG SART) and other subject matter experts including survivors, victim advocates, sexual assault forensic nurses, law enforcement officers, victim/witness professionals, prosecutors, and crime laboratory staff were involved in the creation of this survivor notification protocol.

The Wisconsin Department of Justice's Sexual Assault Kit Initiative's Sexual Assault Response Team (SAKI SART) is responsible for implementing this protocol. The SAKI SART consists of a Victim Services Specialist, two Special Agents, an Assistant Attorney General, a Research Analyst, as well as the DOJ Statewide SANE Coordinator. The SAKI Site Coordinator also participates.

Principles Guiding Survivor Notification

All decisions and interactions with survivors will be victim-centered, trauma-informed, and consist of the following:

- Attending to the survivor's emotional safety, as well as their physical safety
- Strengthening the survivor's capacity to recover from the traumatic effects of sexual abuse/violation by providing ongoing information, resources, services, support, and relevant contacts
- Educating survivors, service providers, and the general community about the impact of trauma on survivors' health and well-being
- Respecting the survivor's confidentiality and privacy
- Empowering the survivor by giving choices
- Respecting the survivor's choice not to engage

The needs and well-being of the survivors are of utmost concern and addressing them must be a collective effort.

Notification Goals

Survivor notification serves a few purposes that are important to this protocol:

- Regaining the survivor's trust in the criminal justice system. Unsubmitted sexual assault kits may signal to survivors that their assault wasn't recognized.
- Provides a genuine apology to survivors
- Reengaging the survivor. Without the survivor, an investigation cannot continue. Reengaging the survivor increases the likelihood of convicting offenders and holding them accountable for their crime.

- Interacting with survivors to mitigate emotional distress and ensure their safety. Notifications will often be difficult for survivors so responding professionals must be prepared to provide the necessary support during and after the notification.

Ensuring Survivor Safety

Ensuring the safety of the survivor is a principal goal in the notification process. Depending on how or where the notification takes place, the physical safety of the survivor may be at risk. As such, the SAKI SART will take into consideration a survivor's current life circumstances.

For example, if it is known that the survivor lives with the suspect, steps should be taken to avoid any breaches of confidentiality or risk of retribution from the suspect, his/her family, and/or acquaintances. In cases in which it is determined that notification may have a high risk of danger or lethality for the survivor, the team should consider whether notification is necessary or appropriate in that case. If the team determines that a notification is still appropriate in a high-risk situation, the team should consider what additional resources are needed (i.e. relocation services, safe shelter, etc.)

Results Generated from the Analysis of Sexual Assault Kits

Results from the analysis of a sexual assault kit may include:

- Suspect CODIS hit – a match within the database that is considered an **investigative lead**. Confirmation requires a buccal swab from the suspect that must subsequently be collected and analyzed.
- Case-to-case CODIS hit without identified suspect – a database match of the kit profile to another case within CODIS
- DNA positive, CODIS eligible – a DNA profile developed from analysis and eligible for CODIS upload
- Negative – insufficient amount of DNA, ineligible CODIS profile, inconclusive results, or no DNA profile developed

Notifications Types

Survivor input through the Joyful Heart Foundation indicated that survivors preferred to control whether and when they receive information about their case and to control how to move forward, either opting in or out of future notification. They recommended widespread initial notification after which the individual determines for themselves whether or not they want to receive further information.

- Opt-In Notification: Opt-In Notification allows all survivors to reach out should they want information about their kits. Survivors and community members can connect with the WI Department of Justice's Office of Crime Victim Services to learn about the status of their kit and access information for sexual assault service providers in their community should they want to connect with support services. Survivors can reach out via a toll-free number (1-800-446-6564) or info@byyoursidewi.org.
- Active Outreach Notification: Active Outreach Notification is when the survivor is contacted regarding the results of testing their sexual assault kit. If there is information to share with the survivor, the SAKI SART will review the details of the case and determine the next steps for notification. Based on the guidance of this review team, a Special Agent and a Victim Services Specialist will attempt to contact the survivor to let them know there is information to be shared about their kit. Attempted contact will be in a form that the SAKI SART deems best for the situation.

Notifying the Survivor

Survivors will not be notified about the testing of their kits until after the testing is complete. This decision was influenced by several factors that could make pre-testing notification traumatic:

- Depending on when the assault occurred, the statute of limitations may have already run out. If this is the case, charges cannot be filed. And while there is still value and importance in testing this kit, giving the survivor false hope that charges could be filed must be avoided.
- There's no guarantee that anything will be found during testing. Potentially re-traumatizing the survivor for no new development could be very risky.

These factors, combined with the likelihood that it's been years since the assault occurred, indicate that notifying survivors before testing could lead to potentially adverse consequences for the survivor.

If results are generated from the testing, options for notifying the survivor will be discussed. The SAKI SART will review cases in which there is a CODIS hit, a case-to-case CODIS hit without an identified suspect, or in which a DNA profile is entered into CODIS to determine if/how/when a survivor will be notified.

Notification Methods

The SAKI SART will determine if a survivor will be contacted and, if so, whether this contact will be made, in-person, via phone or mail. It is important to remember the following:

- The advantage of mail contact is that it allows survivors to process information, is less invasive than a phone call, and gives the survivor control over if/when to engage. The disadvantage is that it could be intercepted and read by others. For this reason, the wording of the letter will be very vague as to not violate the survivor's privacy.
- The advantage of a phone call is it is less resource intensive and offers the ability to build rapport with survivors immediately and answer any questions he/she may have. The disadvantage of a phone call is the difficulty in finding current phone numbers, as well as the difficulty in assessing a survivor's emotional reaction and the risk of another person intercepting the call and demanding information about the attempted contact. A survivor may experience a phone call as intrusive or unsafe.
- The advantage of an in-person notification is that it allows for rapport building, question answering, and immediate support. The disadvantage is trying to find the survivor, and finding them at a time when confidentiality can be maintained.

It is important that above all, respect is maintained for the survivor's choices and whether he/she wishes to continue contact or involvement. Additionally it is vital that survivors remain safe and any identifiable information is kept confidential and secure.

Survivor Notification Process

All cases involving a CODIS hit will be reviewed by the SAKI SART. Information on the case(s) being reviewed will be provided to all partners on the team prior to the meeting so they are prepared to discuss the particulars, relative to their discipline. The team will review the basic information about the case, taking into consideration the unique circumstances of each case.

If the SAKI SART determines that a survivor contact is appropriate, the team will work together to obtain the survivor's information and to formulate a plan for a trauma-informed notification that includes what information will be shared during the initial contact. The SAKI Victim Services Specialist and Special Agent will be responsible for the notification.

Survivor Notification Process – Special Circumstances

If the survivor is under 18 years of age, the parent/guardian has the right to receive the information. In this case the survivor should be included in this process as much as willing or able.

If the survivor is currently 18 years of age or older, but for some reason the parent/guardian has legal guardianship, then the parent/guardian has the right to

receive the information. In this case the survivor should be included in this process as much as willing or able.

Other than the situation stated above, if the survivor is 18 years of age or older, no information will be provided to the parent/guardian as the survivor is considered a legal adult. It is the survivor's choice whether or not they wish to relay information to another person.

Note: It is important to discuss and consider what the safest notification option is for a survivor if their parent or guardian was the offender and if the survivor still resides with them. Cultural sensitivity should also be heavily considered.

Initial Notification

Whether initial notification is made by mail, phone or in person, there should be the intent to have follow-up contact in the way the survivor feels most comfortable. It is not best practice to attempt initial contact with a survivor unless there's availability to connect with the survivor the following day.

❖ Contact by mail

If the team determines that a survivor will receive their initial notification by mail, the letter will state the following:

I would like the opportunity to provide you with some updated information about a matter the [Jurisdiction] Police Department investigated in ____ (year). If you are interested in receiving this information, please call me during [list times if applicable] at _____ for further information.

Thank you for your assistance in this matter.

If a letter is sent, the envelope should state "Return Service Requested – Do Not Forward". The U.S. Postal Service will not forward envelopes marked Return Service Requested but will return it with the new address, if available.

❖ Contact by phone

If the team determines that a survivor will receive their initial notification by phone, the call should include the following:

- Introduction and explanation of roles
- Confirmation that it is a safe time to talk or if the survivor will need to reschedule to a different time
- Explanation that the call is regarding the investigation of a crime that happened in (date)
- Explanation of any confidential communication privileges

- The Special Agent will offer an explanation of ‘why now’ and an apology for the delay in testing. They should also answer the survivor’s questions.
- The Victim Services Specialist will offer support and services
- Survivor will be offered the opportunity to discuss the matter further, in person or over the phone, with the Special Agent and the Victim Services Specialist. Ideally, a follow-up conversation should be held within 24-48 hours unless the survivor proposes a different time.
- A meeting place, where the survivor will feel most comfortable, will be established
- Update contact information on the survivor, including preferred method of contact, and offer option to designate a secondary contact
- Provide the survivor with contact information in case they need to cancel, reschedule, or need something in the meantime
- Ask if the survivor needs any additional resources and encourage them to connect with any support network they may have

(Note: This same phone protocol should be used if a survivor initiates contact upon receipt of a notification letter.)

If there is no answer, a message should be left on the voicemail which states the following:

Hi, this is _____ from _____. I would like the opportunity to provide you with some updated information about a matter the [City] Police Department investigated in ____ (year). If you are interested in receiving this information, please call me on a weekday between 8am and 12pm at _____ for further information.

Thank you.

❖ **Contact in person**

If the team determines that a survivor will receive their initial notification in person, the following information should be discussed:

- Introduction and explanation of roles
- Ask if now is an okay time to talk or if the survivor will need reschedule to a different time
- Explain that you are calling about an investigation of a crime that happened in (date)
- Explain any confidential communication privileges
- The Special Agent will offer an explanation of ‘why now’ and an apology for the delay in testing. They should also answer the survivor’s questions.
- The Victim Services Specialist will offer support and services

- Survivor should be offered the opportunity to discuss the matter further, in person or over the phone, with the Special Agent and the Victim Services Specialist. The goal is to meet with the survivor within 24-48 hours unless the survivor proposes a different time.
- Set a meeting place where the survivor will feel most comfortable
- Update contact information on the survivor, including preferred method of contact, and offer option to designate a secondary contact
- Provide survivor with contact information in case they need to cancel, reschedule, or need something in the meantime
- Ask if the survivor needs any additional resources and encourage them to connect with any support network they may have

Initial Face to Face Contact

This meeting will occur in a place where the survivor feels most comfortable and at a time that is convenient for them. If the survivor does not wish to meet in person, accommodate his/her wishes regarding the mode of communication they feel most comfortable with.

The survivor will be notified that their sexual assault kit was tested and the results of this testing. After the notification is made, the survivor will be allowed time to process the new information. Survivors often are in shock and experience a wide range of emotions at this point in time. The Special Agent and Victim Services Specialist will answer the survivor's questions and provide as much information as possible about the criminal justice process, DNA and DNA databases, and the different roles of the parties involved, both within the SAKI SART and the local jurisdiction.

The survivor will be provided with:

- Their options for involvement moving forward
- Contact information for the Special Agent and the Victim Services Specialist
- Appropriate referrals and contact information for the local sexual assault service provider or other agencies that might provide support and general information on court proceedings
- Written explanation of victim's rights.

Follow-Up After the Initial Face to Face Contact

The Victim Services Specialist will discuss the parameters of confidentiality surrounding information the survivor shares, including any limitations on confidentiality. The Victim Services Specialist will also inform the survivor of his or her rights as a crime victim, including the right to receive notice as the case progresses,

the right to referrals and assistance, the right to seek survivor compensation, and other statutory rights.

Survivors will be contacted by the Victim Services Specialist on a regular basis to check in and provide case information, if the survivor consents to the ongoing communication.

The SAKI SART will make every effort to notify survivors about case information before they learn about it from other sources, particularly the media.

The SAKI SART will provide as much information and assistance as possible to help the survivor feel supported and comfortable engaging with the criminal justice system. It is best practice to allow a survivor to decide if they want to participate or not participate in the process.

Reasonable Efforts to Contact the Survivor

The SAKI SART will make reasonable efforts to contact the survivor. Reasonable efforts include a minimum of 3 attempts whether attempted contact is made by phone or mail. Efforts to locate current contact information and contact attempts will be documented on the Survivor Notification Form.

Monitoring and Evaluating the Protocol

During each SAKI SART meeting, there will be a review and update of cases previously assigned. Reviews should include a discussion of what tactics have been successful, which have not been successful, opportunities to improve, and special considerations for diverse populations. The protocol will be revised as agreed upon by the team.

Training for Staff Conducting Notifications

All SAKI SART staff will receive training on the following prior to being involved in the survivor notification process:

- Neurobiology of trauma
- Common trauma reactions of sexual assault survivors
- Working with survivors from marginalized and/or multicultural populations
- Self-care for notification personnel
- Survivor advocacy and support services
- Survivor notification procedures
- Explaining CODIS/forensic science in layman's terms

When Conducting Survivor Notifications, the SAKI SART will:

- Explore what collaborations are needed with local law enforcement agencies, as well as local sexual assault services providers
- Protect survivor confidentiality to the greatest extent possible
- Ensure enough time is allocated for survivor notifications, case reviews and follow-up
- Acknowledge that each case and survivor notification will be different and require a variety of resources and approaches
- Ensure safety of professionals performing survivor notifications
- Be prepared ahead of time and bring necessary materials, contact information and resources
- Ensure each step of the notification process is trauma-informed and victim-centered
- Be creative and sensitive to the unknowns when performing in person notifications. (i.e. confidentiality and privacy could be compromised if other people are present)
- Perform case reviews after each case to determine where improvement or change is necessary
- Always be mindful to confirm, with certainty, information is only being shared with the survivor
- Stay informed and knowledgeable about cultural diversity and be sensitive and respectful of different perspectives and traditions. The Victim Services Specialist will collaborate with culturally specific sexual assault service providers to ensure that the perspectives of marginalized communities are taken into consideration.

SAKI SART Training Requirements

- Neurobiology of trauma:
 - www.nij.gov/multimedia/presenter/presenter-campbell/Pages/welcome.aspx
 - “Neurobiology of Trauma” by Dr. David Lisak
www.youtube.com/watch?v=py0mVt2Z7nc

- Common trauma reactions of sexual assault survivors
 - www.nij.gov/multimedia/Pages/playlist-campbell-neurobiology-of-sexual-assault.aspx
 - www.rainn.org/effects-sexual-violence
 - www.rainn.org/after-sexual-assault

- Working with survivors from marginalized and/or multicultural populations
 - www.wcasa.org/pages/Resources-Info_Sheets.php (Under “Population Specific”)
 - www.ovc.ncjrs.gov/sartkit/focus/culture-print.html

- Self-care for notification personnel
 - Ensure there is time to debrief after a notification is complete
 - Utilize your agencies self-care materials
 - Take time for yourself
 - Ask others to help you be accountable for your self-care

- Survivor advocacy and support services
 - <http://byyoursidewi.org/> (WI Advocacy Services Map)
 - Know the counseling resources in your area
 - Connect survivor with support groups
 - Victim Services Specialist (DOJ) - (1-800-446-6564)

- Survivor notification procedures
 - See enclosed protocol. This protocol is utilized by the DOJ AG SART however it may be tailored and edited as needed.
 - The DOJ AG SART is always available for information, aid and support (1-800-446-6564)
 - Investigation of Cold Case Sexual Assaults-Archival
https://rticqpub1.connectsolutions.com/content/connect/c1/7/en/events/event/shared/1182376668/event_landing.html?sco-id=1193516440&_charset_=utf-8

- Explaining CODIS/forensic science in layman’s terms:
 - **Possible results from analysis of sexual assault kits:**
 - Suspect CODIS hit – a match within the database that is considered an **investigative lead**. Confirmation requires a buccal swab from the suspect that must subsequently be collected and analyzed.
 - Case-to-case CODIS hit without identified suspect – a database match of the kit profile to another case within CODIS

- DNA positive, CODIS eligible – a DNA profile developed from analysis and eligible for CODIS upload
- DNA negative – insufficient amount of DNA, ineligible CODIS profile, inconclusive results, or no DNA profile developed
- Crime Victim Rights (WI Chapter 950):
 - <https://docs.legis.wisconsin.gov/statutes/statutes/950.pdf>

Crime Victim Rights in WI

Victim Accompaniment

- Pursuant to Wis. Stat. § 950.045 victims have the right to victim accompaniment by means of a victim advocate.
- If a victim feels this right has been violated, direct them to the Victim Resource Center at 1-800-446-6564

Crime Victim Compensation

- Victims should be made aware of their, potential, eligibility for the Crime Victim Compensation Program. To determine if they are eligible or for questions, direct them to the Crime Victim Compensation Office at 1-800-446-6564.

Information for Survivors & Families

- The Office of Crime Victim Services at the Wisconsin Department of Justice has a variety of information and resources available to victims and witnesses of crimes. Information includes, understanding the Criminal Justice System, Tips on Restraining Orders, Finding Victim Services by County and more, www.doj.state.wi.us/ocvs/specialized-resources/specialized-resources.

Crime Victim Bill of Rights

- Pursuant to Wis. Stat. § 950 victims have right to be awarded the following: <http://docs.legis.wisconsin.gov/statutes/statutes/950.pdf>
 - To be treated with fairness, dignity and respect for your privacy.
 - To not have personal identifiers including email disclosed or used for a purpose unrelated to the official duties of an agency, employee or official.
 - To be informed of your rights and how to exercise those rights.
 - To information regarding the offender's release from custody.
 - To be notified of a decision not to prosecute if an arrest has been made.

- To speak with (confer) the prosecutor representative upon your request, about the possible outcome of the case, potential plea agreements and sentencing options.
- To attend court proceedings in the case.
- To be notified of the time, date and place of upcoming court proceedings, if you so request.
- To be provided with a waiting area separate from defense witnesses.
- To a speedy disposition of the criminal case.
- To have your interest considered when the court is deciding to grant a request for a delay (continuance).
- To be notified if charges are dismissed.
- To be accompanied to court by a service representative. This right is limited to specific types of crimes.
- To ask for assistance with your employer if necessary, resulting from court appearances.
- To request an order for, and to be given the results of, testing the offender for sexually transmitted diseases or HIV. This right is limited to specific types of crimes.
- To provide a written or oral victim impact statement concerning the economic, physical and psychological effect of the crime upon you to be considered by the court at sentencing.
- To have the impact of the crime on you included in a presentence investigation.
- To be provided sentencing or dispositional information upon request.
- To restitution as allowed by law.
- To a civil judgment for unpaid restitution.
- To compensation for certain expenses as allowed by law.
- To have your property expeditiously returned when it is no longer needed as evidence.
- To be notified of the offender's eligibility for parole and to have input into the parole making decision.
- To be notified by the Department of Corrections of specific types of releases, escapes or confinements as provided by law.
- To be notified of a pardon application to the governor and to make a written statement regarding the pardon application
- To contact the Department of Justice about any concerns you may have about your victim rights.