

What Happens Next? Victim Resources for Support, Questions, and Information in Cold Case Sexual Assaults

Jurisdictions across the country are sending previously unsubmitted sexual assault kits (SAKs) to crime laboratories for testing; these jurisdictions are also re-investigating and prosecuting cold case sexual assaults. All of these efforts are part of the National Sexual Assault Kit Initiative (SAKI) program. Each SAK contains DNA evidence collected from a victim's body during the sexual assault forensic exam. Renewed activity in a cold case sexual assault may result in law enforcement officials and/or victim advocates notifying the victim of their SAK results and providing available options in the criminal justice system.¹ These options depend on a fact-specific, evidence-driven evaluation of each case. If SAK testing reveals that a DNA match exists, a victim may be notified of the results and be given a choice to re-engage in the criminal justice system. This could mean that the case has an opportunity to move forward with investigation and potentially prosecution. Unfortunately, a match does not always exist; some victims may be notified (a) that no DNA was found or (b) that DNA was found but there is not a match to a known offender. In these situations, the case may remain open pending additional investigative leads.

As a victim of sexual assault, you may find that re-engaging with the criminal justice system feels overwhelming—especially if a significant amount of time has passed since the assault. It is important to know that you have been (or will be) contacted because individuals within the criminal justice system are committed to enhancing their response to sexual assault and ensuring justice for you and other victims. As part of that commitment, the individuals assigned to your case have had extensive trauma-informed, victim-centered training and will assist you throughout the investigative process. You may receive an apology for the delay in processing your SAK and investigating your case. Understanding the basic steps of the process and identifying individuals you might meet along the way will help remove some of the unknowns, and can help you feel more prepared when or if you re-engage with the criminal justice system. This SAKI Training and Technical Assistance (SAKI TTA) resource highlights the victim notification process, the people you will meet during that process, and the next steps.

Victim Notification Team

Victim notification teams may include both a cold case sexual assault investigator² and a victim advocate. There are two types of victim advocates you may engage with throughout the process, community- and systems-based advocates; both will be working to ensure your needs are met.

A community-based advocate often works for a local service provider, such as a rape crisis center. The community-based advocate will provide you with referrals for rape crisis therapy services, even if you choose not to participate in the criminal justice process; depending on your state, a community-based advocate can offer privileged and confidential communications.

You may also meet with a systems-based advocate from a law enforcement agency or prosecutor's office. The systems-based advocate will support you by helping you navigate the criminal justice system and ensuring you understand your rights. Together, community- and systems-based advocates provide invaluable support as you partner with members of the victim notification team to pursue justice.

The victim notification team understands that a significant amount of time has passed since the assault and that talking about your case again will likely be difficult. Speaking to law enforcement and others about the assault can trigger strong and conflicting emotions; it is okay to feel this way.

The victim notification team will prioritize your safety and confidentiality at all times; a member of the victim notification team will provide their contact information to schedule a confidential meeting.

Notification Process

Each jurisdiction follows its own established processes, and relevant state and federal laws for notification. The purpose of notification is to contact you to see if you want to re-engage with this case. The victim notification team will

¹ Based on best practices and/or state laws

² For more information on working with law enforcement, refer to the SAKI TTA resource *Engaging with Law Enforcement: Guidance for Cold Case Sexual Assault Survivors*.

generally include a cold case sexual assault investigator, a victim advocate, or both professionals.

You will find that the notification process will be respectful and victim-centered, and conducted with your safety in mind. The notification will take place in two primary stages:

- ◆ First contact
- ◆ Follow-up informational interview

First Contact

You may live in a state in which the law requires that victims be notified in a timely manner about when and if their SAK was tested, as well as the results and next steps. Law enforcement officials will consider several factors as they determine when to notify you; these factors may include the following:

- ◆ The statute of limitations (i.e., if it has already expired, or when it will expire, for a crime);
- ◆ The relationship between you and the perpetrator (i.e., whether you knew your offender); and
- ◆ The possibility of there being multiple SAKs that appear to match to the same suspect.

Once your SAK has been tested and the results have been received, the victim notification team will decide when to notify you.

The first contact you receive will probably be brief; this conversation, either in person or on the phone, will focus on informing you (1) that your SAK has been tested and (2) that results are available.

Following up with the victim notification team is your decision. You can choose whether or not you want to learn about your SAK results. The notification team will not require you to attend a follow-up informational interview. Before scheduling time to meet with the notification team, you may want to consider how you are feeling about the news and whether you are ready to discuss the case further. Community-based victim advocacy services are available to you through the victim notification team, even if you choose not to proceed with the case.

Should you choose to proceed with the follow-up informational interview and re-engage with the criminal justice system, the next section provides valuable information about this stage of the process.

Follow-Up Informational Interview

The victim notification team will coordinate a convenient time to meet with you to discuss your SAK results, the details of your case, and address your questions. The location may

be at your home or at a neutral location, such as a local rape crisis center or law enforcement office. The meeting will occur in an environment where you feel safe.

How to Proceed After Notification

Once the officer shares the results of the DNA testing with you, you will learn more about the current state of the case. You may then be asked if you want to remain engaged in the re-investigation of your sexual assault case, which could lead to pursuing criminal charges against the perpetrator. If you choose to remain engaged in the re-investigation, the law enforcement officer will do the following:

- ◆ Ask follow-up questions about the assault
- ◆ Document the information you have provided
- ◆ Reopen the cold case sexual assault criminal investigation
- ◆ Pursue any evidentiary leads to support your case

Throughout the re-engagement process, the decision to engage and move forward with a criminal investigation or to not engage is entirely up to you. Even after learning about your SAK results and discussing the case with the investigator, you do not have to proceed with requesting to file criminal charges.

Should you decide to move forward with the criminal investigation, your case will follow a path similar to the investigation of an active case (i.e., a case that has not gone cold). The prosecutor will work with law enforcement officials and you to further investigate and determine if they can proceed with a criminal case against the perpetrator.

The Prosecutor

Prosecutors' offices often have specialized departments that handle sexual assault cases. The prosecutor, who is specially trained on the topic of sexual violence, has the following roles and responsibilities:

- ◆ Determines if a criminal case can occur. Depending on the jurisdiction, this may be based on (a) whether there is probable cause that a crime occurred (the minimum standard under prosecutor's ethical requirements) or (b) whether there is a reasonable likelihood of conviction, which is a higher standard of consideration.
 - If the case is pursued, you may be asked to testify in a grand jury hearing. The prosecutor will present the evidence at this hearing to support the initiation of criminal proceedings against the alleged perpetrator. The prosecutor will be the only one asking questions at the hearing and will work with you to ensure you are prepared.

- If the case is not pursued, you should receive a clear explanation during a face-to-face conversation about the reasons.
- ♦ Considers the gathered evidence and determines the next steps in proceeding with a criminal case. Remember, the prosecutor may require further information or evidence before filing formal criminal charges and could request to meet with you.
- ♦ Files a protective order—sometimes called a “no-contact order” or “restraining order”—against your assailant, at your request. The prosecutor’s office should also inform you if the perpetrator is released from police custody or if any upcoming bail hearings may lead to the perpetrator’s release.
- ♦ Provides you with their contact information and keeps you well informed of any upcoming hearings. Additional hearings may follow the grand jury hearing before your case moves to trial or to a plea agreement.

Victim Advocates

- ♦ Victim advocates can help you understand and connect with officials regarding additional rights and support, including crime victim compensation, to which you may be entitled.
- ♦ Remember that community- and systems-based advocates will assist you through the criminal justice process. Each type of advocate provides a specialized support system to ensure your needs are met; victim advocacy in all forms can be critical to the success of the case.
- ♦ Find out whether the victim advocate is part of the prosecution team. If so, the systems-based advocate may not be governed by the same confidentiality rules as a community-based advocate; therefore, the systems-based advocate may be obligated to share any case notes with a defendant in your case.³

³ Refer to the SAKI TTA “Community- and Systems-Based Advocates” brief for more information.

Legal Representation

You have the right to hire an attorney to address civil issues that arise during your sexual assault case; these civil issues may include victim depositions, victim polygraphs, image exploitation, rape shield issues, and a variety of other issues. This attorney may represent you in civil court proceedings to protect your rights under state law or under your state’s victim bill of rights.

The Defense Team

Defense Attorney: The defense attorney will represent the accused, also known as the defendant, during the case. Before asking you questions about the case, the defense attorney is required to identify who they are and the person they represent. You are not obligated to speak with the defense attorney. Be aware that any information you share with the defense attorney may be used in criminal court. Therefore, you may want to seek the counsel of your attorney and/or victim advocate before answering the defense attorney’s questions.

Defense Investigators: The defense counsel sends defense investigators to ask witnesses for further information or to gather additional evidence for the defendant’s case. Defense investigators must identify themselves and explain that they work for the defense attorney. You are not obligated to speak with a defense investigator. Be aware that any information you share with the defense investigator may be used in criminal court.

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.