Beyond Conviction Rates

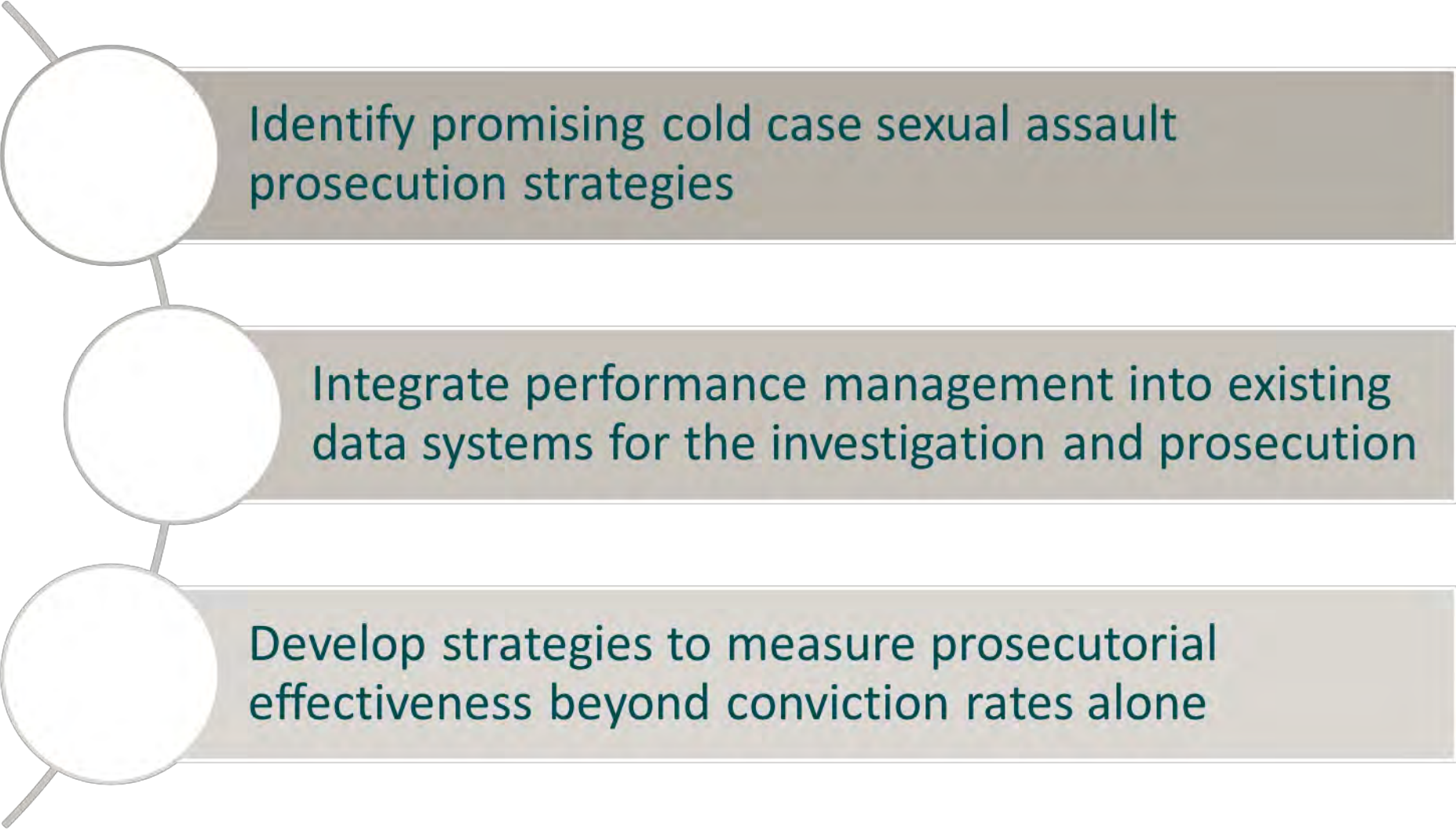Learning from Cold Case Sexual Assault and Managing Future Performance

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Acknowledgments

- U.S. Department of Justice Office on Violence Against Women
- Elaine Borakove, President, Justice Management Institute
- Sexual Assault Justice Initiative
  - AEquitas
  - Justice Management Institute
  - Urban Institute
  - http://aequitasresource.org/Sexual-Assault-Justice-Initiative.cfm

Objectives

Identify promising cold case sexual assault prosecution strategies

Integrate performance management into existing data systems for the investigation and prosecution

Develop strategies to measure prosecutorial effectiveness beyond conviction rates alone

How do we know if we are achieving justice?

If not convictions, then what?

What other ways can you measure success when you work on sexual assault cases?

- –Prosecutors?
- –Law Enforcement?
- –Service Providers?
- –Advocates?
- –Others?

Model Response to Sexual Violence for Prosecutors (RSVP)
An Invitation to Lead

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"

One of the most enduring realities of sexual assault is that very few cases result in arrest, prosecution, and conviction of [perpetrators]

CASSIA SPOHN & KATHARINE TELLIS, POLICING AND PROSECUTING SEXUAL ASSAULT: INSIDE THE CRIMINAL JUSTICE SYSTEM 101 (Lynne Rienner 2014)

SAKI Performance Management

Identifying and Implementing Meaningful Measures
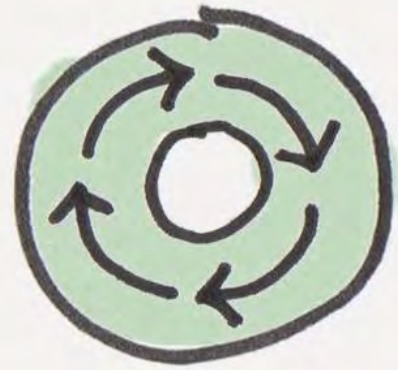
vs.

What are the goals of prosecution?

- Conviction on the lead charge or other charges?
- Victim safety?
- Victim's voice being heard?
- Punishing the offender?
- Community awareness?
- Creating a record?
- Reducing the likelihood for re-offense?
- Some combination of all of these, or something else entirely?

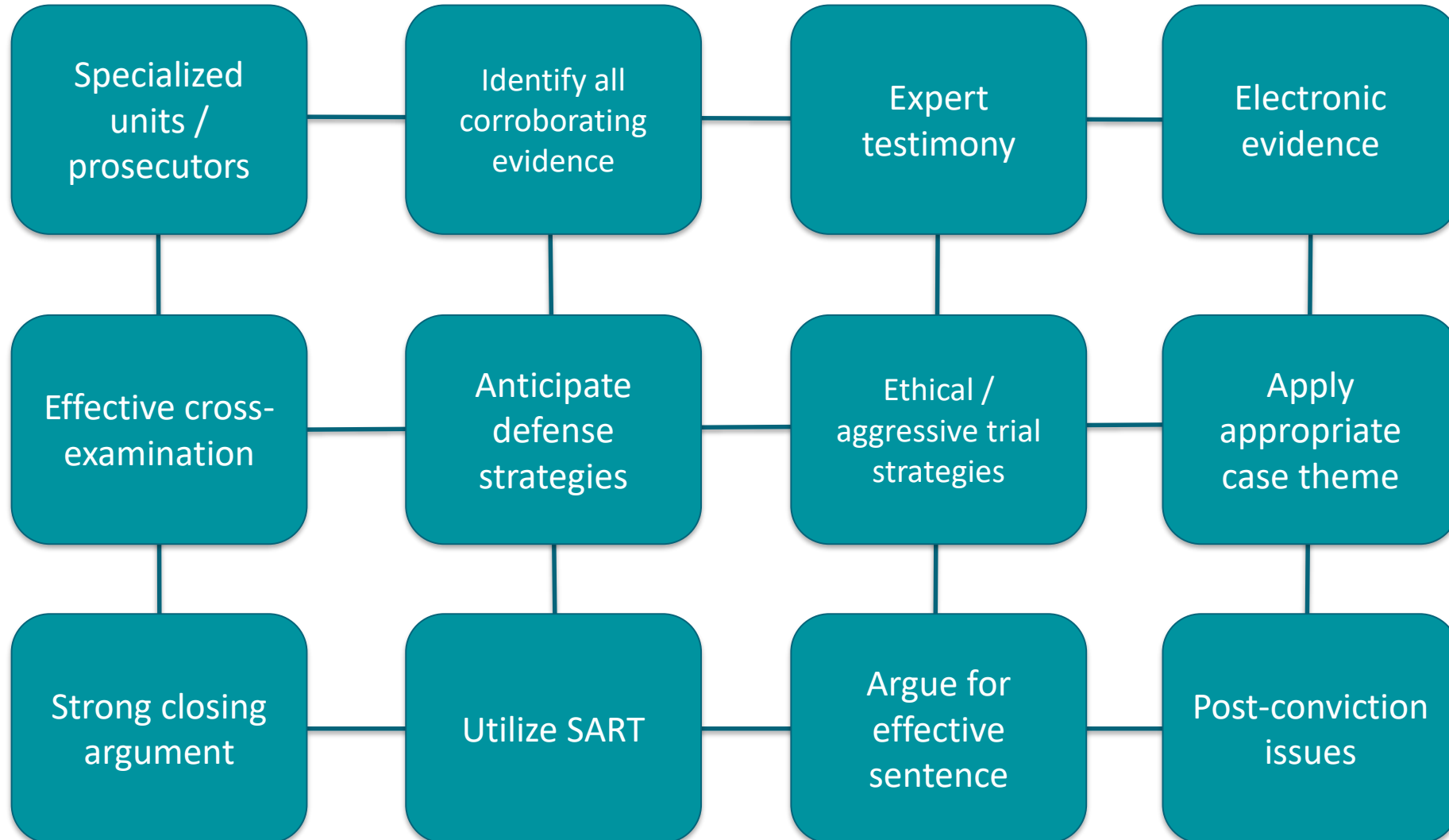*Adapted from Teresa Scalzo, Former Director of the National Center for the Prosecution of Violence Against Women and former sexual assault prosecutor*

What practices increase victim safety and offender accountability?

Promising Practices

Specialized units / prosecutors	Identify all corroborating evidence	Expert testimony	Electronic evidence
Effective cross-examination	Anticipate defense strategies	Ethical / aggressive trial strategies	Apply appropriate case theme
Strong closing argument	Utilize SART	Argue for effective sentence	Post-conviction issues

Promising approaches to cold case sexual assaults?

Developing cold case theme		John Doe arrest warrants	
	Multi-disciplinary response	?	Utilize forensic DNA experts
Trauma-informed victim notification	?	Cold case voir dire strategies	?
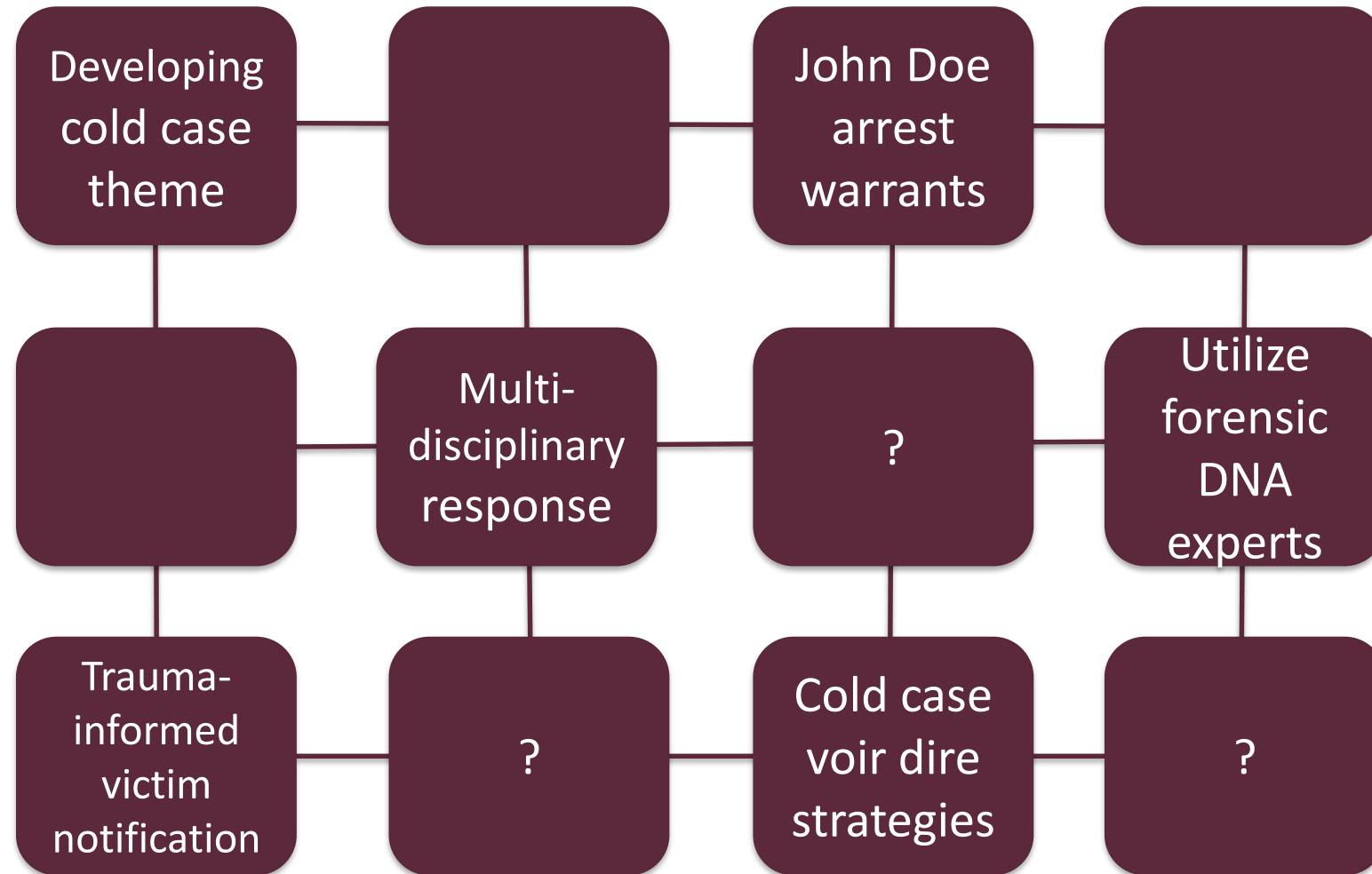
Victim Participation
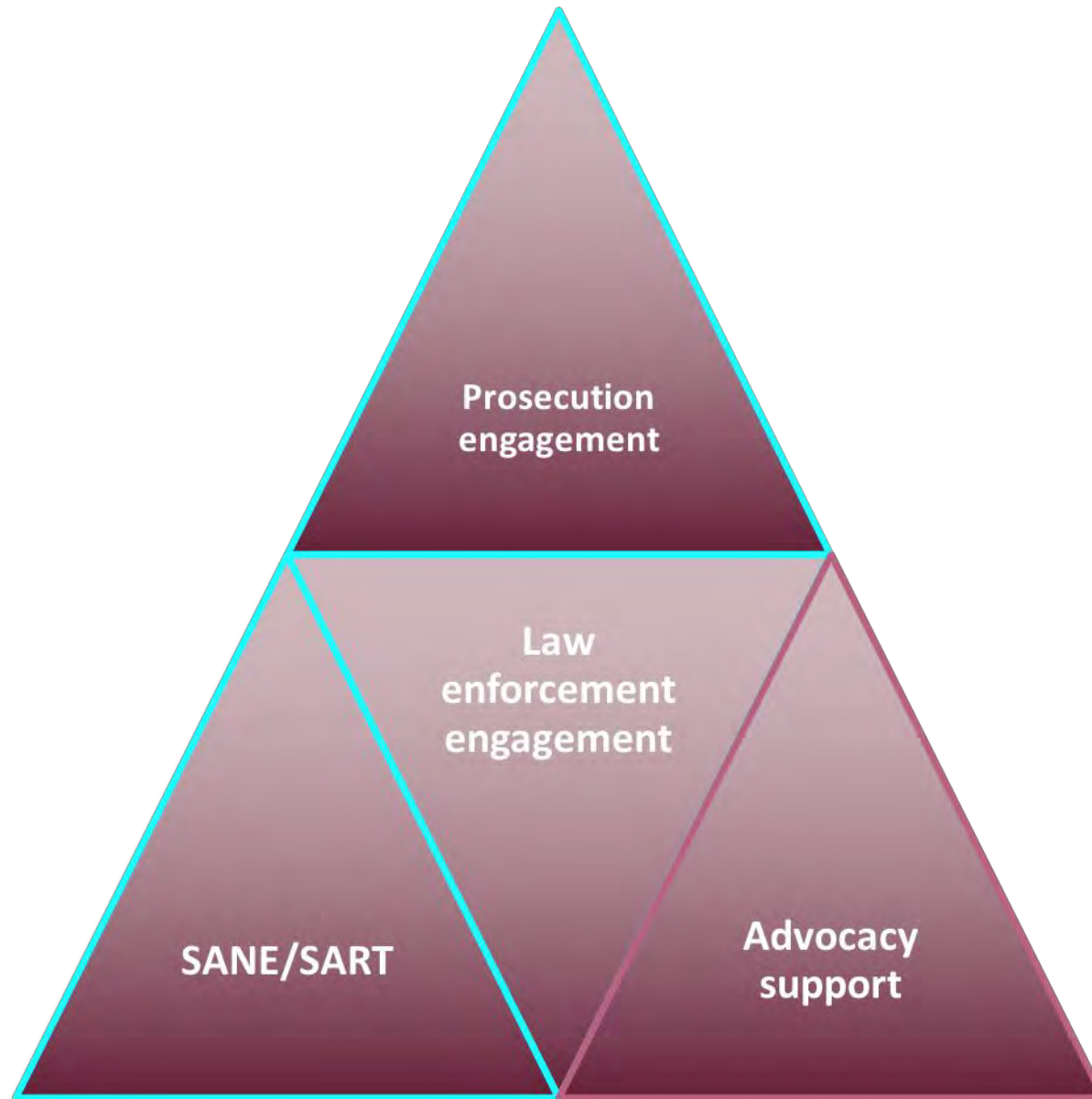
What about conviction rates?

Conviction Rates

TELL US: Jury determined prosecution proved the charge beyond a reasonable doubt

DON'T TELL US

- Number of cases investigated v. charged
- Number of cases pled
- Charges pled to
- Dispositions of closed cases prior to trial
- Number of cases dropped
- Victim experience
- Victim safety

- Differentiate between a conviction after a jury trial, a conviction after a bench trial, and a guilty plea?
- Guilty as charged or lesser?
- How is data collected?
- Effect on institutional morale?

What else don't they tell us?

The length of time the victim has been waiting for justice

The number of previously unsubmitted sexual assault kits and the length of time it takes to test them

The victim's experience with notification of a CODIS hit

How Can We Measure Prosecution Performance?

Performance Measures

- Define what is expected of an organization or an individual
- Way to understand quantitatively business processes, products, and services
- A target that you strive for

What aren't they?

- One-time snapshots of effectiveness
- Outcome evaluations based on guilty verdicts
- Cause-and-effect determinants

Performance Measures

Categories

- Outcomes / output measures
- Satisfaction and quality measures
- Efficiency and timeliness measures

Measures For Prosecutors

Office-level

- How well the office performs overall relative to the intended outcomes
- Processes in the aggregate

Case-level

- Individual contribution to overall outcomes
- Adherence to processes
- Skills, capacity, and capabilities

Prosecution Performance Management

OFFICE-LEVEL CHECKLIST

☐ Assess Current Practice in Your Jurisdiction

- ☐ **What does attrition look like in your jurisdiction?**
  - Capture prevalence
  - Capture reports to law enforcement
  - Capture reports referred for prosecution
  - Identify gaps in reporting and referring cases for prosecution
- ☐ **Identify, review, and link prosecution policies and practices to specific outcomes**
  - Review existing office policies
  - Track cases through justice system
  - Review and evaluate standards for charging decisions
  - Analyze impact of policies and practices
  - Analyze data collected at each stage of prosecution
  - Assess case characteristics
  - Consider where victims interact with professionals and may be identified
  - Conduct candid file review and evaluation
  - Assess practices of multidisciplinary partners
- ☐ **Capture complexity of cases**
  - Be aware of common factors that contribute to complexity
- ☐ **Routinely capture, analyze, and communicate about the data**
- ☐ **Properly allocate resources to address sexual violence**
  - Assess office's current allocation of resources
  - Dedicate line items in budgets for appropriate resources
  - Consider options for obtaining necessary additional resources

☐ Build Capacity Within the Office

- ☐ **Develop and instill core principles**
- ☐ **Develop specialized units and prosecutors**
- ☐ **Implement research-informed decision-making**
- ☐ **Understand how the rules of professional responsibility govern prosecutorial decisions**
- ☐ **Recognize and address the impact of vicarious trauma on staff**

☐ Build Capacity Within the Community

- ☐ **Collaborate through multidisciplinary partnerships**
- ☐ **Identify and employ useful data and technology**
- ☐ **Share information and expertise**
- ☐ **Develop an effective strategy for communicating with the community about sexual violence**
- ☐ **Improve community relations by promoting cultural humility**

☐ Performance Management to Continuously Improve the Response to Sexual Assault

- ☐ **Identify outcome measures**
  - Consider primary and secondary outcomes
  - Review outcome data by victim characteristics or circumstances
- ☐ **Account for case complexity**
- ☐ **Obtain feedback and outcome information from victims**
- ☐ **Establish a basic analysis and reporting process to maximize usefulness**
- ☐ **Continually improve the effectiveness and efficiency of handling sexual assault cases**

☐ Encourage and Facilitate Formal and Informal Cross-Training

- ☐ **Elevate communication between disciplines**
- ☐ **Improve identification of sexual assault in co-occurring crimes**
- ☐ **Incorporate cross-training into professional development education**
- ☐ **Ensure all professionals understand the role of each multidisciplinary team member**
- ☐ **Engage survivors in training**

Figure 8

List of Outcome Measures
Primary Outcome Measures
1.   Total number and percentage of sexual assaults, both reported and unreported.
1a. Number and percentage of assaults unreported to any agency, public or private.
2.   Number and percentage of sexual assault cases reported to law enforcement, including police departments, sheriff's agencies, and campus/school police.
3.   Number and percentage of sexual assault cases reported by victims to a health or victim service agency, public or private, but not to law enforcement.
4.   Total number of known victims. This is the sum of the number of victims who reported to law enforcement (Measure 2) and the number who had reported the assault to another agency but NOT to law enforcement (Measure 3).
5.   Number and percentage of reported sexual assault cases not referred by law enforcement to the prosecutor's office.
6.   Number and percentage of cases declined by the prosecutor.
7.   Total number and percentage of cases declined, whether by law enforcement or the prosecutor.
8.   Number of persons charged with sexual assault and percentage convicted of that charge (the "conviction rate").

9. Number and percentage of cases accepted for prosecution with: (a) fully successful outcomes; (b) partially successful outcomes; and (c) fully unsuccessful outcomes.	
	9a. Number and percentage of cases rated as resolved satisfactorily by plea.
10. Percentage of victims who rated their overall experience with the sexual assault case handling as either good or excellent.	
11. Percentage of cases in which the victim was threatened, *while the case was pending,* by the offender or the offender's allies.	
	11a. Threat reported before the conclusion of the case.
	11b. Threat not reported until after the conclusion of the case.
12. Percentage of cases in which the victim reported being threatened by the offender or the offender's allies, *after case disposition.*	
13. Ratings of the overall performance of the prosecution of sexual assault cases as either good or excellent.	
	13a. Number and percentage of judges who rated the overall performance of the prosecution of sexual assault cases as either good or excellent.

13b. Number and percentage of law enforcement who rated the overall performance of the prosecution of sexual assault cases as either good or excellent.
13c. Number and percentage of advocates who rated the overall performance of the prosecution of sexual assault cases as either good or excellent.

Secondary Outcome Measures
14. Number of cases with victims or witnesses who failed to appear for trial.
15. Average case processing time from initial report to arrest to case resolution/disposition; and/or number and percentage of cases with delays.
16. Number and percentage of cases in which: findings from rape kits were not available in time to be useful for investigatory or prosecutorial purposes; kits were mishandled; or kits were lost.
17. Number and percentage of cases in which the forensic lab required over "Y" days to provide its findings; and/or average lab processing time.
18. Percentage of cases rated satisfactory or fully satisfactory by case reviews of each best practice.
19. Victim ratings of each quality-of-service element with respect to the victim's experience with medical forensic examiners, responding law enforcement officers, detectives/investigators, prosecutors, and victim advocates.

Capturing Case Complexity

- Overreliance on conviction rates creates incentive to avoid prosecuting complex cases
- Circumstances creating case complexity should be accounted for when assessing case outcomes
- May provide an important counterweight to lower conviction rates
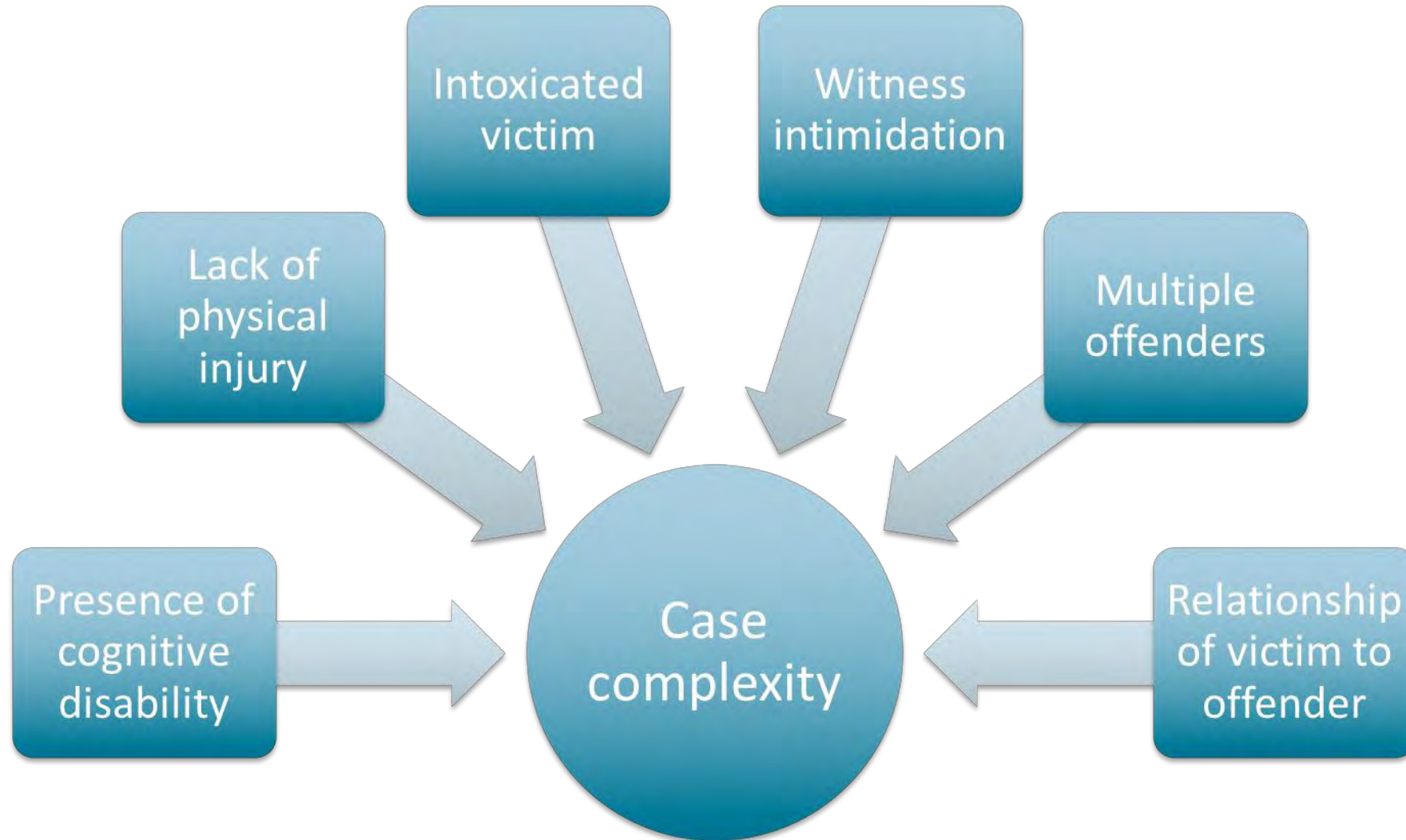
Sample Case Complexity Factors

Figure 9

Methodology Comparison: Case Complexity Factors for a Prosecutor's Office

Complicating Factor	Factors weighted the same	Rating Factors on a scale of 1-5	Weighting factors based extent of complexity
Lack of rape kit evidence	1	A rating from 1-5	1
Prior sexual relationship between victim and offender	1	A rating from 1-5	1.5
Victim use of alcohol or drugs	1	A rating from 1-5	1.5
Lack of participation by the victim	1	A rating from 1-5	2
Delayed report	1	A rating from 1-5	1.5
Total *Possible* Case Complexity Score	5	25	7.5

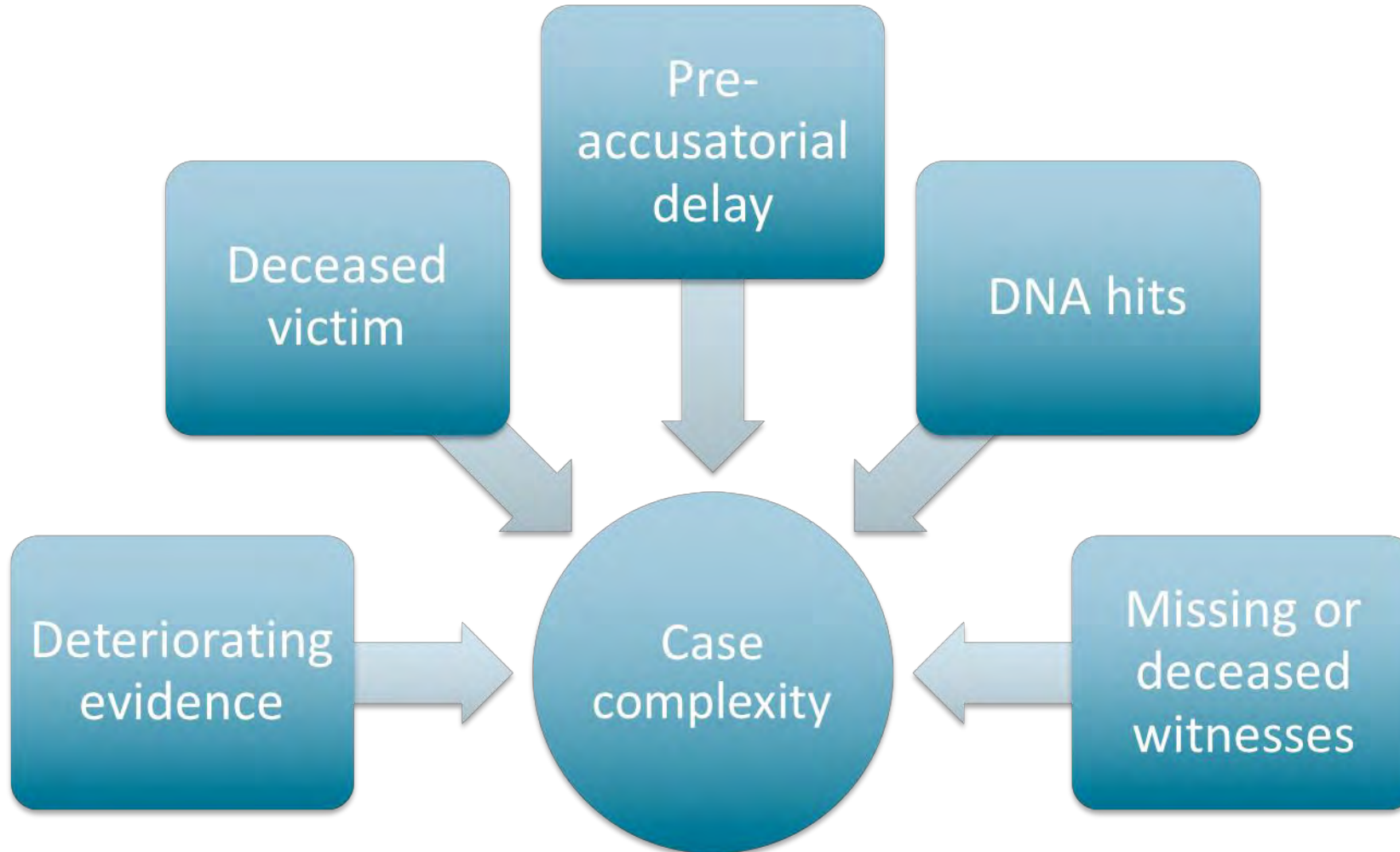# Accounting for Case Complexity in Cold Cases

Figure 10

Example: Percentage of Victims Reporting Satisfaction with their Experience with the Prosecutor's Office

Characteristic	Number of Cases	Satisfaction (%)	Dissatisfaction (%)
Gender			
Male	31	29	71
Female	43	70	28
Age Group			
21–30	13	54	46
31–39	28	53	47
40–49	24	50	51
50–59	9	55	44
Race/Ethnicity			
African-American	25	52	48
Asian	5	60	40
Hispanic	20	55	45
White/Caucasian	24	50	51
Case Complexity			
Little	13	23	77
Moderate	21	57	43
Substantial	40	61	40
Victim Knew Offender?			
Yes	49	51	49
No	25	56	44
Prosecutor			
Prosecutor A	19	52	47
Prosecutor B	18	50	50
Prosecutor C	18	23	78
Prosecutor D	19	84	16
All Victims	74	53	47

Example of a Sexual Assault Performance Report

Performance Measure	2017	2016	2015	Change from 2015
Sexual Assault Reporting				
1. Total Number of Sexual Assaults reported (2+3)				
2. Number of Sexual Assault Cases Reported to Law Enforcement				
3. Number of Sexual Assault Cases Reported to Health/Victim Agency but not to Law Enforcement				
4. % of all Reported Cases that were Reported to Law Enforcement (3÷1)				
Case Disposition				
5. Number Closed by LE without Prosecutor Agreement				
6. % of Cases reported to LE but Declined by LE without agreement from Prosecutor (5÷2)				
7. Number of Cases Referred to Prosecutor				
8. Number of Cases Declined by Prosecutor				
9. Number of Sexual Assault Cases with Successful Outcomes				
10. % of Cases Successfully Prosecuted (9÷7) or (9÷[7-8]) or both[1]				
Workload Management				
11. Average Case Processing Time				
12. Number of cases at the end of the reporting period waiting for prosecutor's decision[2]				
13. Number of all open cases at end of reporting period				

Going Forward

- Institute promising prosecution practices that apply to individuals and can be adopted office-wide that support victims and are aimed at holding offenders accountable

- Integrate existing data into performance management and partner with researchers

- Evaluate existing policies and practices to identify strengths and areas for continued improvement

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