

WEST VIRGINIA SEXUAL ASSAULT KIT INITIATIVE (SAKI) HANDBOOK



State of West Virginia

Jim Justice, Governor

Created March 15, 2017



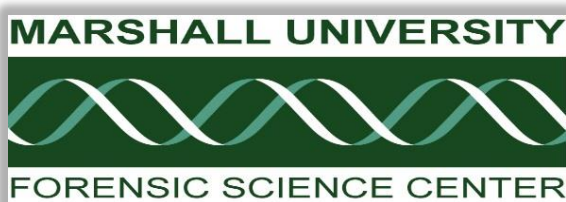
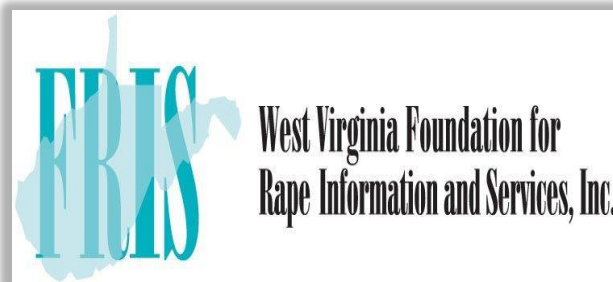
Department of Military Affairs and Public Safety

Jeff S. Sandy CFE, CAMS, Cabinet Secretary



W. Rick Staton, Director

PARTNERING AGENCIES:



This project was supported by Grant No. 2015-AK-BX-K019 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.

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OVERVIEW:

The federal government has estimated that hundreds of thousands of untested sexual assault kits (SAKs) are stored in law enforcement agencies, medical facilities and other sites around the country. A national movement is now focused on moving forward with testing previously unsubmitted kits.

In 2015 and 2016, West Virginia received funds from two sources to address this issue:

- New York County District Attorney (DANY) Sexual Assault Kit Backlog Elimination Program
 - \$1,763,281 to the WV State Police Forensic Lab for the testing of sexual assault kits
- Bureau of Justice National Sexual Assault Kit Initiative (SAKI)
 - \$2,170,800 to the WV Division of Justice and Community Services (DJCS) for investigation, prosecution and victim support services in cases involving unsubmitted sexual assault kits

Originally the project was created to focus only on 16 counties, but additional SAKI funds awarded in 2016 to support expanded investigation and victim services will enable the project to be implemented throughout the entire state.

Purposes of the Sexual Assault Kit Initiative (SAKI) and New York County District Attorney (DANY) Projects:

- Create a coordinated community response that utilizes a victim-centered approach to ensure, when possible, just resolution to these cases;
- Reduce the number of unsubmitted cases and improve investigative and prosecutorial outcomes; and
- Build the capacity of the counties (through protocols, training and technology) to prevent the development of conditions that lead to high numbers of unsubmitted SAKs in the future.

The West Virginia project partners wish to acknowledge the Multnomah County District Attorney's Office for sharing its DANY Project Handbook, which served as the prototype for this document.

Partner Agencies:

- West Virginia Division of Justice and Community Services
- West Virginia Foundation for Rape Information and Services
- West Virginia Prosecuting Attorneys Institute
- West Virginia State Police Forensic Laboratory
- Marshall University Forensic Science Center

SAKI Multidisciplinary Work Group:

1. Sarah Brown, WV Division of Justice and Community Services
2. Perri Jo DeChristopher, Prosecutor, Monongalia County
3. Margaret Denny, Sexual Assault Nurse Examiner, WV Foundation for Rape Information and Services
4. Sergeant Steve Compton, Huntington Police Department
5. Cpl. Tony Craigo, Putnam County Sheriff's Department
6. Sherry Eling, WV Prosecuting Attorneys Institute
7. Leslie Forbis, Victim Advocate, Putnam County Sheriff's Department
8. Dr. Chris Goode MD,FACEP, Medical Director and Chief, United Hospital Center ED, WVU School of Medicine
9. Detective Larry Hasley, Morgantown Police Department
10. Nancy Hoffman, WV Foundation for Rape Information and Services
11. Sarah Kingston, Kanawha County Sheriff's Department
12. Sheri Lemons, WV State Police Forensic Laboratory, West Virginia State Police Headquarters
13. Misty Marra, Marshall University Forensic Science Center
14. Dr. Joan Philips, MD, Children Advocacy Center Women and Children's Hospital
15. Sharon Pressman, CONTACT of Huntington
16. Melissa Runyan, WV State Police Forensic Laboratory, West Virginia State Police Headquarters
17. Ted Smith, Marshall University Forensic Science Center
18. Danny Swiger, WV State Police
19. Jason Wharton, Prosecutor, Wood County Prosecutor's Office
20. Renee Yokum, Women's Aid in Crisis

Project Goal and Objectives

Goal: Develop a coordinated community response that ensures all sexual assault kits in cases reported to law enforcement are submitted for testing.

Objective 1: Inventory all unsubmitted sexual assault kits in West Virginia.

Objective 2: Coordinate and collaborate on policy and protocol development in order to improve statewide practices using a victim-centered approach to ensure SAKs are submitted and tested in the future.

Objective 3: Develop a database to track SAKs from the time of testing through final case disposition.

Objective 4: Provide victim-centered, trauma-informed services to victims in all communities that will be impacted by this project.

Objective 5: Build the capacity of law enforcement, advocates and prosecutors to provide sensitive, effective responses to victims impacted by this project.

Definitions:

CODIS: Combined DNA Index System - The Federal Bureau of Investigation's national DNA database for uploading DNA profiles contributed by participating forensic labs.

Cold Case: Case whose probative investigative leads have been exhausted.

Pink Envelopes: Kits that were previously submitted to the West Virginia State Police Forensic Laboratory and screened for biological fluids will contain the cuttings and/or swabs that were collected for DNA testing in pink envelope packaging.

Trauma-Informed Approach: Approach used to engage people who have a history of one or more traumatic life events. This approach acknowledges the role trauma has played in a victim's life and is focused on creating safety, fostering connections, and maximizing opportunities for a victim to have choice and control.

Untested SAK: SAK that has been submitted to forensic labs for testing with CODIS-eligible DNA methodologies but is delayed for testing for longer than 30 days.

Unsubmitted SAK: SAK that has not been submitted to a forensic laboratory for testing with CODIS-eligible DNA methodologies.

Victim Centered Approach: Systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. A victim centered approach seeks to minimize re-traumatization of the victim.

Y-Screen: The assessment of evidence for the presence of male DNA. The Y in Y-Screen is in reference to the Y (male) chromosome. This technique may replace traditional screening methods such as Acid Phosphatase, p30 and sperm identification.

Eligibility of SAKs for Testing:

Sexual assault kits will be tested at two locations in West Virginia – the WV State Police Forensic Lab (WVSPFL) and at Marshall University Forensic Science Center (MUFSC). Kits collected prior to January 1, 2015 will be tested at Marshall University Forensic Science Center and kits collected on or after January 1, 2015 will be tested at the WV State Police Forensic Lab.

The SAKs will be submitted for analysis using the “forklift” approach. This means that all SAKs (with a few exceptions) will be submitted for testing.

The following types of SAKs are eligible for testing:

- Identity of the offender is unknown;
- Identity of the offender is known;
- Offender was convicted without DNA;
- Sexual assault kits that were analyzed but not with latest DNA technology;
- Cases where the offender alleges it was consensual sex; and
- Investigation (and possibly witness statement) contradicts the accusation, but there is no conclusive and objective evidence that the crime did not occur.

The following SAKs are NOT eligible for testing:

- Non-reports, anonymous or “Jane Doe” cases (unless the victim has subsequently decided to make a police report); and
- Cases where a SAK was not submitted because a thorough law enforcement investigation found conclusive evidence that the crime did not occur. It is expected that there will be very few cases that would meet this criterion.

Inventory of SAKs:

The inventory should contain all the SAKs in the law enforcement agency’s possession. The spreadsheet in Appendix A should be used when completing the SAK inventory and submitted via email as an Excel document. In the event a law enforcement agency does not have any SAKs in its possession, a letter stating that fact must be submitted on agency letterhead or by the county’s Prosecuting Attorney. All completed inventories and/or letters should be submitted to Misty Marra at the Marshall University Forensic Science Center by email to marra2@marshall.edu. Inventories should be sent in the Excel file format.

Scheduling of SAKs for Testing:

MUFSC and the WVSPFL will determine the testing schedule of the SAKs on a county by county basis and notify each county prosecutor when testing will begin for his/her

county's kits. SAKs will be retained by each law enforcement agency until notification and arrangements have been made for the submission of the SAKs for testing. Organization of the kits and their associated case documentation, as well as plans for transporting the kits to the testing site, should be completed as early as possible to avoid unnecessary delays. The most recent SAKs in a county will be tested first.

Submitting SAKs to MUFSC:

SAKs with a crime date prior to 1/1/15 will be shipped directly to MUFSC. Any kit with a crime date after 1/1/15 should be sent directly to WVSPFL for testing. Any SAK documentation (e.g. medical reports) should be secured within or attached to the SAK. Shipping options include:

1. Mail using a commercial carrier with tracking capabilities.
2. Personal transport. The prosecutor may arrange to have all SAKs from a county to be transported together.

Any concerns about the transport of specific evidence (e.g., frozen samples) need to be discussed with MUFSC at marra2@marshall.edu or 304-691-8952.

Lab Analysis:

Once evidence is received, MUFSC (in collaboration with the WVSPFL) will determine which SAKs and evidence are eligible for testing. Technical specifications agreed upon by the WVSPFL and MUFSC will outline the protocols to be used by the MUFSC. These technical specifications can be made available upon request.

MUFSC will Y-Screen up to 6 of the most probative evidence samples. Clothing collected during the sexual assault exam may be examined and tested. Traditional serology screening (alternate light source and Acid Phosphatase) may be performed on clothing prior to Y-Screen. Additional screening will be performed at the discretion of the WVSPFL.

MUFSC will perform DNA testing on up to 3 of the most probative samples based on the case scenario and medical report. In certain cases, additional testing may be required and will be performed at the discretion of the WVSPFL.

MUFSC will seek approval from the appropriate county prosecutor to consume more than half of the evidence.

MUFSC Lab Report:

MUFSC will provide a written laboratory report detailing the results of analysis and will include an interpretive statement detailing any DNA comparisons with known standards.

The official laboratory report for each case will be issued to the submitting law enforcement agency. Copies of the laboratory reports and case file documentation from cases with probative male DNA profiles will be provided to the WVSPFL for their review and subsequent upload into CODIS. A supplemental report may be provided by WVSPFL regarding testing/CODIS as applicable.

Possible Additional Evidence/Information Needed:

Cases with “No DNA present” and “Insufficient evidence for CODIS entry”

The prosecuting attorney and the law enforcement agency will need to determine if there is additional evidence that would be appropriate for laboratory analysis. The WVSPFL is available for consultation regarding further testing. Please email biochemistry@wvsp.gov.

Cases with “Sufficient DNA for CODIS entry”

Unless unavailable, each law enforcement agency should send the police reports or other associated documentation with each SAK at the time of testing for evaluation of CODIS eligibility and to obtain metrics for the grant report. If the original officer’s report is not available, other documentation (e.g., summary report) may be used to support the position that a crime was committed and that the crime was not recanted by the victim - thereby, making the profile CODIS eligible.

Furthermore, the West Virginia State Police Forensic Lab will need information regarding whether DNA identified in a kit could be from a consensual partner. **If there was a consensual partner, then the WVSPFL will need a DNA standard from the partner for elimination purposes or documentation from the law enforcement agency that they attempted to obtain a standard.**

WVSPFL Laboratory Review, CODIS Entry, and Reports:

The WVSPFL DNA Section will receive the technical data from MUFSC and will perform the following actions:

- Review the technical data to ensure that quality assurance criteria were met.

- Review information on the case to ensure that the profile is eligible for CODIS and that the alleged crime was not recanted by the victim or conclusively and objectively disproven (e.g., video evidence).
- Determine if a consensual partner could be the source of the DNA. Notification will be made to the law enforcement agency (LEA) requesting a DNA sample from the consensual partner.
- Enter profiles, which meet the eligibility and quality assurance criteria, into CODIS and search at state and national level (if appropriate). The search will include the comparison to the following types of samples:
 - ✓ Offender profiles (samples collected from convicted offenders)
 - ✓ Evidence profiles (DNA results from other solved and unsolved cases)
- When a match/hit occurs, WVSPFL will send a report to the primary LEA and the prosecuting attorney for the county in which the incident occurred.
 - ✓ When the CODIS hit is to a convicted offender in the database, the LEA will be asked to submit a reference standard (oral swabs) from the offender to confirm the match.

Return of SAKs to Law Enforcement:

Each law enforcement agency will be responsible for the return of SAKs to their facility following testing at the MUFSC. SAKs that were tested by the WVSPFL will be returned to the submitting agency as per normal WVSPFL protocol.

Kits will be marked with an identification label indicating that the kit was reviewed and/or tested under the SAKI/DANY project.

Investigation, Prosecution and Case Disposition:

Each county will review the lab results and make the decisions as to which cases will be investigated, in what order, and how/when victims will be notified.

Victim Notification: Issues to Consider:

Each county will be responsible for creating a protocol for contacting victims once the laboratory results are received. (For overviews of victim notification protocols, see Appendix B.) *How victims are notified and by whom may significantly impact both their*

willingness to participate in a criminal justice proceeding and the possibility of re-traumatization due to the lapse of time since the assault.

Although various professionals have clearly identified roles in sexual assault cases (e.g., prosecutors – deciding whether or not to prosecute cases; law enforcement – investigating cases; victim advocates – providing support to victims), each will be significantly impacted by a victim’s response upon notification in a cold case. National research on victim notification in untested rape kit projects has identified key decision-points to consider in crafting a victim notification protocol.

- **WHEN will kit analysis results activate the notification protocol?** Each county will need to determine if, when, and how victims are notified based on DNA test analysis results. Studies have found some variances in protocols that were reviewed, as summarized below:
 - All jurisdictions notified victims when an investigation was initiated, as victim safety is a major factor to consider.
 - Some jurisdictions concluded that informing victims when kits resulted in no CODIS-eligible DNA provided closure for those victims.
 - Some jurisdictions also notified victims when DNA was found, entered into CODIS, but did not result in a match – knowing that a future match was still possible.
 - Some jurisdictions notified all victims prior to testing.
 - Some jurisdictions did not notify victims unless there was a CODIS match.

- **HOW will notifications occur?** Studies of untested kit projects in other jurisdictions provide some clear feedback from victims regarding the initial notification process.
 - In-person. The research clearly found that victims preferred notification in-person.¹ (*Also see the next section ‘Who will conduct the notifications?’*)
 - Telephone. Focus group research with victims concluded that phone calls were preferable to mail/email notification, but not as optimal as in-person.² At best, calls could be used to arrange for an in-person meeting.

¹ Noël Busch-Armendariz, *How to Notify Victims About Sexual Assault Kit Evidence: Insight and Recommendations from Victims and Professionals* (Austin: University of Texas at Austin, School of Social Work, Institute on Domestic Violence and Sexual Assault, 2015), 12. http://houstonsakresearch.org/resources/documents/IDVSA_victim.pdf.

² Ibid.

- Mail/Email. Victims expressed concerns in the research about safety and confidentiality using these methods, as well as believing that this impersonal method could result in feelings of anger and isolation.³
 - Victims also emphasized the importance of sharing their preferences for future communications after the initial notification.
- **WHO will conduct the notifications?** Each county will decide who will actually notify victims. Studies offer some varied recommendations.
 - In one study, victims conclusively recommended that a trained victim advocate be present but had ‘mixed emotions’ about speaking with police investigators.⁴
 - Researchers in ‘*Navigating Notification: A Guide to Re-engaging Sexual Assault Survivors Affected by the Untested Rape Kit Backlog*,’ which devotes an entire chapter to ‘who should notify,’ report that while only 30% of criminal justice professionals extremely agreed that rape crisis victim advocates should participate in the notification process, 75% of victims extremely believed that they should and an additional 17% very much supported advocate involvement.⁵
 - Rather than focusing on the gender of the person notifying the victim or someone with a previous connection to the case, victims emphasized the importance of the individual being trained in trauma and crisis management.⁶
 - Victims also noted multiple reasons for the advocate being community-based, including: the ability to provide on-going support regardless of the outcome of the investigation/case; being independent from the legal system expands confidentiality; and that more comprehensive services could be provided by community-based advocates.⁷
- **WHAT will be shared in the initial contact?** The local notification protocol should include consideration of the following issues:
 - *How will victim privacy and confidentiality be protected?* The initial notification should be sensitive to a victim’s privacy and needs (e.g., an officer in uniform in a police cruiser could raise curiosity in a neighborhood and trigger a traumatic memory for the victim). Other

³ Ibid.

⁴ Busch-Armendariz, *How to Notify Victims*, 11.

⁵ *Navigating Notification: A Guide to Re-engaging Sexual Assault Survivors Affected by the Untested Rape Kit Backlog*, (New York: Joyful Heart Foundation, 2016), 30. <http://endthebacklog.org/information-survivors/victim-notification>.

⁶ Ibid

⁷ Ibid

issues, including ensuring that the conversation is private, should be considered.

- *What approach will be taken during that first visit?* The Oregon Untested Sexual Assault Kit Project handbook recommends that the straightforward, empathetic and informative approach works best. It suggests that the notifying person use kindness, respect and empathy while letting the victim know that you care about their experience and how this new notification may be affecting them.⁸
- *How much information will be shared during the first contact?* Will the first visit be used to share as much information as is available, or will it primarily be a brief connection to arrange for a subsequent meeting at a criminal justice agency's office (or other agreed upon location) at a time that is convenient to all parties? Consideration should be given regarding what to share with the victim to avoid causing undue stress prior to a subsequent meeting. If in the first contact the protocol is to notify them that additional information is available about their case and to arrange a face to face meeting, take their lead in determining how much information should be shared in that first interaction (e.g., if the victim has pressing questions, answer them immediately or arrange for a time do so expeditiously).
- *What resources will be provided?* Will names and contact information be provided for support services? Will print materials (such as a rape crisis center brochure, an informational handout provided by this project and available through the FRIS Victim Services Coordinator, etc.) be offered? Providing resources will enable the victim to learn about the project, have potential concerns answered, formulate questions, and connect with support services if needed before the next interaction with the investigating officer.

Some additional issues to consider in developing a victim notification protocol include how the safety of those doing the notification will be maintained if in-person notification is conducted and the 'next steps' if an initial effort in locating/connecting with the victim is unsuccessful.

Creating a Victim Notification Protocol

The research clearly shows that convening a small team comprised of prosecution, law enforcement and advocates (both community-based and system-based) as well as possibly even survivors can be extremely beneficial in creating a victim-centered,

⁸ *Untested Sexual Assault Kit Project DANY Grant Handbook* (Portland, OR: Multnomah County District Attorney's Office, 2016), 11.

trauma-informed notification protocol.⁹ The following resources are available to assist in developing a protocol.

- Appendix B contains overviews of victim notification protocols.
- The West Virginia Foundation for Rape Information and Services (FRIS) has a Victim Services Coordinator for this project who can assist your county in developing a victim notification protocol. The Coordinator can be reached at 304-848-0444.
- West Virginia's community-based rape crisis centers are listed in Appendix D.
- Other counties in West Virginia have already implemented this project and can be contacted for technical assistance. Technical assistance can be arranged through FRIS' Victim Services Coordinator at 304-848-0444 or the DJCS SAKI Project Coordinator at 304-558-8814 Ext. 53350.
- The National Center for Victims of Crime published a brochure on issues to consider in victim notification: *DNA Hits in Cold Cases: Notifying Crime Victims*, accessed through <https://victimsofcrime.org/docs/Resource%20Library/DNA%20COLDCASE%20bro.pdf?sfvrsn=0>
- Navigating Notification: A Guide to Re-engaging Sexual Assault Survivors Affected by the Untested Rape Kit Backlog developed by The Joyful Heart Foundation and accessed through <http://issuu.com/thejhf/docs/navigatingnotification/1?e=15058640/34484663>
- The National Institute of Justice report, *Untested Evidence in Sexual Assault Cases* accessed through <http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx>
- How to Notify Victims about Sexual Assault Kit Evidence accessed through http://houstonsakresearch.org/resources/documents/IDVSA_victim.pdf
- "The Neurobiology of Trauma" by Dr. Rebecca Campbell at <https://www.youtube.com/watch?v=AnRpoGSOkZs>

Refer to Appendix C: Victim Notification Record for an example of information that can be collected during the victim notification process. Once collected, this form will become part of the law enforcement record.

⁹ Untested Evidence in Sexual Assault Cases, National Institute of Justice, last modified March 18, 2016, <http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx>.

Project Reports and Performance Measures:

Because this project is supported through grant funds, any data, reports, and other written or graphic work produced in the performance of the grant are subject to the rights of the funders. The WVSPFL and DJCS will work with the LEAs, MUFSC, and the prosecuting attorneys' offices to obtain the information required for the grant reporting.

Quarterly Reports

WVSPFL and DJCS will be preparing the quarterly reports the month following each quarter and may request information from all partnering agencies.

- Law Enforcement Report Form (*provided in Appendix E*). Data to be collected by law enforcement centers around kit submission, victim notification/response, investigation, and how cases were prioritized. Appendix C contains a record to assist law enforcement in collecting victim notification data; this document is not to be submitted as part of the report.
- Prosecution Report Form (*provided in Appendix F*). Data to be collected by prosecution centers on case outcomes.

Report Due Dates:

Reporting Quarter	Date due to DJCS
04/01/2017 – 06/30/2017	Due to DJCS by 07/15/2017
07/01/2017 – 09/30/2017	Due to DJCS by 10/15/2017
10/01/2017 – 12/31/2017	Due to DJCS by 01/15/2018
01/01/2018- 03/31/2018	Due to DJCS by 04/15/2018
04/01/2018 – 06/30/2018	Due to DJCS by 07/15/2018
07/01/2018 – 09/30/2018	Due to DJCS by 10/15/2018

**APPENDIX A
INVENTORY SHEET**

APPENDIX B
VICTIM NOTIFICATION PROTOCOLS

SHORT OVERVIEW - VICTIM NOTIFICATION PROTOCOL

The WV Sexual Assault Kit Initiative project has three goals: a) to forensically test all unsubmitted sexual assault kits in the state of WV b) to remove the existence of unsubmitted kits and assure that a future collection of unsubmitted kits does not develop and c) to provide justice and closure to victims in sexual assault cases. If there is a DNA match in a tested kit, the information will be shared with the jurisdiction that provided the kit for testing.

- Upon receiving notification of a match from the WVSPFL, the investigator will meet with a victim services advocate to review the details of the case and to make a plan for victim notification. It is expected that victim notification will occur based on each county's established notification protocol. Best practice recommends that an in-person notification be done by an investigator and a victim services advocate.
- Notification should be done as soon as possible in these cases so that the victim does not hear about activity in the case from other sources.
- Prior to any victim notification, the team must be trained on victim-centered, trauma-informed approaches so as not to re-traumatize the victim when doing the notification. **SAFETY AND PRIVACY ARE OF UTMOST IMPORTANCE IN VICTIM NOTIFICATION CASES!**
 1. **SAFETY** – It is possible that a victim may have a relationship with the perpetrator (e.g., stepfather). Therefore, it is not appropriate to discuss facts of the case in front of others. It is also inappropriate to conduct the interview if children are present as they may inadvertently mention details of the conversation to others. The exception to this would be if a victim brings someone *of his/her choosing* to the interview as a support person. Safety planning is a must for both the victim and the team doing the notification.
 2. **PRIVACY** - Many victims have never disclosed the sexual assault, and during the interview it is possible that victims may express many behaviors, thoughts, and emotions. Therefore, the team must assure a victim's privacy and the meeting must occur in a place where support can be appropriately offered and a victim can feel free to express emotions.
- During the interview, the team will apprise the victim of the developments in the case. Team members should be ready to answer questions and provide as much information as possible to the victim about his/her concerns. Likely questions may deal with DNA, information about the perpetrator (if unknown to the victim), the criminal justice process, the roles of the various team members, and what the next steps are likely to be. Some victims will be numb and have no questions, while others will want to know as many details as possible. Victims should be encouraged to contact either the investigator or the advocate if questions later arise. **The interview should include questions listed on the WV SAKI Victim Notification Record.**
- One question on the form asks if/how a victim would like to participate in the case. Some victims are in shock at the time of the notification and may not be able to decide immediately if or how he/she would like to participate in any potential court case. Team members should allow the victim time to process the information that is being given and not push for an immediate answer on this question.
- Another question on the victim notification form asks if/how the victim wants to receive case updates. If a victim chooses to receive updates, it is important to note HOW (phone, letter, etc.) the victim would like to be contacted and to obtain that information (i.e. phone number, address, etc.).
- Prior to ending the interview, victims should be *offered* a resource packet. At minimum, this packet should contain names and contact information for the investigator and advocate, a

brochure from the local rape crisis center, hotline numbers, and available counseling services.

- Future contact will be primarily victim-driven based on the answers to questions on the notification form. However, ongoing advocacy services should be available to the victim throughout the process. Additionally, if victims have asked for updates in the case they should be given, and the victim should immediately be made aware of any decision regarding prosecution or plea bargaining. Optimally, the victim should be given an opportunity to provide input into these matters when at all possible.

Each of the bulleted items above should be discussed by the prosecutor, law enforcement officers and advocates in creating a protocol for victim notification.

EXPANDED OVERVIEW - VICTIM NOTIFICATION PROTOCOL

Safety, privacy, and confidentiality are of utmost importance when working with survivors of sexual assault. The purpose of this protocol is to provide information and guidance to the teams who will be providing victim notifications in the West Virginia Sexual Assault Kit Initiative Project.

In WV, county teams have been established, and each county will be responsible for contacting victims once lab results have been received from the tested sexual assault kits. Research has shown that how a victim is notified, and by whom can significantly influence their willingness to participate in the prosecution of the case.¹⁰

A local protocol should answer the following questions:

WHO WILL DO THE NOTIFICATION?

- The notification team may vary from county to county, but studies have shown that notifications should be done by an investigator (from either a law enforcement agency or the prosecutor's office) and a victim's advocate¹¹. If a law enforcement officer is part of the team, thought must be given to whether or not he/she should be in full uniform during the notification (including weapon, radio, badge, etc.). Some victims may not have had good experiences with law enforcement, and it could be possible that the presence of a weapon, for example, may adversely affect a victim's ability to process the information being given. It is possible that a gun could trigger flashbacks of the assault if a weapon was used during the rape. Similarly, radio "traffic" or chatter could be a distraction, and/or the presence of handcuffs could be problematic if the victim was handcuffed, tied up, or restrained in some way during the assault. Consideration should be given as to whether or not the advocate doing the notification is a systems-based advocate or a community-based advocate. A systems-based advocate may have his/her work with a victim subject to discovery by the defense in a criminal proceeding. Further, a systems-based advocate may be unable to work with the victim who chooses not to pursue a case and/or may not be able to provide services and support once the case concludes in the judicial system. Community-based advocates have the ability to provide on-going advocacy and support regardless of the outcome of the case and/or whether or not a criminal charge is ultimately pursued.
- Those doing notifications should have been trained on using trauma-informed, victim-centered approaches so as not to re-traumatize victims. Past studies have been done with victims who have received cold case notifications. In one study, victims reported that the gender of the person doing the notification was not important, nor was it important that the person had a previous connection to the case. Victims emphasized

¹⁰ Noel Busch-Armendariz, *How to Notify Victims About Sexual Assault Kit Evidence: Insight and Recommendations from Victims and Professionals* (Austin: University of Texas at Austin, School of Social Work, Institute on Domestic Violence and Sexual Assault, 2015), p. 12. <http://houstonsakresearch.org/resources/documents/IDVSA.victim.pdf>.

¹¹ Ibid. p.11

that the important factor was having team members who were trained in trauma and crisis intervention.¹²

- Each team member involved in the notification must have set aside enough time to do a proper notification, and this issue could be problematic for teams in rural areas. In many cases, the staff at the law enforcement agency may be limited in the number of officers on duty during a particular shift, and/or the prosecutors' offices may be understaffed in terms of investigators. Both systems-based advocates and community-based advocates also have responsibilities to other clients. It is not appropriate to leave an interview to answer a call or handle another emergency.

HOW WILL THE NOTIFICATION BE DONE?

Studies have been done on how to best notify victims in cold cases, and notification can occur in any of the following ways:

- In person – Research has shown that overwhelmingly victims prefer this method of notification.¹³
- Telephone – While the telephone may be used to set up an appointment for an in-person meeting, telephone calls are NOT the preferred method of notification. Phone calls are considered impersonal, and notification in this manner could lead to feelings of anger or isolation. Telephone contact, while not the optimal choice for notification, is preferable to either notification by email or via United States mail. In light of current technology (e.g., caller ID), the number from which the initial call is made is also important. Having the number of a law enforcement agency appear on a caller ID is different than having a community-based organization's name register on a caller ID. This is particularly true in households where others have access to the caller ID or in cases where someone else may hear a message or voice mail before the victim gets to hear it. A victim may not have told anyone about the sexual assault, and a detailed message on an answering machine or in a voicemail could lead to serious issues/consequences.
- Email or U.S. Mail Service - Victims found these to be the least desirable notification methods, indicating that both means were very cold and impersonal. In terms of email, consider who may have access to a victim's email and the possibility of hacking. With respect to the US mail, several complicating factors can occur. In rural WV, consideration must be given to having a victim sign for a certified letter that may have been mailed by the sheriff's office. If the victim lives on a rural route, mailing a certified letter would require a trip to the post office to pick it up. In small towns, there is very little anonymity, and it would not be uncommon for both the route carrier and/or the postmaster's curiosity to be aroused. Getting to the post office could create both unwelcome questions and an undue burden on the victim. Other mail issues could include not knowing who lives in the household or who collects the mail for the household. All of these factors should be taken into consideration when deciding if/how to notify victims by mail.

¹² *Navigating Notification: A Guide to Re-engaging Sexual Assault Survivors Affected by the Untested Rape Kit Backlog*, (New York, Joyful Heart Foundation, 2016), 30. <http://endthebacklog.org/information-survivors/victim-notification>.

¹³ Busch-Armendariz, p. 12

WHERE WILL THE NOTIFICATION OCCUR?

Teams must decide the location(s) where the notification(s) will occur. If the notification will occur at a location other than the victim's residence, transportation must be considered. In rural West Virginia, most communities do not have public transportation. In some cases, a victim will not have *personal* transportation and may rely on "getting a ride" from a friend or neighbor. This could be problematic if the victim has never told anyone about the rape and now must explain why a ride is needed. This could be an even greater issue if the meeting is scheduled at a police station. The victim may not have had positive experiences with law enforcement in the past, may be feel intimidated going into a law enforcement office, or may be concerned about being seen entering a police station, sheriff's office or state police detachment. Community agencies (e.g. rape crisis center) may be an option as a notification site, but any location outside of the victim's immediate community may create an undue burden for the victim in terms of both transportation and childcare. Conversely, the arrival of a police car in a remote, rural area that lacks its own police force may also arouse curiosity among neighbors. If notifications will be done at the victim's home, it is recommended that a police car not be used unless it is unmarked. Similarly, law enforcement officers should arrive in street clothes if at all possible.

If the notification will be done at the home of the victim, this should be arranged in advance as opposed to "dropping in." This is important so that victims can have their choice of a support person available if desired and/or so that childcare arrangements can be made if necessary. Remember, some victims may have never disclosed the rape and it could be that they don't want *anyone* at the notification meeting. Conversely, it could be that the victim has a relationship with the rapist. Safety and privacy should always be of paramount concern, and it is good foresight to ask the victim about existing household members when setting up the appointment.

A neutral meeting site may be considered as long as it provides the privacy a victim needs. The victim may exhibit a variety of emotions at the notification, and most public places should be avoided if possible. Teams could be creative about how to address this issue. For example, if a mother has to bring her children to the notification meeting, it is possible that it could occur at a park. That way the children could play nearby while the victim was meeting with the team. It is important that the child not be privy to the details of the notification for a variety of reasons including: 1) the team does not want to traumatize the child with details of the victim's attack, and 2) the child may inadvertently mention details to others. Again, privacy and confidentiality must be assured, and the notification needs to occur in a place where support can be appropriately offered. Each county team should develop a list of potential meeting sites to offer as optional meeting places should the victim's residence not be conducive for a meeting. These sites should be victim-friendly, private, and in close proximity to the victim's residence. When possible, teams should arrange meeting sites in different geographic areas of the county as opposed to relying on one site.

Safety is extremely important when determining a meeting site. This is true for not only the victim, but also for the team doing the notification. Safety planning is a must for all involved in the notification process.

If the victim is employed, a meeting may need to occur outside the normal business hours and the team should plan for that should the notification need to occur.

WHAT WILL BE SAID AND/OR SHARED?

Prior to contact with the victim, the team should have met to review the details of the case so that no issues or unanswered questions exist among the team members. When possible, it is important to know about the victim's experience during the initial investigation, whether a suspect is currently incarcerated, etc. The goal in any notification meeting is safety, privacy, and the avoidance of re-traumatization, which is why having team members trained in victim-centered, trauma-informed practices is important. Experts have found that a straightforward, empathetic approach works best, with kindness and respect for the victim shown throughout the notification process. It is important for team members to acknowledge the trauma that assault victims may have experienced and convey that they understand that the notification itself may have an impact. Team members should realize that victims may exhibit a wide range of emotions and behaviors during the notification. Victims may respond with anger, fear, worry, or happiness in cases where the victim believes the perpetrator will finally be punished for the assault. It may also seem as if the victim has no reaction at all, and *all of these reactions are normal*. Regardless of the victim's reaction, it is not up to the team to judge whether or not a victim's responses are "appropriate." The team should be focused on providing information to the victim, discussing options for moving forward, and connecting the victim with any resources that may be needed.

After the notification, teams can complete the *WV Sexual Assault Kit Initiative Victim Notification Record (Appendix C)*. Once completed, it will be retained with the law enforcement agency.

If the notification is done in-person, a packet of resources should be *offered* to the victim. At a minimum, a typical resource packet should include: the names and contact information for the persons working the case, a fact sheet on DNA testing and/or the WV SAKI project, a brochure from the local rape crisis center, hotline numbers, and sources for local counseling services. Not all victims will take a resource packet, and that is a personal choice that should be respected. Victims may not want to accept the resources for a variety of reasons (e.g., having resources on hand will create questions from other household members who don't know about the assault or who may pressure the victim to seek services that he/she doesn't want at this time).

REVISIT THE PROCESS AND ADAPT AS NEEDED:

Cold case notifications can be extremely difficult, and every effort should be made to treat each notification with the care, respect, and concern it deserves. Notifications have the potential to be unpredictable, but planning can help assure a victim's safety and privacy. Following each notification, teams may want to review the process to make sure that they have acted in a compassionate, respectful way that empowers the victim and acknowledges the harm done by the perpetrator.

**APPENDIX C: WV SEXUAL ASSAULT KIT INITIATIVE VICTIM
NOTIFICATION RECORD**

WV SEXUAL ASSAULT KIT INITIATIVE VICTIM NOTIFICATION RECORD

Investigative Agency Name _____ Case Number: _____

Victim's Name: _____ Date: _____

Victim's Name at the Time of Incident: _____

Current Address: _____

Phone Number: _____ Alternate Phone Number: _____

Email: _____ Other Contact Method: _____

Investigator's Name: _____ Advocate's Name: _____

Reason for notification this time:

_____ Forensic match (the new profile matches DNA from an unknown forensic sample collected at a crime scene – i.e. the match is to a sample in the forensic index).

_____ Offender/arrestee match (the new profile matches the DNA of an offender or an arrestee profile already existing in CODIS – i.e. the match is to a known sample in the forensic index).

_____ Other (please specify)

Was personal contact made with the victim? Yes No If yes, by whom? _____

If YES, how was contact made? in person telephone other (describe) _____

Summarize the conversation with the victim (use back of this sheet if needed) _____

Would the victim like to be kept informed about the status of the case? Yes No

If yes, how would the victim like to receive this information (phone, letter, email, etc.) _____

If yes, list contact information _____

Would the victim like to participate in the court case? _____

Was the victim referred for supportive services? If yes, please specify to whom. _____

Was a resource packet left with the victim? Yes No

If NO contact was made, please describe below the attempts to contact. Include what method(s) were used (phone call, letter, etc.), and specifics (number called, to what address the letter was sent, etc.)

	DATE	BY WHOM	METHOD	SPECIFIC DETAIL
1 st Attempt				
2 nd Attempt				
3 rd Attempt				
4 th Attempt				

LIST ADDITIONAL ATTEMPTS ON THE BACK OF THIS SHEET. NOT LIMITED TO 4 ATTEMPTS!

APPENDIX D
COMMUNITY-BASED RAPE CRISIS CENTERS

RAPE CRISIS CENTERS

CONTACT Huntington Rape Crisis Center

Huntington
1-866-399-7273

Family Crisis Intervention Center

Parkersburg
1-800-794-2335

Family Refuge Center

Lewisburg
304-645-6334

Hope, Inc.

Fairmont
304-367-1100

**Rape and Domestic Violence
Information Center**

Morgantown
304-292-5100

REACH

Charleston
304-340-3676

Sexual Assault Help Center

Wheeling
304-234-8519

Shenandoah Women's Center

Martinsburg
304-263-8292

Women's Aid in Crisis

Elkins
1-800-339-1185

Women's Resource Center

Beckley
304-255-2559

The National Sexual Assault Hotline

1-800-656-HOPE

West Virginia Foundation for Rape Information and Services, Inc.

www.fris.org

SAKI Project Victim Information Line

304-848-0444

APPENDIX E: Law Enforcement Report/Performance Measures Form



Sexual Assault Kit Initiative (SAKI) Grant Law Enforcement Report/Performance Measures

Agency	
County/City	
Contact Name	
Report Time Period	

1. During the reporting period, what factors contributed to successfully submitting SAKs or improving your submission of SAKs? *Select all that apply.*

	N/A Have not completed inventory
	Effective in-house records management system
	Proper protocols in place
	Coordination with departmental leadership
	Sufficient amount of staff available
	Effective in-house training
	Access to money and/or other resources
	Diligent community-based victim services
	Understanding and responding to victim trauma
	Understanding of basic forensic investigative techniques
	Understanding the importance of properly handling and testing SAKs
	Other
	If other, please explain:

2. During the reporting period, select the factors your jurisdiction views as contributing to unsubmitted SAKs. *Select all that apply.*

	Employees questioning the validity of victims' reports
	Employees would benefit from more training
	New and improved protocols needed

	Employees would benefit from a better understanding of appropriate victim trauma response
	Need for additional/increased ties with community-based victim services
	Need for a better evidence-tracking system
	Chronic instability in departmental leadership
	Need for greater understanding of the value of testing kits
	Other
	If other, please explain:

3. Were any cases forwarded for investigation related to the SAKs tested during the reporting period? Include any cases opened/reopened because of the results of testing SAKs?

	No (If No, skip next question)
	Yes
	If Yes, how many cases were forwarded for investigation?
	How many cases were re-opened?
	How many were opened for the first time?
	How many arrests were made?
	Describe investigative activities undertaken (e.g., police file sought, case re-opened, etc.):

4. During the reporting period, enter the number of victims located, contacted, or agreeing to participate (associated with previously unsubmitted SAKs) as a result of the Sexual Assault Kit Initiative (SAKI).

	Number of victims located (have found where victim resides)
	Of those located, how many victims were contacted?
	Number of attempted victim notifications
	Number of successful notifications
	Number of victims determined to be deceased
	Of those contacted, how many agreed to actively participate in a new investigation resulting from the SAKI?
	Note any trends observed in victim response and lessons learned: describe reasons victim choose not to cooperate:

5. During the reporting period, how many cases were not forwarded from investigation for prosecution?

	<i>Enter "0" if all cases were forwarded</i>
	<i>Please explain: (enter N/A if all cases were forwarded)</i>

6. What case elements did the working group consider when prioritizing cases during the reporting period? *Select all that apply.*

	N/A have not broached
	N/A not prioritizing
	Age of victim
	Victim/victim's family cooperation
	Public safety concerns
	Statute of limitations
	DNA of known offender
	Other/new evidence and/or witnesses have come to light (not SAK related)
	Other
	If other, please explain:

**Please submit to:
 West Virginia Division of Justice and Community Services
 Attention: SAKI Site Coordinator
 1124 Smith Street, Suite 3100
 Charleston, West Virginia 25301-1323
 Phone: 304-558-8814 Fax Number: 304-558-0391**

Report Due Dates:

Reporting Quarter	Date due to DJCS
04/01/2017 – 06/30/2017	Due to DJCS by 07/15/2017
07/01/2017 – 09/30/2017	Due to DJCS by 10/15/2017
10/01/2017 – 12/31/2017	Due to DJCS by 01/15/2018
01/01/2018 – 03/31/2018	Due to DJCS by 04/15/2018
04/01/2018 – 06/30/2018	Due to DJCS by 07/15/2018
07/01/2018 – 09/30/2018	Due to DJCS by 10/15/2018

Appendix F: Prosecution Report/Performance Measures Form



Sexual Assault Kit Initiative (SAKI) Grant Prosecution Performance Measures

Agency	
County	
Contact Name	
Report Time Period	

1. During the reporting period, select the factors your jurisdiction views as contributing to unsubmitted SAKs. Select all that apply.

	Employees questioning the validity of victims' reports
	Employees would benefit from more training
	New and improved protocols needed
	Employees would benefit from a better understanding of appropriate victim trauma response
	Need for additional/increased ties with community-based victim services
	Need for a better evidence-tracking system
	Chronic instability in departmental leadership
	Need for greater understanding of the value of testing kits
	Other
	If other, please explain:

2. How many SAKI cases were forwarded for prosecution during the reporting period?

--

3. During the reporting period, how many cases were not forwarded from investigation for prosecution? *Enter "0" if all cases were forwarded.*

	<i>Enter "0" if all cases were forwarded</i>
	<i>Please explain: (enter N/A if all cases were forwarded)</i>

4. What case elements did the working group consider when prioritizing cases during the reporting period? *Select all that apply.*

	N/A have not broached
	N/A not prioritizing
	Age of victim
	Victim/victim's family cooperation
	Public safety concerns
	Statute of limitations
	DNA of known offender
	Other/new evidence and/or witnesses have come to light (not SAK related)
	Other
	If other, please explain:

5. Please enter the number of cases that fit in each category below for the reporting period.

	Case Outcome	
A.	How many cases were charged?	
B.	Had the charges dismissed? <i>For example, the prosecuting agency did not proceed to disposition.</i>	
C.	Resulted in a plea bargain? <i>For example, the prosecution and defense reached an agreement where the defendant pleads guilty to a lesser charge or received a reduced sentence.</i>	
D.	Ended with a conviction following a trial? <i>For example, a finding of guilt of a crime in a court of law by judge or jury.</i>	
E.	Ended with an acquittal? <i>For example, a finding of not guilty of a crime in a court of law by judge or jury.</i>	
F.	Ended in mistrial? <i>For example, a trial that is not valid because of an error or because the jury is unable to decide a verdict.</i>	

6. During the reporting period, were there cases where prosecution was denied (e.g., case was deemed to have insufficient evidence)?

	No
	Yes
	If Yes, how many times during the reporting period did this occur?

7. During the reporting period, please select the reasons prosecution was denied. *Select all that apply.*

	Victims declined to participate
	Investigations resulted in insufficient evidence
	Cases involved expired statute of limitations
	Report was determined to be unfounded by investigator or prosecutor

	Resource constraints
	Offender is already serving a long sentence for another crime
	Other
	If other, please explain

8. Of the cases re-opened or opened for the first time which resulted in prosecution, list the number of the top charges for felony or misdemeanor.

	Felony
	Misdemeanor

What was the disposition of each case?

Guilty Plea	Guilty at Trial	Not Guilty	Court Dismissal	Hung Jury	Mistrial
Other : Please describe					

Defendant Charge for each case:

Jail	Prison	Community Supervision	Split Sentence	None	Other

9. Enter the number if felony prosecutions commenced:

	With homicide as the top charge
	With felony sexual assault as the top charge
	With felony burglary as the top charge
	With felony robbery as the top charge
	With another felony as the top charge

10. Enter the number of the following:

	Number of misdemeanor prosecutions commenced
	Number of “John Doe” warrants or indictments obtained

11. Aside from prosecution, how was the CODIS hit information used?

	Parole/probation notification
	Sex offender registry information
	Civil commitment
	Used as evidence in another case
	Other: please describe

12. List the number of case dispositions for the following:

	Cases that resulted in a felony disposition
	Cases that resulted in a misdemeanor conviction
	Cases that resulted in a sexual assault conviction
	Cases that resulted in an acquittal (on all charges)
	Cases that resulted in a dismissal (on all charges)
	Cases in which the CODIS hit identified a different assailant than the one originally named or prosecuted

Please submit to:

West Virginia Division of Justice and Community Services

Attention: SAKI Site Coordinator

1124 Smith Street

Suite 3100

Charleston, West Virginia 25301-1323

Phone: 304-558-8814

Fax Number: 304-558-0391

Report Due Dates:

Reporting Quarter	Date due to DJCS
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