



Why Test Rape Kits After the Statute of Limitations Has Expired? A Victim-Centric Approach

As jurisdictions work their way through backlogs of untested sexual assault evidence kits (SAK), many communities may be tempted to disregard any SAKs from crimes that are too old to prosecute. But our treatment of those kits speaks volumes to victims.

Sexual assault is more than just an isolated event. Victims of sexual assault experience ongoing trauma, not only during the physical assault but also in its aftermath. Victims who submit to a sexual assault forensic medical examination, used to document any injury to the victim and to collect evidence of the assault, must endure hours of examination as they are questioned and evidence is taken from their bodies. Unfortunately, some victims discover years later that the SAK, containing evidence from the exam, was never tested and the statute of limitations has expired. These victims still deserve justice.

The statute of limitations prevents the prosecution of a case after a certain period of time has passed. This time limit varies from state to state (see our chart on the statutes of limitations at <http://victimsofcrime.org/backlog-charts>). With a national backlog of untested SAKs, many jurisdictions possess kits from crimes where the statute of limitations has run out. With limited resources, one might ask: should we test these expired kits? The answer is yes— because victims deserve it. We have learned from talking to victims of sexual assault that the idea of justice varies for each individual. In the mind of many victims, even if conviction of the perpetrator is no longer possible, they still want an opportunity to be validated, to be heard, or even to be informed. Testing rape kits after the statute of limitations can provide the victim with the answers and validation they deserve and prevent further victimization.

Victims Deserve Answers, Regardless of the Passage of Time

Testing SAKs outside the statute of limitations provides victims with answers and, for some, a sense of closure. For many victims, knowing their offender's identity provides them with a sense of relief and security, ending the ongoing fear that comes from not knowing their offender. Testing all kits conveys to the victim and the community that no sexual assault will be tolerated. It validates victims by showing them that their case is important and worth the efforts of law enforcement. It shows that law enforcement is serious about identifying offenders. This is a powerful message to send to victims and society at large.

Victims Deserve Their Day in Court

Victims have a right to be heard during criminal justice proceedings that affect their interest. Even in instances where prosecution cannot be attained, victims may be allowed to give an impact statement in sentencing of the offender for another case. For example, Alaska allows a victim of an unprosecuted crime to be

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called as a witness to testify in a sentencing hearing as to similar conduct committed by the offender.¹ In other instances, victims can make an oral or written statement to the parole board if the offender was incarcerated for another crime. These opportunities allow the victim to play a proactive role in the criminal justice process and let the victim know that the criminal justice system acknowledges the impact of the crime and the harm suffered by the victim. In addition to the criminal process, victims may be able to file a civil suit against an offender. For example, Massachusetts's fraudulent exception law² allows victims to bring a civil suit by suspending the statute of limitations against an offender who has actively concealed his identity.

Testing SAKs Prevents Future Victimization

Many victims report anxiety over the possibility that their offender continues to victimize others. Testing a SAK after the statute of limitations has run can quell this anxiety, as well as help to hold offenders accountable. The DNA profile derived from tested kits can be entered into the FBI's national DNA database, CODIS, (Combined DNA Index System), regardless of whether the statute of limitations has run. Law enforcement can then search CODIS for matches or "hits" between crime scene DNA and offender DNA. Since we know that a majority of rapes are perpetrated by repeat offenders³, entering evidence from untested kits into CODIS will result in more hits, thereby linking offenders to more crimes. Some of these offenders may be deceased and some may be in prison for other crimes. Their inability to harm others can be reassuring to survivors.

DNA evidence from kits outside the statute of limitations may also be used in other forums to hold perpetrators accountable for their crimes. For example, the evidence may be used to strengthen the prosecution of same offender for a different sexual assault. The prosecutor may use the evidence to demonstrate a larger pattern of the offender's behavior, perhaps securing a conviction or increasing the sentence. Some states allow for this evidence to be used in sex offender status hearings, which can determine whether an offender is classified as a sex offender and at what level. This classification can restrict where the offender can live, work, and who he may have contact with. Many states allow DNA evidence from untested kits to be entered into a prisoner's file and used in future parole or probation hearings. For example, Rudy Romero, a parole-eligible prisoner arrested for burglary in Utah, had his release date pushed back 25 years after DNA linked him to a string of serial rapes. Testing all sexual assault kits, regardless of the ability to prosecute, will increase law enforcement's ability to respond to victims, prevent future victimizations, and bring justice to victims.

¹ Alaska Stat. § 12.55.155.

² Mass. Gen. Laws Ch. 260 §12

³ A study by David Lisak at the University of Massachusetts showed that 60% of undetected rapes are perpetrated by repeat offenders. See David Lisak & Paul M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 VIOLENCE AND VICTIMS 73 (2002), available at <http://www.wcsap.org/sites/www.wcsap.org/files/uploads/webinars/SV%20on%20Campus/Repeat%20Rape.pdf>.