

Guidelines for Sexual Assault Victim Notification

> Introduction

House Bill 13-1020, "Evidence Collected in Connection with a Sexual Assault," was passed unanimously by the General Assembly in the 2013 legislative session (C.R.S. § 24-33.5-113). The bill was intended to eliminate Colorado's backlog of untested "rape kits" as well as ensure that sexual assault evidence is tested quickly and appropriately moving forward. As a result of the backlog testing requirement, law enforcement agencies will have important decisions to make about notifying victims of sexual assault whose kits may have gone untested for many years.

Since testing a backlog of kits is new for Colorado, research was conducted to look at programs around the county as well as here in Colorado to see how victim notification was provided in similar types of situations. A survey of Colorado's Law Enforcement Victim Assistance Coordinators was also conducted and the results indicated a strong desire to have a guideline to assist in the development of a victim notification process for backlog sexual assault kit testing. These guidelines are intended to provide information from which each agency and their community partners can develop a process. The information in this document was gathered from cities currently involved in backlog testing, the law enforcement coordinator survey, the Denver Cold Case Project, the Cold Case Task Force, and law enforcement and community advocates.

We recognize that backlog kit testing is a shift from current practice and it will create an increase in workload, possibly substantial, depending on the jurisdiction. It is recommended that agencies develop a notification process that allows for flexibility so that each case can be handled in a way that meets the specific needs for that case. Deciding at what point in the process to notify victims whose kits are now getting tested is a crucial, initial decision point. Some agencies have already begun to contact victims about kit testing and thus far, have reported that the response has been positive. Many victims who have already been notified about their kits being tested have expressed gratitude that their cases are being looked at again while other victims have requested counseling referral resources. Conversely, some agencies have elected to not notify victims at the point the kits were sent for testing. There is no "right" way to do this. However, it is important to have a process in place. This issue has been, and remains, a high profile media issue. Once test results are returned to your agencies, there is the potential for these inactive cases to become high profile. Media attention on backlogged kits is what initially spurred legislators to pass this legislation and it is likely that additional press coverage will follow once kit results begin to be returned to your agencies. We hope you find these guidelines helpful in developing your victim notification process, and that this legislation results in more offenders being held accountable and that some victims will be able to feel a sense of justice and closure.

> Basic Principles

Based on research of state and national best practices in these cases, some basic principles apply regardless of when your agency decides to notify victims in these cases.

1. Notification should be timely.

2. Victims may be angry that their kits were not tested earlier. The frustration that victims may be feeling because they thought their kits had already been tested should be validated.
3. Victims have a right to basic information regarding:
 - > What it means when a kit is tested (see the Appendix for information).
 - > Why their kit is being tested now, which can include an overview of the DNA laws and the backlog testing law (see Appendix for information).
 - > Safety and Support Resources that are available in their community. Getting contacted now may be re-traumatizing for many victims and it is important that they have resources for counseling and on-going support (see Survivor Handout).
4. Contact should be made via phone call or in-person meetings, whenever possible. If meeting in-person, ask the victim where s/he would like to meet. Sending letters should be a last resort. Letters have the potential to get into the hands of someone other than the victim, which could cause additional harm. Letters may also trigger victims in the same way phone calls or in-person meetings would and even if support resources are included, they may be disregarded due to the immediate trauma. If letters are sent, the language should not go into a lot of detail about why they are being contacted and there should be a phone call or in-person meeting to follow up. (See sample letter.)
5. An opt-in for further notification should be offered. It is recommended that agencies adapt their current opt-in forms/procedures on cold cases to address these cases.

When to Notify?

The following “decision points” are various stages when victims could be notified, including recommendations and basic notification guidelines for each decision point. Again, each agency will develop its own notification policies and process. This guideline simply provides information and issues to consider when developing this process. Included with this guideline is the “Victim Notification: Talking Points and Information” handout which provides information regarding the basics of the new sexual assault kit testing law, the Combined DNA Index System (CODIS), and the variety of possible outcomes of kit testing, as well as identifying issues that are likely to arise in the course of a conversation with a victim whose kit has been tested.

Whenever a victim is contacted, regardless of when that occurs, victims should receive:

- Information on DNA collection laws and specifically on the law which requires testing of backlogged kits as well as what it means that their kit has been tested (See Appendix);
- Local safety and support resources and the handout “Towards Healing & Justice: A Handout for Survivors of Sexual Violence.” The back of this handout has a place to write in pertinent contact information.(See Attachment);

- Opt-in options for further notification, including,
 - > The option to provide additional contact information, and
 - > The option to provide contact information for additional persons who the victim may want to be notified if the law enforcement agency cannot reach them directly.

It is recommended that victims are notified in-person or via phone call and be conducted by a Detective/Officer and/or the Victim Advocate.

Decision Point #1: When kits are sent for testing

It is being recommended that victims are **not** notified when a kit is sent out for testing unless:

1. Notification has already occurred, and/or
2. Law enforcement has remained in contact with the victim and feels it is appropriate to notify the victim.

The recommendation for victims not being notified at this stage is because nothing may happen as a result of the kit being tested and victims could be unnecessarily re-traumatized.

Decision Point #2: The kit was tested but there was not enough DNA to create a profile

If there was not enough material to develop a profile, the recommendation is that victims would not be notified, **unless** there has been previous contact with the victim regarding the testing of the kit.

Additional considerations at this stage:

- If the victim was contacted when the kit was originally sent to CBI, then the victim should be contacted to let them know the results (unless the victim indicated they did not want further notification.)
- If the victim initiates contact, then the victim should be informed.

Decision Point #3: A profile is developed and uploaded to CODIS, but does not result in a CODIS hit

If there is NOT a hit in CODIS, but a profile is uploaded to CODIS, it is recommended that victim notification be on a case by case basis. By contacting the victim, the Victim Advocate can prepare the victim that there is a DNA profile in the database and the victim may be contacted in the future if there is a subsequent "hit."

Please refer to the Victim Notification: Talking Points and Information handout for suggestions on how to approach this conversation.

Decision Point #4: A profile is developed and uploaded to CODIS, resulting in a hit

It is recommended that the victim should be notified when there is a hit in CODIS. This constitutes a new development in the case. This would include all CODIS hits such as a hit to a known suspect living or deceased, an unknown suspect, or a known convicted offender who may or may not be incarcerated.

> Additional Considerations

- Getting contact information for victims can be challenging. If appropriate, law enforcement may want to contact other family members or a support person to obtain the victims' current contact information. This should only be done if it is evident from the law enforcement report that the other person is aware of the sexual assault and it seems appropriate. Each case will have to be examined individually and the victim advocate will need to take some time to figure out the "right" action. There are many reasons why a family member or support person should not be contacted, so all factors will have to be weighed. Reasons to not contact family members/support people include, but are not limited to:
 - > If the suspect was a family member, contacting other family members may lead to safety concerns for the victim.
 - > Contacting spouses or partners could cause issues if the victim never disclosed information about the sexual assault.
- In the case of victims who are currently incarcerated, the law enforcement agency may want to consider utilizing the PREA coordinator.

> How and Who Should Notify

A sample protocol from the Denver Police Department has been provided for your reference.

- First contact with the victim should be made by a victim advocate and a detective/officer.
- Adapt your existing opt-in forms/procedures for these cases and document alternative contact information in the file as well as in your cold case database process.
- Phone notification: it is not recommended to leave a message because it could result in safety concerns for the victim. If you must leave a message, be vague and indicate there is no emergency.
- In person notification: It is suggested that victims be allowed to determine the location of the meeting during the initial phone call whenever possible.

Victims should be given information about confidential sexual assault resources in the community, preferably through a direct referral from the victim advocate. The Colorado Coalition for Sexual Assault has a list of statewide resources if you need additional resources beyond your local community resources. Please check out CCASA website at www.ccasa.org or contact them at 303-839-9999.

Acknowledgements

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