

Evidence Analysis when Victims Do Not Report
SART Listserv
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Issues: How do States handle forensic medical exam evidence analysis in cases where victims do not immediately report? Does giving the kit to LE after an anonymous report just mean analyzing the DNA and putting it into CODIS? Is that a valuable use of resources?

Background

According to research (Dr. Linda Ledray):

- Reported before talking to SART 62%
- Initially uncertain/did NOT want to report 38%
 - Of the 38%:
 - Reported after talking to SART 14%
 - Did not want to report 10%
 - Agreed to have exam “in case” 14%
 - Reported later 32% (3.5%)
 - Never reported 68%
 - **Total additional reports 17.5% (20%)** n=206

Multidisciplinary Comments on Evidence Collection and Analysis

Advocacy

- I think it would also be great to have advocates work with SANEs when contacting victims in relation to CODIS hits.
- As an advocate, I know we also have to remind our SART Partners and ourselves that there are other modes of healing besides prosecution of a sexual assault. Although the victim/survivor’s healing is my main focus, I appreciate that other members of the SART may have more focus on prosecution. It’s great to utilize DNA and forensic examinations to prosecute rape, but we don’t want to lose the bigger picture that sexual violence is so often a crime committed between people who know each other.
- Seems like it might be difficult to perform an exam without getting a narrative. If there is an interview, then won’t that narrative be turned over to law enforcement (LE) and couldn’t that be enough information to launch an investigation (e.g., it could contain a perpetrator description, signature M.O)?
- If forensic exam collection doesn’t include a forensic examiner’s interview, I’d be very concerned that just collecting the evidence might miss some very important evidence. For example, if there’s no narrative, then how would an examiner know to swab the breast area for saliva (if the perpetrator put his mouth on her breast)?
- In cases in which a victim does not want to report, SART members could get some kind of consent from the victim to allow LE to analyze the evidence to identify a serial offender but not use it for anything else.

- In a case with a perpetrator is known to the victim (70-80% of sexual assaults) I wonder if it is necessary to run DNA through CODIS. There may be forensic evidence collected that could corroborate the victim's story (a great benefit of the SART exam) but I think this would also be part of an investigation.
- I really appreciate and support the desire to prosecute sexual assault cases, but wonder how to balance the survivor's autonomy and healing? I think I would prefer that the kit not be turned over unless the victim decides to report.

Healthcare

- I could be way off on this, but I think that sometimes patients are concerned out of ignorance about what will or can be done. This is called informed consent.
- Has anyone had law enforcement come out and just talk to the patient?
- Evidence can be collected and HELD, unprocessed, while the victim makes up his/her mind. If evidence is collected and preserved properly, it will last!
- As a forensic examiner, I can collect evidence. As a nurse I can present options and respect my patient's decision or indecision.
- The victim should dictate whether the evidence ever gets into the hands of law enforcement.
- According to the law in our state (Louisiana), patients have up to 30 days to report the crime. Law enforcement does not want to lose any evidence and they want to process it, if our crime lab concurs. The lab processes it as a "jane doe" with the SANE as the reporter. If there is a cold hit in CODIS months or years later, they contact us to testify to the exam and what was collected. If possible, they would want the SANE to contact the victim to let her know of the progress in the case. I know that this is very touchy, especially when women have "moved on"; however, law enforcement tells me that they would not be forced to testify.
- We are also forgetting that some of our patients are also involved in illegal acts when they are assaulted (e.g., warrants etc). This all plays into whether or not they want to talk with law enforcement. Most of my experience has been that once a patient realizes that they will not be in trouble and that the police are more concerned about the crime of rape and not the underage partying or the prostitution, they move forward. Not always the case but it can work when patients have all of the facts.
- Often, with SANE care, a patient who initially is too scared, confused or uninformed begins to feel comfortable with the process and will report later.
- Our consent form stipulates the patient consents to have evidence collected and that the patient consents to have that evidence given to law enforcement with the understanding that LE will be informed that a sexual assault has occurred and their kit *may* be analyzed.

Legal

- Analysis of forensic exam results will not work in cases where the victim knows the offender and doesn't want to deal with the criminal justice system.
- In terms of cases which do go forward in court, proof of the defendant's body fluids on the victim's person is very powerful evidence whether or not identity is an issue.
- DNA testing is relevant to non-stranger rape. I believe there is some statistical evidence that serial rapists tend to start with victims that they know before moving to victims who are strangers. Whether or not it is the norm, it is certainly common enough that having the DNA of non-stranger rapists in the databanks is a useful investigative tool.

- Entering information into CODIS is intended to find perpetrators in cases in which there are no suspects. I would think LE would want to put evidence into the database to see if it matches with other crime scene evidence to identify a serial offender.
- Even if the victim didn't want to report after matches were made to other crimes, the identification of a serial offender nationally can be very helpful.
- Some victims are only willing to proceed if the same perpetrator has abused other victims. Having the forensic exam evidence processed without automatically triggering prosecution can ultimately be in line with victims' wishes.
- Our Dept. of Health, Forensic Biology Lab receives kits directly from the hospitals and then stores the kits (indefinitely). RI has no statute of limitations on first degree sexual assault. The consent form provided to the survivor/patient asks their consent for medical personnel to conduct the exam and for the Department of Health (DOH) to analyze the evidence collected. A separate part of the form asks for specific authorization by the patient/survivor to allow the release of exam results, medical records, etc. to law enforcement. The survivor/patient can check whether they "Do" or "Do Not" authorize the release to law enforcement. Kits are transported to the DOH by hospital courier (in a few jurisdictions, the police courier).
- Our DOH is working on a no-suspect grant/database involving CODIS. In those cases where victims have consented to release of information to police but police do not have a suspect, the exam kit data is entered (if the case meets other criteria). Currently they only process the exam materials if requested by prosecution; otherwise, the evidence (dry swabs, etc.) is just preserved.
- When drafting consent forms, it is important to check with the local SART, prosecutors, and law enforcement about the specific guidelines. For example, a listserv subscriber indicated the detective's interview was always a part of the rape kit but, at least in the special victims' bureau I ran, this was only sometimes true. Each hospital had a slightly different procedure for what they did with the investigator's report.

Resources

Indiana Statute on forensic exam kit storage guidelines and funding

SOURCE: IC 16-21-8-10; (07)IN1655.1.15. --> SECTION 15. IC 16-21-8-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10.**

(a) Law enforcement shall:

- (1) obtain the sample and the form signed under section 9 of this chapter within forty-eight (48) hours of a provider's notification; and**
 - (2) transport the sample to secured storage.**
- (b) Law enforcement shall keep the sample in secured storage until the earlier of the following:**
- (1) One (1) year after the date the sample is placed in secured storage.**
 - (2) The victim reports the sex crime to law enforcement and the sample is transported to the crime lab for investigation and use as evidence.**
- (c) The division shall notify the victim, as described in subsection (d), that the victim's sample will be removed from secured storage and destroyed if the victim does not report the sex crime to law enforcement at least ten (10) days before the date described in subsection (b)(1).**
- (d) The notice the division is required to provide a victim under subsection (c) shall be sent:**
- (1) by first class mail to the individual's last known address; and**

- (2) by electronic mail to the individual's electronic mail address.
- (e) Each county shall develop and implement a plan for the secured storage of samples.

SOURCE: IC 5-2-6.1-49; (07)IN1655.1.2. --> SECTION 2. IC 5-2-6.1-49 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 49. (a) The secured storage fund is established as a dedicated fund to provide money to assist counties to pay expenses for the secured storage of samples from forensic medical examinations of sex crime victims.**

- (b) The division shall administer the secured storage fund.
- (c) The institute shall identify grants and other funds that can be used to fund the secured storage of samples from forensic medical examinations of sex crime victims.
- (d) Money in the secured storage fund at the end of a fiscal year does not revert to the state general fund.

State Rape Reporting Requirements

http://www.ndaa.org/apri/programs/vawa/state_rape_reportings_requirements.html

Summary of Rape Reporting Requirements

http://www.ndaa.org/pdf/rape_rept_summary.pdf