

Nine Tips for Conducting Victim-Centered Prosecution in Cold Case Sexual Assaults

Victims' trust in the criminal justice system can be weakened when a sexual assault remains unsolved or a case goes cold. The handling of the original investigation and the passage of time not only interfere with victims' healing process but also can impact their willingness to reengage with investigators and/or prosecutors. As a prosecutor, you have a unique opportunity to positively impact victims' perception of—and engagement with—the criminal justice system during the reopening of a cold case. This National Sexual Assault Kit Initiative (SAKI) resource provides nine tips that you can implement to enhance the support, safety, and trust needed to encourage victims' continued participation in the criminal justice process.

1. Show Respect

Victims play a central role in the criminal justice process; they are also individuals who come into the case with unique needs and life circumstances. A victim-centered response recognizes these two aspects and applies practices that respect the victim's unique experience. Assessing victims' past experiences with the criminal justice system is important to reinforce current positive interactions and repair these previous harmful experiences; additionally, this practice helps to personalize the approach with each victim. This approach is particularly recommended when deciding how and when to notify a victim about reopening their cold case. For example, victims may have

- ◆ developed a relationship with prosecutors or investigators involved in the original case,
- ◆ experienced their case being passed through many different hands, or
- ◆ had only minimal contact with the criminal justice system.

In any of these circumstances, introducing new individuals to the case can increase victims' anxiety levels. Ensure that any initial notification happens in person; this information should be communicated clearly and compassionately, and with victims' privacy in mind.

2. Be Patient

The principles of a victim-centered approach involve gradual engagement. Take time to build and develop a relationship with the victim based on trust and respect. Systems-based

advocates as well as community-based advocates can assist you in discussions with victims and may represent a consistent presence for victims during the criminal justice process.¹ Pay attention to signs of frustration or disappointment that victims may show.

Develop meaningful dialogue and a path toward building trust. In certain circumstances, offering an apology that acknowledges how the victim may have been mistreated and the timeline for bringing the perpetrator to justice may be appropriate.² Be candid with victims about the case's strengths and weaknesses, and discuss with victims how you have identified strategies to overcome any challenges the case may present.

3. Acknowledge Trauma

Acknowledge the central role victims play in the judicial process and consider their needs throughout the timeline. The prosecutor's duty to pursue justice is consistent with offering support to victims. Acknowledge the trauma that victims have experienced (1) from the assault as well as (2) from other, unrelated sources of trauma that may be—or may have been—present in their life.

Engage in practices that reduce the risk of re-traumatizing victims, and remain aware of victims' needs and reactions throughout the case. Recognize that your message to victims, both what you say and how you say it, can aggravate or mitigate the likelihood of re-traumatization. Acknowledging the offender's responsibility for the victim's trauma can help with identifying and interpreting evidence, as well as assist jury members in understanding the effects of trauma.

4. Listen and Inform

Victims may feel reluctant to reengage with the legal system for several reasons. One such reason may be related to their initial interactions with law enforcement, first responders, or other individuals involved in the criminal justice process.³ Engaging victims in open dialogue can help to overcome their experiences and feelings related to secondary victimization.

Listen to victims and incorporate their informed input into decision making.⁴ Help educate victims by discussing prosecutorial discretion and the factors upon which

decisions in their case are made. Explain that their input is one of those factors, and that they will be provided with regular notification as the case progresses.⁵ If victims are reluctant to engage in the process, ask questions to better understand if external factors may be holding them back. Sexual assault robs victims of self-determination and choice; therefore, try to do everything possible to instill victims with a sense of empowerment while promoting the importance of, and potential for, healing. This healing can come from many sources, including the decision to engage with the criminal justice system.

Although the criminal justice system may offer victims a primary source of healing, it may also create stress for victims during trial because of the personal attacks that the defense may attempt. Inform victims of the strategies that you and your team will use to protect victims and counter those attacks. Victims may express unwillingness or inability to participate in a trial. As a component of keeping victims fully informed, explain the challenges for proving the elements of the case without victim testimony. Supporting victims regardless of their decision to testify is vital to maintaining their trust and engagement.

5. Collaborate with Multidisciplinary Partners

Collaborate with multidisciplinary partners to enhance everyone's understanding about the unique needs of cold case sexual assault victims. Research shows that responding to sexual assault in a collaborative, coordinated manner motivates more victims to take advantage of services and engage in the process, which helps with holding offenders accountable and increases safety for victims and communities.⁶ Collaborating allows prosecutors and other professionals within the criminal justice system to share resources and knowledge, review and revise their practices regularly, change their responses to current issues, and make sure that their practices remain sustainable.⁶ All relevant partners should also work collaboratively to address victims' legal, medical, and/or mental health needs. Partners must be mindful of their unique roles and responsibilities and understand how to work through any disagreements or conflicts.

6. Connect Victims with Services

Connect victims with services, where appropriate. Engaging with the criminal justice process can be daunting for victims; reengaging after a significant amount of time has passed can magnify their concerns. There are numerous resources that offer critical support. Work with their multidisciplinary partners to connect victims with the necessary services they

need to reengage and stay engaged. Resources may include, but are not limited to, the following:

- ◆ **Systems-based advocates** serve as a liaison between prosecutors and victims, and with law enforcement. They support victims throughout the legal process; additionally, systems-based advocates help law enforcement and prosecutors communicate sensitive information. Although systems-based advocates do not have privilege and cannot serve as a confidential resource, they can help prosecutors and victims build trust and work together to move a case forward.
- ◆ **Community-based advocates** provide confidential support for victims throughout the legal process. They work with systems-based advocates and can assist or operate as a liaison among law enforcement, prosecution, and victims. This assistance can be crucial to supporting victims throughout the criminal justice process, as well as with healing and other aspects of their lives following a sexual assault.⁷ In many jurisdictions, confidential communications with community-based advocates are also privileged.⁸
- ◆ **Sexual assault nurse examiners (SANEs)**⁹ provide medical care to victims by conducting medical forensic exams and supporting victims throughout the exam process. SANEs offer responsive, trauma-informed health care and address victims' immediate medical needs, such as providing prophylaxis and treating injuries. SANEs also obtain each victim's medical history and gather the victim's account of the assault. SANEs prioritize victims' healthcare needs, which is good not only for victims but also for their case. This approach strengthens the case by preserving the SANE's objectivity, neutrality, and the admissibility of certain statements and evidence. In cold cases, SANEs may provide expert testimony to explain the sexual assault forensic exam process and any findings.¹⁰

Other community stakeholders may be able to provide cold case sexual assault survivors with support and assistance that go beyond this list. For example, if a victim is a member of a special population (e.g., specific faith communities, LGBTQ, a unique cultural group, persons with disabilities), there may be community groups that can help provide a support network. Additionally, these other forms of support may not have been as accessible shortly after the assault. Ideally, prosecutors' offices will build relationships with as many community groups as possible so that contacts and relationships are already in place. It is important to think broadly about organizations that can provide victims with the support they need to heal and stay engaged with the system.

7. Address Safety

Cold case sexual assault victims may have spent years fearing the return of their assailant or may have achieved some amount of closure or resolve before their case was reopened. With this in mind, respond appropriately to victims' safety concerns upon and throughout the reopening of the case.

Educate victims about the various methods of witness intimidation, including technology-facilitated methods as well as the wide range of other conduct that constitutes intimidation and tampering. If a defendant is in custody, consider monitoring jail phone calls, where permissible. Stalking represents other criminal conduct that could be minimized or unrecognized by victims. This is another area in which you can connect victims to critical resources.¹¹

Discuss safety with victims early to ensure they work with advocates to develop a safety plan. You can pursue different avenues when requesting pretrial bail and sentencing conditions that promote victim safety.¹² Victims may also be able to seek civil protection orders. In either scenario, consult with the victim about their personal circumstances to ensure their needs are considered in any conditions requested. A safety plan may include obtaining no-contact orders, which should be specific enough to ensure that they address any conduct that may pose a threat to the victim. Provide a copy of any court order that addresses safety plan issues to the victim, and address any violations with the court so that identified intimidation can be stopped and further intimidation can be prevented.

8. Prepare Victims for the Process

It is natural for any witness, including a victim, to feel anxious about upcoming court proceedings. Victims of sexual violence have several unique concerns that may relate to the same vulnerabilities their offender exploited in perpetrating the crime. However, some portion of a victim's concerns might be based on unfamiliarity with court hearings and the criminal justice process. You can help alleviate this by preparing victims for the process. At a minimum, this preparation involves giving the victim a tour of the courtroom before the proceedings to show them where the various participants will be located as well as their function. Preparation might also involve talking to victims about the case's prosecution theories and general strategy. Helping victims understand "why" something is happening can be empowering. Additionally, inform victims about general legal procedures and courtroom decorum. One preparation method that might be helpful is to give victims an opportunity to review any applicable jury instructions. Depending on the facts of the case, a particularly vicious cross-examination may be a possibility. Consider working

with your colleagues to help prepare victims for trial with activities (e.g., mock cross-examinations) to avoid breaching the victims' trust with an assigned prosecutor.

9. Engage Victims in Sentencing and Disposition

Prepare victims for sentencing or final disposition of the case. Discuss with victims the opportunity to make a statement and present it themselves in court or have a written statement read into the record. Ensure that all restitution information has been provided prior to any sentencing hearing so it can be ordered by the court. Also discuss with victims any additional no-contact conditions that are part of the sentence. If the defendant will be serving a prison term, ensure that arrangements are made with the Department of Corrections to notify the victim, if possible, when the defendant will be released. Encourage victims to advise appropriate corrections personnel of any mail and/or calls received from the defendant while incarcerated. If there is an appeal, maintain contact with the victim to advise them about the status of the proceedings and length of time anticipated for this litigation.

References:

1. For more information about the similarities and differences between these two disciplines, refer to the SAKI brief *Community- and Systems-Based Advocates* at www.bit.ly/cbas_sbbs.
2. See *Considerations for Victim Notification Protocol*, AEquitas & RTI (2017) (available upon request).
3. In one study of a victim's reengagement with the legal system in a cold case, the majority of victims (82%–93%, depending on the testing site) stated they felt violated after their contact with the legal system, and many were reluctant to seek further legal help. Campbell, R. *Rape Survivors' Experiences with the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference?*, 12 *Violence Against Women* 30 (2006). In a study conducted by Noël Busch-Armendaris, which involved in-depth telephone interviews with seven victims who had reengaged after Combined DNA Index System (CODIS) hits in their cases, all participants reported feeling frustrated about the length of time between the original report and the current notification. Therefore, offering an apology for the delay in testing and initial experience can help to build a positive relationship between the victim and their notifiers, directly impacting the victim's desire to participate in their cold case.
4. See *The Decision to Prosecute*, SAKI (July 2018). www.bit.ly/decision_prosecute.
5. Where appropriate, ensure victims that soliciting their input and providing notification of the progress of the case is statutorily mandated. See, for example, Or. Const. art. I, § 42; N.J. Stat. Ann. § 52:4B-36 (West); Wyo. Stat. Ann. § 1-40-204 (West).
6. *Model Response to Sexual Violence for Prosecutors*, AEquitas, Justice Management Institute & Urban Institute, 12 (2017).
7. For additional information on how prosecutors and advocates can work together, see *Advocacy Meets Prosecution*, SAKI (July 2018). www.bit.ly/advocacy_prosecution.
8. Kristiansson, V. *Walking A Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions, Parts I and II*, 9/10 *Strategies* (2013), available at www.aequitasresource.org.
9. Markowitz, J. *A Prosecutor's Reference: Medical Evidence and the Role of Sexual Assault Nurse Examiners in Cases Involving Adult Victims*, AEquitas (2010).

10. *Id.*
11. For additional resources on stalking, see *Stalking Prevention, Awareness, and Resource Center (SPARC)*, AEquitas, www.bit.ly/AEquitas_SPARC (last visited June 6, 2018).
12. *Model Response to Sexual Violence for Prosecutors*, AEquitas, Justice Management Institute & Urban Institute, 12 (2017) (§ 4.1-D. Request Bail Commensurate with the Seriousness of the Offense).

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AEquitas, The Prosecutors' Resource on Violence Against Women