

Understanding the Use of John Doe Arrest Warrants in Prosecuting Cold Case Sexual Assault *for Advocates*

For a myriad of reasons, a sexual assault case may not have gone forward initially but is now being advanced. This resource focuses on cold case sexual assaults that involve previously unsubmitted sexual assault kits (SAKs) that are now being tested. Additionally, this resource provides an overview of John Doe arrest warrants, which may be used to toll the statute of limitations in cases involving previously unsubmitted SAKs that may have been inactive months, potentially years or even decades.

Following the discovery that evidence contained in SAKs remained unsubmitted for testing in sexual assault investigations in jurisdictions across the country, the Bureau of Justice Assistance funded the National Sexual Assault Kit Initiative (SAKI), which provides resources and funds for victim support, investigation, prosecution, and testing of previously unsubmitted SAKs.¹ Under SAKI, previously unsubmitted SAKs are being tested, including some that are many years old.² As a result of the testing, as well as an increase in substantive training of law enforcement and prosecutors, many of these cold investigations and prosecutions are being renewed. Even when investigations are delayed or are cold, law enforcement and prosecution still can pursue justice. One tool available for certain cases is the John Doe arrest warrant.

SAKI efforts have revealed that, where the statute of limitations is nearing expiration, the John Doe arrest warrant may be crucial in tolling (i.e., stop the running of) the clock. This resource will provide an overview of John Doe arrest warrants and how they may be used in prosecuting cold case sexual assaults.

What is a John Doe Arrest Warrant?

The court issues a John Doe arrest warrant when the suspect in a case can be identified by his or her³ unique genetic profile but not by name. The warrant is issued based on the filing of a charging document, such as a criminal complaint,⁴ that describes the suspect's DNA profile. John Doe arrest warrants,⁵ which identify the suspect only by his or her genetic profile,⁶ may be sought or filed by prosecutors to initiate a criminal proceeding before the statute of limitations expires.⁷ Courts across the United States

John Doe Arrest Warrant

- ◆ Issued by the court when a suspect can be identified by a genetic (DNA) profile, but not by name
- ◆ Based on filing of a charging document, such as a criminal complaint
- ◆ Stops the tolling of the clock on statute of limitations
- ◆ Establishes prosecutorial diligence in solving a case

have upheld the use of John Doe arrest warrants to meet standards requiring that charging documents contain “a description by which someone may identify the person with reasonable certainty.”⁸

How Is a Genetic Profile Obtained?

Following a sexual assault, evidence may be collected from a crime scene, victim's body,⁹ or other source(s) and submitted to a laboratory for testing. This evidence may contain a suspect's DNA, also known as his or her unique genetic profile.¹⁰ Typically, after testing is complete, the DNA profile obtained from the evidence is appropriately uploaded into the local, state, and national DNA database known as the Combined DNA Index System (CODIS) to see whether there is a match or “hit.”¹¹

When Are John Doe Arrest Warrants Issued?

Some cold case investigations may progress after a crime laboratory tests previously unsubmitted evidence. For example, if a match to a known individual exists, an ordinary arrest warrant may be issued. However, when the test results do not match any existing CODIS profile and there is a risk that the limitations period may expire before a positive identification of a suspect can be made, a John Doe arrest warrant can toll the statute of limitations. A John Doe arrest warrant, identifying the suspect as “John Doe, unknown [male/female] with matching DNA at [specific genetic locations],” allows the prosecutor to initiate the prosecution.¹²

How Are John Doe Arrest Warrants Used to Toll the Statute of Limitations in Cold Cases?

Some states require a suspect to be charged¹³ with the commission of certain criminal offenses within a certain time frame after the crime occurs.¹⁴ This time frame is known as the statute of limitations, and its primary purpose is to ensure defendants have the opportunity to defend themselves effectively against charges, while evidence and witnesses are still available to them.¹⁵

Statutes of limitations vary by jurisdiction, crime, and circumstance (e.g., the date of the assault, the specific sexual offense charged, the victim's age at the time of the assault). Some states require a sexual assault to be charged within a certain period, whereas others allow charging at any point in time after the crime occurs.¹⁶ Many states also have provisions that toll the statute of limitations under certain circumstances, such as when a defendant has fled the jurisdiction and becomes a fugitive, or when a DNA match has not yet identified a suspect. In some jurisdictions, the statute of limitations period begins once the suspect's DNA profile is determined; these are the cases in which John Doe arrest warrants are most necessary. In other jurisdictions, the statute of limitations period is tolled until an identified suspect can be named based upon a DNA match.¹⁷

Conclusion

John Doe arrest warrants allow the criminal justice system to hold offenders accountable for their crimes, promoting justice and safety for victims as well as the community. Carefully evaluating the timeliness of each case within the applicable statute of limitations (by engaging in appropriate

case analysis and prioritizing any case nearing an expiration period) is vital, especially with high volumes of cases ensuing from testing previously unsubmitted SAKs. Acting with due diligence in a state without a statute of limitations is also important, and with large numbers of DNA profiles being submitted to CODIS, there remains a potential for a hit in the future.

References:

1. Sexual Assault Kit Initiative. (n.d.). Retrieved from www.sakitta.org.
2. Ibid.
3. "His" and "her" are used in this publication, because genetic profiles are sex specific.
4. Jurisdictions across the country vary in their charging requirements. Some states require charging by indictment, for example, which may follow the issuance of a criminal complaint or may be returned by a grand jury without a preliminary complaint. For additional information, see Ulmer, F. B. (2001). Using DNA to Obtain "John Doe" Arrest Warrants and Indictments. *Washington & Lee Law Review*, 58(4), 1585–1624. Retrieved from <http://scholarlycommons.law.wlu.edu/wlulr/vol58/iss4/14>
5. Someone, such as the prosecutor, files a complaint with the court and, in response, the court issues either a summons or warrant. Please note terminology may vary by jurisdiction.
6. Statutes of limitations vary greatly among jurisdictions in both duration and whether or how the limitations period may be tolled when DNA has been collected. Some states will begin running the statute of limitations at the point the jurisdiction is in possession of DNA evidence (e.g., N.J. Stat. Ann. 2C:1-6, 2007). The statute of limitations may not begin running in other jurisdictions until the evidence is tested (e.g., Mont. Code Ann. § 45-1-205). In some jurisdictions, the limitations period may be extended following a DNA match (e.g., Ohio Rev. Code Ann. § 2901.13).
7. "A law that bars claims after a specified period; specifically, a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered). The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh." Statute of limitations. (2014). In *Black's Law Dictionary* (10th ed.).
8. See, for example, *State v. Dabney*, 663 N.W.2d 366 (Wis. Ct. App., 2003); *State v. Danley*, 853 N.E.2d 1224 (Ohio Ct. C.P., 2006); *People v. Martinez*, 855 N.Y.S.2d 522 (N.Y. App. Div., 2008); Ulmer, note 6 at p. 1590 n. 99 (2001); U.S. Const. Amend. IV (requiring that warrants particularly describe the person who is going to be arrested). Courts have held that the genetic profile satisfies the particularity or reasonable certainty requirement of identification necessary to notice and due process. The prosecutor should amend the complaint when the name of the suspect associated with the genetic profile is determined. Although the statute of limitations was tolled with the filing of the information, providing the suspect with requisite constitutional notice and due process is essential. See *State v. Burdick*, 395 S.W.3d 120 (Tenn. 2012).
9. A suspect's DNA evidence is often collected from a victim's body by a sexual assault nurse examiner and placed in a SAK. Typically, when a sexual assault is reported, a law enforcement officer will pick up the SAK at the hospital and transport it to the laboratory to maintain the SAK's chain of custody. A chain of custody ensures proper handling of evidence when transporting a SAK from one location to another so that the contents can remain in their original, untouched state prior to testing.
10. With the exception of identical twins, each human being has a unique genetic profile—so no matter where an individual's DNA is found, it will match one person. See Jeanguenat, A. (2017). *Sexual Assault Kit Initiative: Understanding DNA Testing and Reporting: Unsubmitted Sexual Assault Kits*. RTI International. Retrieved from <https://sakitta.org/resources/docs/SAKI-Understanding-DNA-Testing-and-Reporting.pdf>.

A Note on Pre-Accusatorial Delay

Even in jurisdictions without a statute of limitations, or in jurisdictions that toll the running of the limitations period until an identified suspect has been named, a John Doe arrest warrant may help establish that law enforcement has exercised due diligence in pursuing the investigation to the extent it is able to do so. Some criminal defendants who were not identified until years later have argued that their constitutional rights were violated because the prosecution failed to act promptly in the investigation and charging of the case. While such claims of pre-accusatorial delay are rarely successful, filing a John Doe arrest warrant may help to establish the prosecution's diligence and good-faith efforts to prosecute the offender, thereby helping to defeat such claims.¹⁸

11. A CODIS “hit” can be made by a DNA profile from evidence in an unsolved case matching the DNA profile from a convicted offender or an arrestee. A “hit” also can be made between evidence in an unsolved case and another unsolved case or to a previously solved case; see Lacroix, C. *What Does a CODIS Hit Mean?* (2013). Posted entry, Virginia Department of Forensic Science. Retrieved Oct. 3, 2017, from http://www.dfs.virginia.gov/question__answer/what-does-a-codis-hit-mean/. From Federal Bureau of Investigation: “The Combined DNA Index System, or CODIS, blends forensic science and computer technology into a tool for linking violent crimes. It enables federal, state, and local forensic laboratories to exchange and compare DNA profiles electronically, thereby linking serial violent crimes to each other and to known offenders. Using the National DNA Index System of CODIS, the National Missing Persons DNA Database also helps identify missing and unidentified individuals.” Federal Bureau of Investigation. (n.d.). *Combined DNA Index System (CODIS)*. <https://www.fbi.gov/services/laboratory/biometric-analysis/codis>. See also Jeanguenat, A. (2017). *Sexual Assault Kit Initiative: Understanding DNA Testing and Reporting: Unsubmitted Sexual Assault Kits*. <https://sakitta.org/resources/docs/SAKI-Understanding-DNA-Testing-and-Reporting.pdf>.
12. For a sample John Doe arrest warrant, please contact AEquitas at info@aequitasresource.org or (202) 558-0040.
13. “According to the American Bar Association’s Model Rules of Professional Responsibility and the rules of ethics or professional responsibility in the various jurisdictions, a decision to file a criminal charge must be based upon probable cause to believe the defendant has committed the crime.” Aequitas, Justice Management Institute, & Urban Institute. (2017). *Model Response to Sexual Violence for Prosecutors: An Invitation to Lead*. Available at www.aequitasresource.org/library.cfm.
14. Joyful Heart Foundation & AEquitas. (2017). *Statute of Limitations for Sexual Assault Offenses*. Available upon request from AEquitas at info@aequitasresource.org.
15. See note 4.
16. See Joyful Heart Foundation & AEquitas, see note 11.
17. *Ibid.*
18. Pre-accusatorial delay is a due process claim brought to address the time lapse between the commission of the crime and the filing of the complaint/ indictment.
19. Amy Jeanguenat, MFS, has spent her career working in the private forensic industry supporting efforts world-wide to prevent and eliminate DNA backlogs. Mrs. Jeanguenat helped manage the successful completion of sexual assault kit outsourcing projects from Houston, TX, and Detroit, MI. Currently Mrs. Jeanguenat works as the principal consultant at Mindgen, LLC.

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