

Understanding the Use of John Doe Arrest Warrants in Prosecuting Cold Case Sexual Assault for Law Enforcement

Cold Case Investigations

Criminal investigations, especially those for serious offenses such as sexual assault, are often time sensitive and resource intensive. Although law enforcement works diligently to obtain evidence from witnesses and crime scenes and to identify or interview known suspects, there still may be some cases that do not move forward for one reason or another and end up “cold.” A cold case sexual assault is “any sexual assault case whose probative investigative leads have been exhausted.”¹ Although some cold case sexual assaults may have led to investigative dead ends, others may have involved unsubmitted sexual assault kits (SAKs) that were not submitted to laboratories until many months or years after the crimes occurred.² Finally, there may be cases that, for a myriad of reasons, did not go forward. This resource will provide an overview of John Doe arrest warrants and how they may be used in investigating and prosecuting cold case sexual assaults.

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.³ Under SAKI, previously unsubmitted SAKs are being tested, including some that are many years old.⁴ 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.

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

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.

Criminal Investigations and Statutes of Limitations

A primary consideration for law enforcement officers is that many cold case sexual assaults may be several years old and in danger of prosecution being barred by the statute of limitations. A statute of limitations, which exists for sexual offenses in many jurisdictions, is the time frame by which charges must be filed or an indictment must be made. The primary purpose of a statute of limitations is to ensure defendants have the opportunity to defend themselves effectively against charges, while evidence and witnesses are still available to them.⁵ John Doe arrest warrants are useful, because they “toll” (stop the running of) the statute of limitations. In cases of previously unsubmitted SAKs, the statute of limitations should be considered in the renewed investigative and prosecutorial decision-making process.⁶

Suspect’s Unique Genetic Profile and John Doe Arrest Warrants

Following a sexual assault, law enforcement may collect evidence from crime scenes, victims,⁷ and other sources and submit it for testing at a crime laboratory. This evidence may contain a suspect’s DNA, also known as his or her⁸ unique genetic profile.⁹ Typically, after testing is complete, the DNA profile obtained from the evidence is uploaded into the local, state, and national DNA database, known as the Combined DNA Index System (CODIS), to see whether there is a “hit.”¹⁰

In most criminal cases, a criminal “complaint” naming a defendant is used to file charges and to obtain an arrest warrant. In some cases, however, only a defendant’s DNA profile, and not his or her name, is known. To prevent expiration of the statute of limitations, prosecutors may file charges by naming the defendant only by his or her genetic profile.¹¹ Such warrants are called John Doe arrest warrants, in which the defendant (unknown suspect DNA

profile obtained from the evidence) is referred to in a criminal complaint as “John Doe, unknown [*male/female*] with matching DNA at [*specific genetic locations*].”¹² Because “[t]he law in most states requires identification of a suspect to contain a description by which someone may identify the person with reasonable certainty,”¹³ use of a suspect’s genetic profile in the warrant has been upheld by the courts.¹⁴ The issuance of an arrest warrant effectively tolls the statute of limitations.¹⁵

When there is no match between the sample submitted to a profile in the database, law enforcement and prosecution must be aware of when the statute of limitations will expire to ensure that the prosecutor is able to charge the case (i.e., file the John Doe complaint to obtain an arrest warrant) within the applicable timeframe. Law enforcement should be prepared to discuss the case with the prosecutor, as they renew their investigation following the issuance of the John Doe arrest warrant.

Upon renewal, the primary focus should be on victim and community safety and potential of evidence to establish elements of the crime. Law enforcement and prosecutors must responsibly balance the weight of the crime and its impact on victims and the community with the due process rights of defendants. Although an arrest based on a John Doe warrant may be made at any time, all actions should be taken with due diligence.¹⁶ For law enforcement, this may include preparing for a potential offender interview and obtaining a search warrant to collect suspect DNA samples for confirmation and comparison purposes.

John Doe Arrest Warrant Requirements

Law enforcement should work closely with prosecutors and crime laboratory personnel to confirm the accuracy of the genetic profile and ensure that it is recorded carefully on the complaint (i.e., charging document) and warrant.¹⁷ CODIS requires that 20 core loci be identified for a profile to be entered into the database.¹⁸ These 20 loci should be included in the John Doe arrest warrant. The warrant also should contain verification of the methodology and protocol for DNA testing, genetic profile obtained, statistical probability of the profile appearing in the relevant population,¹⁹ the sex of the suspect, and, when possible, other descriptive information.²⁰ Information sufficient for probable cause also should be provided in the warrant.²¹ Additionally, John Doe complaints should include any available and detailed physical description, attached photographs, or even addresses of a residence with a physical description.²²

In addition to preparing and filing the warrant, the prosecutor may submit a brief or memorandum to the Court in support of the issuance of the John Doe arrest warrant, summarizing the evidence in the case and detailing applicable case law and authority.

When the name of the suspect associated with the genetic profile is determined, the prosecutor should amend the warrant in a timely fashion. Although the statute of limitations was tolled, the filing of this new information provides the defendant with requisite constitutional notice and due process.²³ The suspect will be arraigned on the amended information that is within the statute of limitations.²⁴

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.²⁵

Conclusion

In any jurisdiction with a statute of limitations, the John Doe arrest warrant may be employed effectively when the genetic profile is known, but there is no named individual associated with the profile, there is no CODIS database hit, and the statute of limitations is nearing expiration. 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. In jurisdictions without a governing statute of limitations, a John Doe arrest warrant is also a means of establishing diligence upon discovery of an offender profile, proactively countering a potential claim of pre-accusatorial delay.²⁶

References:

1. National Institute of Justice. (n.d.). *What Is a Cold Case?* Retrieved from <https://nij.gov/journals/260/pages/what-is-cold-case.aspx>.
2. Sexual Assault Kit Initiative. (2017). Retrieved from www.sakitta.org.
3. Sexual Assault Kit Initiative. (n.d.). Retrieved from www.sakitta.org.
4. Ibid.
5. "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.).
6. Previously unsubmitted sexual assault kits associated with cases that are outside the statute of limitations or that may be currently tolled may not be barred as evidence of other crimes or prior bad acts. Law enforcement should check with prosecutors and their jurisdiction's laws to analyze admissibility of evidence.
7. 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.
8. "His" and "her" are used in this publication, because genetic profiles are sex specific.
9. 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/. Each human being has a unique genetic profile, so no matter where his or her DNA is found, it will match. 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>.
10. "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)*. Retrieved Aug. 8, 2017, from <https://www.fbi.gov/services/laboratory/biometric-analysis/codis>. 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>.
11. 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>.
12. For a sample John Doe complaint and arrest warrant, please contact AEQUITAS at info@aequitasresource.org or at (202) 558-0040.
13. 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>. See also Joyful Heart Foundation & AEQUITAS. (2017). *Statute of Limitations for Sexual Assault Offenses*. Available upon request from AEQUITAS at info@aequitasresource.org.
14. See *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). 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).
15. Joyful Heart Foundation & AEQUITAS. (2017). *Statute of Limitations for Sexual Assault Offenses*. Available upon request from AEQUITAS at info@aequitasresource.org.
16. "(18c) 1. The diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. Also termed *reasonable diligence*; *common diligence*. . . . 3. *Criminal law*. The prosecutorial burden of meeting all speedy-trial requirements in bringing a criminal defendant to justice. Due diligence. (2014). In *Black's Law Dictionary* (10th ed.).
17. For a sample John Doe complaint and arrest warrant, please contact AEQUITAS at info@aequitasresource.org or at (202) 558-0040.
18. Federal Bureau of Investigation. (n.d.). *Frequently Asked Questions on CODIS and NDIS*. Retrieved Sept. 27, 2017, from <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet>; Hares, D. R. (2015, July 17). Selection and implementation of expanded, CODIS core loci in the United States. *Forensic Science International: Genetics*, 33–34. Epub March 1, 2015. doi: 10.1016/j.fsigen.2015.03.006
19. See *State v. Belt*, 179 P.3d 443, 447, 450 (Kan. 2008).
20. See *Commonwealth v. Dixon*, 458 Mass. 446 (2010).
21. "A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime." Probable cause. (2014). In *Black's Law Dictionary* (10th ed.).
22. This information may be used to obtain an arrest warrant on its own but should also be included whenever possible to supplement the genetic profile. See Bieber, M. A. (2002). Meeting the statute or beating it: Using "John Doe" indictments based on DNA to meet statute of limitations. *University of Pennsylvania Law Review*, 150(3), 1079–1098. Retrieved from http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3267&context=penn_law_review
23. *State v. Burdick*, 395 S.W.3d 120 (Tenn. 2012).
24. Ibid.
25. Pre-accusatorial delay is a due process claim brought to address the lapse in time from the crime to filing a complaint or an indictment. See also note 13.
26. Ibid.
27. 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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