

Final Report
Senate Joint Resolution 1
Untested Rape Kits



Criminal Justice Council

June 2016



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
CRIMINAL JUSTICE COUNCIL

STATE OFFICE BUILDING – 10th FLOOR
820 FRENCH STREET
WILMINGTON, DELAWARE 19801

Telephone: (302) 577-5030
Fax: (302) 577-3440

June 2016

Dear Reader:

On June 30, 2015, Governor Jack A. Markell signed into law Senate Joint Resolution #1 pertaining to the inventory and prioritization of untested rape kits in the State of Delaware. The Joint Resolution required that the Criminal Justice Council inventory, prioritize, and report the aggregate number of untested rape kits in the state including recommendations on how best to improve the criminal justice response to sexual assault.

Please find on the pages that follow, the final report pursuant to SJR 1. The Criminal Justice Council would like to thank our long standing partners in the law enforcement community for their quick and full cooperation with the collection of this data and their input into the development of recommendations. The council would also like to thank the State Department of Justice, the Division of Forensic Science, the victim services community and the dedicated network of Sexual Assault Nurse Examiners.

While this is the final report that will be issued pursuant to Senate Joint Resolution # 1; the staff of the Criminal Justice Council and our partner agencies believe this report is just the beginning of a multi-faceted approach to improving the criminal justice response to sexual assault in our state.

If you have any questions, comments or require additional information pertaining to this report, please do not hesitate to contact the Criminal Justice Council at 302-577-5030.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. L. Kervick'.

Christian L. Kervick
Executive Director



Acknowledgements

Delaware Criminal Justice Council

Title 11: Chapter 87 of the DE Code

Mission:

The Delaware Criminal Justice Council is an independent body committed to leading the criminal justice system through a collaborative approach that calls upon the experience and creativity of the Council, all components of the system, and the community. The Council shall continually strive for an effective system that is fair, efficient, and accountable.

Special Thanks to:

Maureen Monagle, CJC, Primary Author
Victims Planning Coordinator

Matthew Rosen, CJC, Contributor
Senior Criminal Justice Planner

Ericka Blythe, CJC, Contributor
Criminal Justice Planner

Monica Celli, CJC, Contributor
Criminal Justice Planner

W. Scott McLaren, CJC
Deputy Director

Introduction

Many jurisdictions across the country are examining the issue of sexual assault evidence that has not been submitted to a crime lab for testing. Delaware is not alone in attempting to address this issue. On Jun 25, 2015, Senate Joint Resolution 1 was passed by the Delaware General Assembly and signed by the Governor Markell on June 30, 2015. This Joint Resolution required every law enforcement agency, law department, hospital, testing facility, and prosecutorial agency to report to the Attorney General's Office the number of unexamined sexual assault kits and their date of collection. In January 2016, the CJC reported a total 1,018 SAKs in law enforcement custody. Shortly after the initial report submitted in January, one local jurisdiction revised their number upwards after a more thorough inventory.

According to the information collected by law enforcement, there are a total of **1,033** sexual assault kits in law enforcement's custody that have never been submitted for testing. The breakdown is as follows:

- 1. Unsolved rapes/Sexual Assaults: 337**
- 2. Suspect DNA/Not Prosecuted: 80**
- 3. No Suspect DNA/Not Prosecuted: 392**
- 4. Suspect DNA/Case Resolved: 116**
- 5. No Suspect DNA/Case Resolved: 108**

The numbers reported above represent the total kits in twenty two (22) police departments across the state. The seventeen (17) remaining local police departments have reported they do not have any Sexual Assault Kits in storage. These numbers represent the total number of Sexual Assault Kits that were identified during the timeframe prescribed by the Joint Resolution, untested kits prior to September 2015.

Background

Sexual assault is a crime of power and control which can often result in physical trauma, significant mental anguish and suffering for victims.¹ According to the United States, Department of Justice, Office on Violence Against Women, sexual assault is *“any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape.”*

The problem of sexual assault is extensive across the country and the State of Delaware is no exception. According to the U.S. Department of Justice's National Crime Victimization Survey (NCVS), there is an average of **293,066** victims (age 12 or older) of rape and sexual assault each year. The crimes categorized as sexual assault are not new challenges to the criminal justice system. However, the issues surrounding crimes of sexual violence have been receiving an increasing amount of attention on a national, state and local level.

Again, sexual assault is a crime of power and control. It is a crime of violence against a person's body and will. Therefore, victims may be reluctant to report the assault to law enforcement and/or seek medical attention for a variety of reasons. Some victims may experience feelings of self-blame; shame, or fear of not being believed. For others, safety and/or repercussion from their abuser can be a very real concern. In some cases, victims may lack health insurance or believe the medical expenses would be too costly. And for others there may be confusion or a lack of trust in the criminal justice system. But for most victims the extensive and intrusive nature of a forensic medical exam or involvement in the criminal justice system just seems too overwhelming.

Pursuant to Senate Joint Resolution 1, the Criminal Justice Council was tasked with identifying a comprehensive program to improve the criminal justice response to sexual assaults in Delaware. The CJC worked with law enforcement, forensic medical personnel, forensic laboratory personnel, prosecutors and victims' advocates to identify strategies that may result in

¹ The terms “victim” and “survivor” are often used in discussion on sexual violence. In this report, the terms may be used interchangeably, and always with respect for those who have been impacted by these crimes.

enacting systematic changes to eliminate or reduce the number of unsubmitted sexual assault kits.

It is the hope of the Criminal Justice Council that the information in this report will be presented in a manner that will identify the issue and provide possible strategies to improve Delaware’s response to sexual assault. Victims and survivors of sexual assault often blame themselves for behaving in a way that they believe encouraged the perpetrator. It’s important to remember that the victim is never to blame for the actions of a perpetrator.

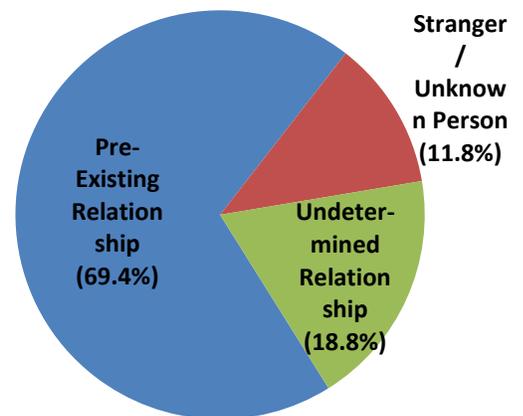
Crimes of Sexual Assault in Delaware

Reporting the rates of sexual violence can be difficult, as many victims choose not to report or involve the criminal justice system. There is no uncertainty, according to the national data, that the majority of sexual assaults are never reported to police, approximately 70% of sexual assaults are not reported to law enforcement.ⁱ

According to the most recent Uniform Crime Report (UCR), data indicates that the sexual assault rate in Delaware in 2013 was higher than the national average—28.7 per 100,000 people in Delaware versus the national rate of 25.2 per 100,000.ⁱⁱ This is a trend that has remained relatively consistent over the past 20 years, with only one year lower than the national average rate—2012 (FBI, 2015). In essence, while Delaware may be a relatively small state, the issues surrounding the criminal justice response to sexual assault crimes and the process for how rape kit evidence is collected and maintained should be made a priority.

In order to provide a better picture of the issue of sexual assaults in our State, the CJC analyzed the reported crimes of forcible rape. One of the benefits of Delaware’s composition and structure is having all reported crimes captured in the Delaware Criminal Justice Information System (DELJIS).

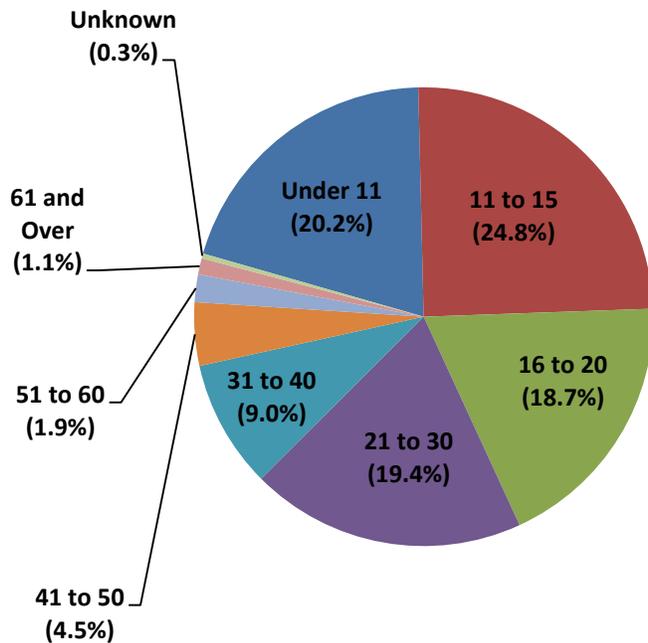
Relationship of Victim to Offender



Through the information reported in DELJIS, the CJC performed a statistical analysis of reported forcible rape incidents in Delaware over the five-year period from 2011 to 2015. Several charts summarizing the data are included here, and the full data is available in the Appendix of this report.

The data was obtained by running a DELJIS query of complainant report information for sexual assaults, and then winnowing the results to incidents of forcible rape only. For the purpose of this analysis, forcible rape refers to vaginal, oral, or anal intercourse with a person, without the consent of the victim. It is inclusive of cases in which the victim is incapable of consenting because of temporary or permanent mental or physical incapacity, or because of age. It does not include sexual assault with an object, unlawful sexual contact, statutory rape, or non-forcible incest.

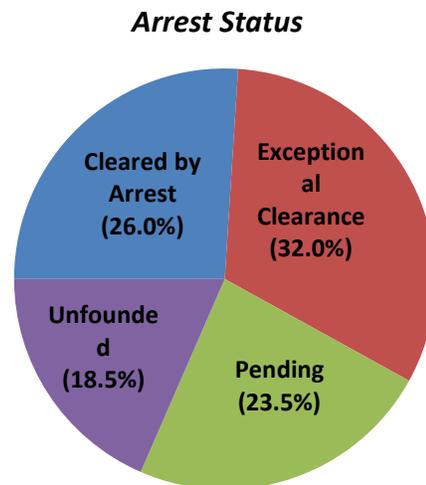
Age of Victim



The determination of which incidents constitute forcible rape was based on the UCR codes associated with the complaints. However, UCR codes in DELJIS are sometimes misclassified due to input errors. As such, it was not possible to produce a dataset of forcible rape incidents with complete precision. These figures should therefore be seen as estimates, rather than exact counts, of forcible rapes in Delaware.

The purpose of the analysis is to determine the relationships of the perpetrators to the victims, the ages of the victims, and the arrest and clearance statuses of the cases.

The data in the Appendix also compares the figures to national rates. The national-level data on relationships and victim age is drawn from the Federal Bureau of Investigation’s “Sex Offenses Reported via NIBRS in 2013,” and the national clearance data is from the FBI’s Crime in the United States 2014.



Evidence Collection in Crimes of Sexual Assault

DNA evidence, collected from a crime scene, has become a routine part of investigating and prosecuting major crimes. In cases of sexual assault, DNA evidence can also be collected from the victim’s body, clothes, or other personal belongings. Evidence collection is a critical component in successful investigation and prosecution of sex offenders. While the definition of justice may vary, the evidence collected by a trained Sexual Assault Nurse Examiner (SANE) is an important tool in achieving it for survivors of sexual assault.

The decision to seek assistance, or report a crime of sexual assault, is often a difficult, frightening and overwhelming process. Most often, a victim seeks medical attention as result of the injuries received by way of this violent crime. For some, the focus is on the treatment of a medical injury, not the potential evidence that may be collected through a forensic exam. Physical evidence for the SAK can be collected up to 120 hours following a sexual assault; but a victim may not be ready to report the assault. Timing can be critical in the collection of potential evidence. Just as critical is performing sexual assault forensic exams by professional, trained nurse examiner, in a victim-centered approach. Victims may choose to have a sexual assault forensic exam, sometimes known as a “rape kit,” to preserve possible DNA evidence and receive important medical care. It is very important to note, victims do not have to report the crime to have an exam. It does, however, give the victims a chance to safely collect and store evidence, should they decide to report at a later time. Allowing a victim time to decide about their

engagement with the criminal justice system is important to returning power to victims and giving them control over their participation in the process.

Under the Violence Against Women Act (VAWA), grantees of the STOP Violence Against Women Formula Grant Program must meet certain requirements concerning payment for the forensic medical exam in order to receive funds. Specifically, states, territories, and tribes must certify that they, or another governmental entity, "incurs the full out-of-pocket cost of forensic medical exams" for victims of sexual assault. Under the VAWA Reauthorization of 2005 (42 U.S.C. § 3796gg-4(d)), states may not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both." Under the most recent reauthorization, "VAWA 2013," the federal law further clarifies that victims cannot be required to pay any out-of-pocket costs to obtain a forensic exam.

In Delaware, the Victims Compensation Assistance Program (VCAP) of the Department of Justice is the agency that provides financial assistance to cover the costs of forensic medical exams (11 Del C. § 9023(a)). These examinations are provided free of charge to victims of sexual assault, but the statute does permit a hospital or health care provider to seek reimbursement from a patient's insurance carrier, if available. VCAP has worked diligently with the CJC (the STOP State Administering Agency), forensic nurse examiners, and health care professionals throughout the state to recognize that, in some cases, the insurance company should not be billed. VCAP has established procedures whereby the claim is not submitted to insurance providers for those cases and circumstances when it may not be safe for the victim.

Delaware's Sexual Assault Evidence Collection

In addition to paying for the costs associated with receiving a forensic medical exam, VCAP pays for the purchase of all sexual assault kits. The content of each kit is established after review and consultation with the Division of Forensic Science, and the Delaware State Police, and forensic nurse examiners.

The Delaware State Police Victims Center delivers the kits to each emergency department. Each department is responsible for having adequate supply of SAKs stocked, and ready for use when needed. Currently, Delaware's "***Sexual Assault Evidence Collection Kit***" contains:

- Kit Box (pre-sealed at Tri-Tech Forensics)
 - Label (expiration date; evidence collected information on bottom; Kit # label affixed to top)
- Kit Instruction sheet
- Consent for Collection and Release of Evidence form
- Sexual Assault Medical Report form
- Foreign Material bag with label affixed
- Underpants Bag with label affixed
- Debris Collection envelope
- Oral Swabs envelope- containing one swab box and one package of sterile swabs (2/pkg)
- Head Hair Combing envelope- containing one swabbie towel and one plastic comb
- Pubic Hair Combing envelope- containing one swabbie towel and one plastic comb
- Pubic Hair Cuttings envelope
- Vaginal/Penile Swabs envelope- containing two swab boxes and two packages of sterile swabs (2/pkg)
- Rectal Swabs envelope- containing two swab boxes and two packages of sterile swabs (2/pkg)
- Known Blood Sample envelope- containing one FTA Mini Card, one 21g Haemolance Lancet, one Alcohol Pad, one Adhesive Bandage, one Gauze Pad
- Physical Examination/Traumagram (Female) SANE Form
- Physical Examination/Traumagram (Male) SANE Form
- Photograph Record
- Patient Information Form
- Release of Collected Evidence form
- Important Medical Information form
- Victims Compensation Assistance Program form
- Biohazard Label
- Police Evidence Seals
- US Food & Drug Administration Insert (mandatory)

The forensic medical examination is particularly invasive and can last several hours. The collection of evidence in crimes of sexual assault is optimized when performed by an appropriately trained, or certified, SANE. The role of SANE nurses is complex, as they must attend to the medical, forensic, and psychological needs of their patients.ⁱⁱⁱ

Forensic nurses are also a critical resource for anti-violence efforts. They collect evidence and provide testimony that can be used in a court of law to apprehend or prosecute perpetrators who commit violent and abusive acts.

Sexual Assault Nurse Examiners/Forensic Nurse Examiner (SANE/FNE)

Delaware has five hospitals with a Forensic Nurse Examiner/Sexual Assault Nurse Examiner (FNE/SANE) program. Nemours/Alfred I. duPont Hospital for Children, Christiana Care Health Systems, Bayhealth Kent General, Beebe Healthcare and Nanticoke Memorial Hospital. Currently, there is no mandate or regulatory authority to ensure practices or standards is followed in Delaware. While there is much collaboration between the different programs, each program operates independently. At this time, there are no definitive standards, practices or protocols for a SANE Program. In an attempt to achieve uniformity and consistency, a group of SANE Coordinators representing the different hospitals worked to develop the “*Sexual Assault Nurse Examiner Standard of Practice Guidelines for Delaware.*” The guidelines, most recently revised in March 2016, have been modified from standards recommended by the International Association of Forensic Nurses (IAFN) Sexual Assault Nurse Examiner (SANE) Council.

If a patient seeking medical treatment discloses that they are a victim of sexual assault, the victim is informed of the option to have a medical forensic exam. A victim is provided with the information related to the forensic exam [i.e., collection of evidence; treatment of injuries, prevention of potential infection (STD’s), and pregnancy prophylaxis]. They are also offered to have a rape crisis/sexual assault advocate in order for the patient to make appropriate decisions concerning his/her care. The decision to accept these services, or, receive a forensic exam, is up to the individual patient.

In accordance with VAWA, victims of sexual assault are not required to report crimes of sexual assault to law enforcement in order to receive a forensic exam. At the conclusion of the sexual assault medical forensic examination, any evidence will be collected and packaged in a manner that insures the integrity of specimens and the appropriate chain of custody.

In Delaware, hospitals do not store SAKs that are reported to law enforcement. If a victim chooses to report the crime, the SAK follows the chain of custody and is under the property of the appropriate law enforcement agency. If police are not involved, the SANE/Forensic nurse will maintain forensic evidence (this includes the kit, clothes, and patient chart). The kit is held for 30 days in a locked evidence storage area. After 30 days, the SAK is destroyed with prior patient consent. Clothing will be held by the patient at his/her own discretion if police are not involved. If patient requests police involvement evidence will be secured until it is properly signed off to law enforcement. In Delaware, the SANE Programs in each hospital have agreed to guarantee that the kit will be held for 30 days; after 30 days, the kit may be destroyed following the hospital's biohazard protocol or policy (the actual time frame varies anywhere between 35-60 days, depending on each program's storage capacity). The victim is given the destruction information, before the exam and again at discharge. He/she is also provided with a number for the appropriate police agency, should the victim decide to report the assault.

As previously stated, there is no regulatory authority or mandated uniform protocol for Sexual Assault Nurse Examiner Programs in Delaware. Each SANE Program functions uniquely depending on staffing capacity, funding, and leadership support. Christiana Care Health Services is the only SANE Program to have full-time SANE/FNE staff to ensure 24/7 coverage to the emergency department in that hospital. The other agencies rely on individual trained and/or certified SANEs to be available when needed. The CJC highlights this issue to raise awareness that not all SANE Programs operate consistently in our state.

Due to high staff-turnovers (often related to burnout), scarce resources, and limited administrative capacity, there is no consistent method used to capture the number of forensic medical exams performed in most SANE Programs. Delaware's SANE Programs can provide the number of exams performed, but the details related to each exam are often difficult for the SANE Coordinators to track.

During the calendar years of 2013 and 2014, there were a total of 1,178 forensic medical exams performed by SANE Programs in four of the five programs that have provided the numbers of SANE/FNE exams. For some programs, the numbers may fluctuate depending on

time of year (i.e., summer months may be higher for some programs). Christiana Care Health Services consistently reports the highest volume annually.

Law Enforcement Evidence Collection and Storage

When a victim decides to report the crime of sexual assault to law enforcement, the appropriate responding jurisdiction should be informed that a medical forensic exam has been performed, and the SAK is available for evidentiary purposes. The evidence collected through a medical forensic exam is only one component of what is often a complex criminal investigation.

The testing of the evidence in a SAK may be another part of the process. There are varying protocols and determining factors regarding whether and when a SAK is submitted to a lab for testing. Research conducted nationally has revealed a number of reasons that police did not send a kit for testing. For example, in many sexual assault cases, the victim knows the perpetrator so the police might not send a kit to the lab as they do not need to confirm the identity of the suspect. As part of the investigation, law enforcement presents the results of the investigation to the Department of Justice (DOJ). In most cases, the DOJ makes the final determination regarding SAK submission for testing. There does not appear to be any policy or protocol in how those determinations are made. These decisions are made on a case by case basis, at the discretion of the prosecutor.

With the cooperation of law enforcement agencies, we are aware of the number of SAKs currently in the custody of police storage. Without reviewing the content of each SAK and each case tied to the individual SAK, we are not currently able to identify the reason(s) why those SAKs were not submitted for testing. In the coming months, an audit will be conducted of each SAK to help identify the reason each kit was not submitted for testing. This work will be completed as the CJC implements the National Sexual Assault Kit Initiative grant funded through the US Department of Justice, Bureau of Justice Assistance,

As forensic evidence collection and DNA testing continues to become an important part of the investigation and prosecution of crimes, establishing standards for preservation and destruction of this evidence becomes increasingly urgent. The National Center for Victims of

Crime DNA Resource Center shows that Delaware is one of 16 states that does not have any form of evidence retention law.^{iv} As evidence continues to accumulate throughout the state, police departments routinely follow their established protocol for evidence storage inventory. If a law enforcement agency intends to destroy or dispose of rape kit evidence, or other crime scene evidence, the agency must submit the information to the Department of Justice for review and an order to destruct. Evidence that is held in police custody may not be destroyed without the written permission of the DOJ.

Victim Notification of Sexual Assault Kits

The work under SJR1 is related only to those SAKs that are currently in police custody and have never been submitted to a laboratory for DNA testing. We have identified the number of SAKs in custody, however, a more extensive audit of each SAK will be required to determine the priority and viability for testing. It is important to consider that each kit is connected to a survivor who, after experiencing a sexual assault, made the decision to have an invasive rape kit collection examination performed and reported the assault to law enforcement.

There are many factors that should be considered prior to the testing of SAKs, most important is the notification and communication protocol with any victim who reported the crime to law enforcement. There are best practices available regarding victim notification, a list of resources is available at the end of this report.

Coordinated Response & Services for Victims of Sexual Assault

Since the implementation of the VAWA, we have learned that coordinated community efforts are the best way to stop violence against women and hold offenders accountable for their crimes. Coordinated community response programs work to create a network of support for victims and their families that is both available and accessible. They also use the full extent of the community's legal system to protect victims, hold perpetrators accountable, and reinforce the community's intolerance of violence against women. An example of a successful coordinated community response is the established practice of a Sexual Assault Response Team (SART).

A SART is a multidisciplinary team (MDT) approach to establishing local, county, and statewide response protocols related to adult victims of sexual assault, as well as post-pubescent youth assaulted outside of the context of child abuse. Successful SARTs require the support of community decision makers and statewide leaders. Per the Office of Justice Programs (OJP), the goal of a SART is to establish a consistent, appropriate, and trauma informed response process to sexual assault, regardless of when it occurs or who responds with its primary purpose is focused on coordination and action. Coordination relates to identifying roles and responsibilities of team members and a multipronged response protocol through the establishment of Memorandums of Understanding (MOUs). Action relates to the implemented interventions based on the SARTs coordination and established protocol.

Per OJP, SARTs can provide primary intervention to prevent sexual assaults, provide secondary prevention to minimize the harm resulting from sexual assaults, and tertiary prevention to treat victims after sexual assaults occur. The SART must define the magnitude, scope, characteristics, and consequences of sexual assault, identify and research risk and protective factors, develop and evaluate interventions, and identify appropriate aftercare and comprehensive supports.

In order to establish a sustainable SART, it should begin as a resource focusing on standardizing response policies, evidence collection, and training for the police, hospitals, advocates, and the Attorney General. To establish a SART, the State must begin by forming a task force/planning team, establish leadership, and identify the SART coordinator who will ensure consistency in practices throughout the State. The task force and leadership will identify the jurisdiction, identify partners, develop the budget, identify membership guidelines, and schedule planning meetings. It will be important to develop local, county, and statewide needs assessments to create hard deadlines and to provide ongoing technical assistance to service providers. The SART must coordinate first response among advocates, law enforcement, and medical personnel. The response must be immediate. Case management will be an important component of the first responders' protocol and must include transitions to community or system based advocates for aftercare services.

Once policies are standardized and partners begin to incorporate those policies into regular practice, the SART can morph into case reviews to assess for policy and protocol compliance as well as identifying any gaps in service. These reviews are not status based, but are intended for the SART to identify recurring issues and successful practices in order to modify and streamline the process. Confidentiality agreements must be signed and filed prior to any case reviews. The establishment and dissemination of service provider and, most importantly, victim surveys is also crucial to identifying the success of SART protocols. The surveys should include questions regarding the services provided/received, the option for anonymity, the option for the victim to provide contact information for future correspondence, should the perpetrator be identified, and a self-addressed and stamped envelope for the victim to mail the survey.

SARTs help communities by:

- Creating culturally specific services and alleviating victim barriers to accessing those services;
- addressing violence at the individual and systemic levels;
- integrating intervention and prevention services;
- holding offenders accountable;
- providing consistency in the civil and criminal justice systems;
- addressing sexual violence as a major public health and criminal justice concern;
- preventing victims from falling through the cracks;
- improving the quality of evidence collection and service provider accountability through strict protocol guidelines;
- reducing re-traumatization;
- increasing reporting and prosecution rates;
- reducing costs to communities; and,
- allowing victim feedback through surveys.

The National Sexual Violence Resource Center (NSVRC) published a fact sheet titled *Sexual Violence and the Spectrum of Prevention*^v. The fact sheet detailed 6 levels of community capacity building:

1. educating victims about personal safety;
2. promoting public safety through public awareness campaigns;
3. educating MDT providers who can, in turn, educate the public/clients;
4. building partnerships for a collective voice to end sexual assaults;
5. developing guidelines to underscore and shape public safety; and,
6. creating local policies supporting national efforts to end sexual assault.

SARTs also benefit service providers by fostering open communication and enhancing working relationships by increasing informal problem solving through established protocols and open forums to discuss strengths/needs/weaknesses, and by providing a quality control mechanism.

A coordinated community response involving health, police, judicial and legal services, shelters and protection services, schools and other education institutions, religious or cultural groups, community advocates, and others is an important strategy to ensure victims and survivors of sexual assault receive the comprehensive support they need in a timely and sensitive manner.

Increasing the Awareness of Sexual Assault:

Marketing sexual assault awareness activities is extremely important to provide education surrounding the effects of the assaults on victims, their families, and the community as a whole. It also acts as a tool to remove the stigmatizations (real and perceived) and fears related to shame, disclosure, and blame, placed on the victims as a result of the assaults. By creating memorable campaign strategies agencies and advocates could engage victims, non-victims, and offenders by affecting change through education and increased programming. This in turn, reduces negative economic impacts to businesses by reducing sick leave. Per the NSVRC fact sheet on the impact of sexual violence, “according to the 1995 U.S. Merit Systems Protection Board, sexual harassment alone cost the federal government an estimated \$327 million in losses associated with job turnover, sick leave, and individual and group productivity among federal employees.”^{vi} Furthermore, citizens will become more invested and unified to create safer environments at school, at work, and in the community. Successful campaigns are effective in getting communities to recognize the impact of the victimization and to create an environment of

change and healing. The community will connect with the need for awareness, thereby placing a value to lives impacted by the violence. This subsequently works to implement existing or new strategies to keep society safe. A list of various national awareness programs may be found at the end of this report.

Reporting Options for Victims of Sexual Assault

As indicated throughout this report, the DNA evidence collected through a SANE Kit may be a valuable evidentiary tool for law enforcement to identify trends and patterns associated with the violent behavior of perpetrators of sexual assault. The challenge lies within the fact that that society relies heavily on the victim to collect that evidence. A victim may not be coerced or forced to report or participate in the criminal justice process; and a victim should not be judged on their choice or their decision. Victims can, however, be provided with various reporting options to help them make a decision. This may benefit law enforcement's duty to investigate and identify perpetrators of sexual violence, while respecting and honoring victims' privacy and safety.

All too often rape and sexual assault go unreported. In fact, only 15-38% of all sexual assaults are reported to police. Of those injured during a sexual assault, only 27-32% receives medical treatment.^{vii} Multiple factors affect a victim's decision to report, but those most cited are fear of reprisal from the perpetrator, the victim feels as if it is a personal matter, and the belief that the police would not or could not help.^{viii ix} These fears are compounded for undocumented immigrants who are victims of sexual assault, due to their abuser threatening them with deportation.^x In addition to these beliefs and fears, victims have historically been re-victimized by the forensic exam and criminal justice system; subsequently affecting their willingness to participate in the investigation and prosecution of the offender.^{xi}

Reporting options allot time for the victim to heal, take safety precautions, and consider the consequences of investigation and prosecution.^{xii} The victim may consult with friends, family, and/or advocates before making a decision about involving law enforcement. When victims have the opportunity to consult with others and are encouraged to report, they are more likely to report to law enforcement.^{xiii} Furthermore, the option of confidentiality leads to increased reporting rates and about 25% of victims who use restricted/anonymous reports later

convert to a standard or formal report.^{xiv xv xvi} Finally, giving victims the opportunity to have the Sexual Assault Medical Forensic Exam (SANE) without requiring an immediate reporting decision permits prompt evidence collection; which has predicted greater success in the criminal justice system.^{xvii}

Currently, in the State of Delaware, common practice is for hospitals to store the SAKs for 30 days while the victim decides whether or not to report to law enforcement. If a victim chooses to report, the appropriate law enforcement agency is responsible for collecting the SAK from the hospital. If the victim chooses not to report to law enforcement, the kit is destroyed with prior victim consent.^{xviii} Due to the dichotomous nature of these current options, we recommend implementing a graduated system of reporting options for victims of sexual assault. This includes: anonymous reporting, pseudonym/Jane Doe reporting, blind/restricted reporting, and unrestricted reporting. These classifications are often used interchangeably and defined differently depending on the jurisdiction. Therefore, for the purpose of this recommendation, the definitions are clarified below:

Anonymous Reporting: The victim chooses to have a SANE and to have evidence collected. The victim fills out a form and is given a code number at the hospital to identify him or herself if he/she chooses to report at a later time. The evidence is stored with the hospital until the victim files a report with law enforcement. The victim is not required to cooperate with law enforcement and no direct connection is made with law enforcement unless the victim is willing. The victim may speak with law enforcement without providing any identifying information about herself or the offender, and has no obligation to an investigation or prosecution. If the victim decides not to go forward with the investigation, the report will be kept and stored by law enforcement as “informational.”^{xix xx}

Blind/Restricted Reporting: The victim chooses to have a SANE and to have evidence collected. The victim may share information with law enforcement without providing identifying information. The victim specifies how the agency might use the information contained in the report. Law enforcement can conduct a limited investigation and review similar reports. For example, restricted reporting is used in the Department of Defense. A victim may disclose to a Sexual Assault Response Coordinator, who then notifies command and provides

limited details for the purposes of public safety. Any further investigation is at the discretion of the victim.^{xxi xxii}

Pseudonym/Jane Doe Reporting: The victim chooses to have a SANE and to have evidence collected. The victim is not required to cooperate with law enforcement. The victim uses a pseudonym on her medical and legal records. If she chooses to report to police, law enforcement knows the identifying information of the victim, but removes it from specified records. The victim may testify using the pseudonym. This is not truly anonymous; it is used to protect confidentiality in public forums. Some state laws allow victims to request that their name and identifying information not be made available to the public.^{xxiii xxiv}

Unrestricted Reporting: The victim chooses to have a SANE and to have evidence collected. The victim then decides to report the assault to law enforcement. This may be done by the SANE nurse, a victim advocate or the victim. Details from the medical service provider are reportable to law enforcement and are used to initiate an investigation.^{xxv}

In addition to instituting reporting options, we recommend maintaining the limitation of mandatory reporting to children under the age of 18 and to those who are unable to report for themselves.^{xxvi xxvii} Due to reasons previously cited, the victim will not only refrain from reporting to law enforcement, but also from seeking a SANE, rendering mandated reporting a deterrent to medical care. Expected implications of this include but are not limited to: increased pregnancies resulting from rape, increased Sexually Transmitted Infections, and increased future physical and mental health complications. Mandatory reporting for competent adult victims of sexual assault is an impulsive, imprudent, offender-centered approach to an issue that requires extensive research and thought regarding policy recommendations. Allowing the victim to decide to report provides her/him with the opportunity to build trust with law enforcement and prosecutors;^{xxviii} while mandated reporting robs the victim of control and re-victimizes her/him by forcing her into yet another unwanted experience. Therefore, competent adult victims of sexual assault should be left the decision of reporting and provided with reporting options. This will facilitate victim empowerment and will ultimately be a step toward returning victims' voices and choices.

**Recommendations to improve the Criminal Justice Response to Sexual
Assault in Delaware pursuant to Senate Joint Resolution 1**

1. The State should explore victim-centered reporting options for non-minor victims of sexual assault.
2. The State should explore a unified system for tracking evidence and Sexual Assault Kits that are submitted to law enforcement, statewide.
3. The State should explore developing a policy to determine if and when a Sexual Assault Kit is submitted for testing.
4. The State should explore developing a victim-centered notification policy pertaining to the victim's reported Sexual Assault Kit.
5. The State should explore developing an evidence retention statute, which should determine when a Sexual Assault Kit can be destroyed.
6. The State should explore mechanisms to support critical upgrades for the Division of Forensic Science for any DNA testing performed on Sexual Assault Kits.
7. The State should explore guidelines and protocols for the identified SANE/FNE Programs to ensure continuity of standards regarding the comprehensive care & treatment of victims of sexual assault.
8. The State should explore the benefits of establishing a statewide Sexual Assault Response Team (SART).
9. The State should explore the development and implementation of prevention and awareness programs.
10. The State should explore supporting various training opportunities for all professionals involved in the response to sexual assaults.

Conclusion

This final report, including the data sets, narrative, and recommendations are the culmination of many hours of academic research and discussions with criminal justice practitioners. The Criminal Justice Council submits these findings and recommendations for consideration by the General Assembly based on consensus of those individuals and agencies that agreed to participate in this process. It should be noted that victims have a choice of whether to participate in the criminal justice process and that right must always be protected. For a variety of reasons, not every victim desires to move forward with a criminal case, participate in an investigation, or cooperate with prosecution. For that reason, the Criminal Justice Council will conclude this report and begin the next steps of implementing the Federal Sexual Assault Kit Initiative (SAKI) with an understanding and commitment to adhere to victims' rights and to develop victim-centered practices and policies.

Over the next-three years, the Sexual Assault Kit Initiative Implementation stage, the Criminal Justice Council will continue to engage with law enforcement, forensic medical personnel, forensic laboratory personnel, prosecutors, and victims' advocates in order to identify and implement strategies that may result in enacting systemic changes to eliminate or reduce the number of unsubmitted sexual assault kits. This work will be performed in conjunction with the Multi-Disciplinary team that has been identified for the purpose of implementing the federal grant program designed by the U.S. Department of Justice. The Council encourages members of the General Assembly, experts in the field, or any interested parties who wish to comment on this report, or who wish to have input on the process as we move forward, to contact our office.

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Appendix

**Forcible Rape in Delaware:
2011 to 2015
Relationship of Victim to Offender**

Relationship	Total	% of Total	National
Total Pre-Existing Relationships	1,214	69.4%	74.2%
Friends/Acquaintances	637	36.4%	37.0%
Acquaintance	515	29.4%	
Friend	108	6.2%	
Neighbor	14	0.8%	
Family	326	18.6%	14.2%
Child	76	4.3%	
Sibling	56	3.2%	
Stepchild	35	2.0%	
Grandchild	20	1.1%	
Stepsibling	20	1.1%	
In-Law	4	0.2%	
Parent	2	0.1%	
Stepparent	1	0.1%	
Other Family Member	112	6.4%	
Intimate Partners	206	11.8%	12.2%
Boyfriend/Girlfriend	147	8.4%	
Spouse	48	2.7%	
Ex-Spouse	6	0.3%	
Common-Law Spouse	3	0.2%	
Homosexual Relationship	2	0.1%	
Other Relationships	45	2.6%	10.8%
Child of Boyfriend/Girlfriend	36	2.1%	
Employee	4	0.2%	
Babysitree (The Child)	3	0.2%	
Employer	2	0.1%	
Total Stranger/Unknown Person	207	11.8%	10.1%
Total Relationship Undetermined	328	18.8%	15.4%
TOTAL REPORTED FORCIBLE RAPES	1749		

**Forcible Rape in Delaware:
2011 to 2015
Age of Victim**

Victim Age	Total	% of Total	National
Under 11	353	20.2%	26.4%
11 to 15	434	24.8%	25.4%
16 to 20	327	18.7%	16.8%
21 to 30	339	19.4%	15.0%
31 to 40	158	9.0%	7.5%
41 to 50	78	4.5%	4.6%
51 to 60	34	1.9%	2.2%
61 and Over	20	1.1%	1.3%
Unknown Age	6	0.3%	0.8%
TOTAL REPORTED FORCIBLE RAPES		1749	

**Forcible Rape in Delaware:
2011 to 2015
Arrest Status**

Status	Total	% of Total	National
CLEARED	1015	58.0%	38.5%
Cleared by Arrest	455	26.0%	
Adult Arrest	349	20.0%	
Juvenile Arrest	106	6.1%	
Exceptional Clearance	560	32.0%	
Prosecution Declined	471	26.9%	
No Victim Cooperation	79	4.5%	
Death of Suspect	6	0.3%	
Service Clear	3	0.2%	
Juvenile/No Custody	1	0.1%	
PENDING	411	23.5%	
Pending-Active	151	8.6%	
Pending-Inactive	260	14.9%	
UNFOUNDED²	323	18.5%	
TOTAL REPORTED FORCIBLE RAPES		1749	

² An incident is defined as “Unfounded” when an incident is reported to police, but investigation determines that the reported claim is false or baseless.

DEFINITIONS

Sexual assault can take many different forms, but one fact remains the same: it's never the victim's fault. The term "sexual assault" refers to sexual contact or behavior that occurs without explicit consent of the victim. Some forms of sexual assault may include:

- Penetration of the victim's body, also known as rape
- Attempted rape
- Forcing a victim to perform sexual acts (oral or penetrating the perpetrator's body)
- Fondling or unwanted sexual touching

Consent is an agreement between participants to engage in sexual activity. Sexual activity requires consent, which is defined as voluntary, positive agreement between the participants to engage in specific sexual activity.

Sexual intercourse: Any act of physical union of the genitalia or anus of 1 person with the mouth, anus or genitalia of another person. It occurs upon any penetration, however slight. Ejaculation is not required; or any act of cunnilingus or fellatio regardless of whether penetration occurs. Ejaculation is not required.

DEFINITIONS USED FOR SJR1 REPORT:

Sexual Assault Kit (SAK): A set of items used by medical personnel for the preservation of physical evidence collected from a person, living or deceased, following an allegation or suspicion of sexual assault.

Unsubmitted kits: are those in in police custody that have never been submitted to a crime laboratory for testing.

Untested kits: are those that have been submitted to crime labs, but are delayed for testing for longer than 30 days, e.g., as a result of a backlog of work in the laboratory.

Forcible Rape: refers to vaginal, oral, or anal intercourse with a person, without the consent of the victim. It is inclusive of cases in which the victim is incapable of consenting because of temporary or permanent mental or physical incapacity, or because of age. It does not include sexual assault with an object, unlawful sexual contact, statutory rape, or non-forcible incest.

- *Delaware has defined fourteen crimes that are used to prosecute sexual assault and related crimes within the state. The statistical information contained in this report focused on the crime of rape, as defined in Title 11, Chapter 5, § 770-773 of the Delaware State Code.*

Stranger/Unknown Person: refers to the relationship between the perpetrator and victim in rape complaints in which DELJIS records the relationship as “Stranger” or “Otherwise Unknown.” In the national data, it refers to relationships categorized by the FBI as “Stranger.”

Relationship Undetermined: refers to the relationship between the perpetrator and victim in rape complaints in which DELJIS records the relationship as “Relationship Undetermined” or in which DELJIS displays a blank relationship field. In the national data, it refers to relationships categorized by the FBI as “Relationship Unknown.”

Cleared: refers to cases in which an arrest of a suspect is made or when an element beyond law enforcement’s control precludes the arrest of a known suspect.

Cleared by Arrest: refers to cases in which an arrest of a suspect is made.

Exceptional Clearance: refers to cases in which an element beyond law enforcement’s control precludes the arrest of a known suspect.

Unfounded: refers to cases in which an incident is reported to police, but investigation determines that the reported claim is false or baseless.

Victim: A term often used by medical personnel, law enforcement and government officials when referring to those who have been sexually assaulted.

Survivor: A term used by those who have experienced a traumatic event, but who will, with time, overcome adversity and heal.

Notes

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