



Department of Justice

STATEMENT OF

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BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

AT A HEARING ENTITLED

**“SURVIVORS’ BILL OF RIGHTS:
IMPLEMENTATION AND NEXT STEPS”**

PRESENTED

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Principal Deputy Director
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**Before the
United States Senate
Committee on the Judiciary**

**Entitled
“Survivor’s Bill of Rights: Implementation and Next Steps”**

June 26, 2018

Chairman Grassley, Ranking Member Feinstein, Members of the Committee, thank you for this opportunity to discuss the ongoing commitment by the U.S. Department of Justice to provide the nation with resources to address the issue of untested sexual assault kits. My name is Howard Spivak, and I am the Principal Deputy Director of the National Institute of Justice (NIJ), a component of the Office of Justice Programs at the Department of Justice.

While NIJ is the research, development, and evaluation agency of the Department, we are acutely aware of the real impact that science has on people, especially crime victims, every single day. Science helps victims access justice and ensures that offenders are held responsible for their crimes.

The increased use of DNA technology in forensic laboratories, in addition to the ongoing expansion of the Federal Bureau of Investigation’s (FBI) Combined DNA Index System (CODIS) DNA database, has created a powerful tool for getting violent criminals off the street and helping victims obtain justice. The expanded use of DNA evidence in our nation’s criminal justice system is the culmination of decades of research and development activities that have yielded more precise and effective technologies. These technologies allow a greater number of DNA profiles to be developed and entered into the CODIS DNA database from old, degraded, or previously unviable samples.

Evidence processed through our Nation’s crime laboratories provides law enforcement with critical investigative leads. Advances in DNA technology and many other forensic disciplines have enabled more effective investigations and made a profound impact on the collection, processing, and testing of sexual assault evidence. As a result, the criminal justice community relies heavily on forensic analysis, most notably the collection, processing, and testing of DNA evidence.

As you know, Congress passed the Sexual Assault Forensic Evidence Reporting (SAFER) Act in 2013. It was created, in part, to develop practices “appropriate for the accurate, timely, and effective collection and processing of DNA evidence, including protocols and practices specific to sexual assault cases, which shall address appropriate steps in the investigation of cases that might involve DNA evidence.” To that end, NIJ created a SAFER Working Group charged with developing best practices recommendations. This group addressed issues relating to evidence collection; inventory and tracking; communication strategies; victim engagement and notification; and efficiencies in processing and testing sexual assault evidence.

Additionally, representatives from jurisdictions that identified and successfully addressed large volumes of untested sexual assault kits shared strategies in an effort to help other jurisdictions move forward. More than 50 subject matter experts from across the nation – including victim advocates, Sexual Assault Nurse Examiners, medical examiners, forensic laboratory professionals, law enforcement officials, prosecutors, and members of the judiciary – contributed to the efforts of the SAFER Working Group.

In order to obtain critical, comprehensive feedback from all stakeholder groups, prior to final publication of the *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, a draft of the document was posted on the Federal Register for public comment for 30 days in August 2016. NIJ considered all comments and ultimately used them to strengthen the document and to ensure a quality deliverable for our nation’s criminal justice system.

From there, NIJ developed and published the *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, which outlines practices that can not only improve the overall quality of evidence collected and streamline processes for the submission, testing, and analysis of sexual assault kits, but also help keep victims at the center of a trauma-informed, multidisciplinary response to sexual assault. The report includes 35 recommendations to ensure that the nation’s response to sexual assault is collaborative, continuous, and solicitous of the victim’s perspective. The recommendations are designed to optimize the collection and processing of DNA evidence and to help develop investigative leads.

More specifically, these best practices outline time periods for testing, processes for communicating information between stakeholders, and auditing standards for all sexual assault kits, including those that were collected but not reported and those that have never been submitted to a laboratory for testing. The needs and resources of jurisdictions vary, but these recommendations provide a solid starting point for developing plans and protocols for untested kits.

What cannot be forgotten, regardless of advancements in science and technology, is that behind every sexual assault case is a person whose life has been forever changed. Anyone who encounters a victim in the immediate aftermath of sexual assault has the ability, and the duty, to respond in a way that increases that victim’s chances of healing, recovering, and achieving justice. Engaging the victim at the earliest stages enhances the potential for better outcomes, both for the victim and for the public, whose safety is at risk when assailants are not held accountable.

The victim-centered approach that underpins the *Best Practices* document is due not only to concern about sexual assault kits that have not been submitted, but also to victim accounts of the re-traumatization they suffer when the criminal justice system's response falls short. This publication highlights how essential it is that law enforcement puts the needs of the victim at the center of its response. The varying approaches to sexual assault evidence collection, a lack of policies and procedures, and an absence of timely communication can lead to delays in justice and underscore the need for best practices which are described in the document.

We recognize that whether an unsolved case is decades old or recent, the failure to aggressively investigate and prosecute these heinous crimes creates additional trauma for victims and can lead them to disengage from the criminal justice system. We at the Department work every day to support those who have survived violence, by providing professionals both inside and outside the justice system with evidence-based strategies for doing the same.

While recommendations in *Best Practices* are not mandated by any governing body, they are based on research, well-established processes from other disciplines, extensive professional experience of the working group members, and input from the public. For example, in April 2011, NIJ awarded competitive research grants to Detroit and Houston to examine the issue of untested evidence in sexual assault cases. At that time, it was believed that more than 16,000 untested sexual assault kits were housed in the Houston Police Department property room and that more than 10,000 in Detroit were in police custody. What we learned from that research proved to be critical for the creation of *Best Practices*. Specifically, there needs to be coordination and collaboration across and beyond the criminal justice system, including law enforcement, labs, prosecutors, forensic healthcare providers, victims' services, and others. Furthermore, victims need to be brought into the process as early as possible so they can be better prepared for the results of any evidence testing, regardless whether the analysis of the evidence yields an investigative lead or a suspect.

As jurisdictions continue to inventory evidence in their possession, either on their own volition or pursuant to statutory directives, we will discover more untested sexual assault kits. The *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach* was created to put forward best practices that can provide a practical roadmap for a victim-centered approach to collecting, transferring, preserving, storing, and analyzing sexual assault kits. The Department remains committed to ensuing justice for victims of sexual assault and to using scientific research, development, and best practices to eliminate the problem of untested sexual assault kits.

Thank you again for this opportunity to discuss this issue, and I look forward to addressing your questions.