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DNA & CRIME VICTIMS: POST-CONVICTION TESTING AND EXONERATIONS

JUSTICE ACT
TESTING BACKLOG

DEBBIE SMITH AC

COLD HITS

OFFENDER INDEX

EXONERATION

VINE

STATUTES OF

JOHN DOE WARRANTS



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DNA & CRIME VICTIMS: Post-Conviction Testing and Exonerations



Victim advocates and other criminal justice professionals who work with crime victims increasingly encounter cases that involve the use of DNA evidence. Recent advances in DNA analysis and related technologies make it possible for law enforcement to test DNA in more types of crimes than ever before. Sophisticated technology now allows for DNA analysis in cases in which testing was never conducted or testing brought inconclusive results. Additionally, many state laws now explicitly allow convicts to request that their DNA be tested.

These advancements have brought increased requests for post-conviction DNA testing and the increased likelihood of exonerations in cases where the wrong person was convicted of a crime.

Victim service providers and other professionals may be called upon to help victims understand the post-conviction testing and exoneration process, understand their rights, and find support. In most cases, a prosecutor or attorney general's office is the entity responsible for contacting the victim and providing support through their victim-witness program. The goal of this bulletin is to give professionals in these offices the knowledge they need to provide informed and sensitive guidance in such cases. In some cases, community-based advocates may also be called on to provide assistance and support to survivors. They will find the information in this bulletin useful for their work with survivors, too.

Victim Responses to Post-Conviction Testing or Exoneration

Learning about a post-conviction test request or exoneration can be highly traumatic and disruptive for a victim, because this may trigger painful memories of the victimization. Though victimization may affect people across their lifespans in a variety of ways, victims often integrate the experience into their lives and find a way to move forward. Many years may have passed since the victimization, and victims' lives may have significantly changed—with new jobs, marriages, divorces, the birth of children, or the death of loved ones. Some may have moved to a new community, state, or even a different country.

Victim service providers and other professionals who interact with victims on these cases will benefit from being prepared for a variety of victim responses. Most victims will react to this news with shock and disbelief. Victims in post-conviction testing or exoneration cases may:

- Feel numb or overwhelmed
- Suffer from anxiety, panic, fear, confusion, or powerlessness
- Lose faith in the justice system
- Feel revictimized or as if their life is being shattered all over again
- Be angry or feel unjustly inconvenienced
- Feel responsible for or guilty about the wrongful conviction
- Ask to never be contacted again

Post-conviction testing requests may also raise new questions about the facts of the case. Victims of sexual assault, especially, are often highly scrutinized and disbelieved. Convictions in their cases may have helped the victims feel validated and believed. So, when a post-conviction test is ordered, victims may fear being disbelieved, and this may trigger a significant amount of distress.

When exonerations occur, victims may feel responsible for the conviction. Victims may feel a strong sense of guilt and anguish over their part in the pro-

cess, especially if they provided an eyewitness identification of the offender. Some victims say they feel as if they are now “the offender,” and they may fear retaliation by the exoneree or the exoneree’s family.

In all post-conviction testing and exoneration cases, victims should have the option of receiving support from a victim service provider and allied experts. Victims deserve to receive services and know their rights throughout the process; such information and support can help to make the process less traumatic.

Victims’ Rights

Victim service providers should be prepared to inform victims of their rights throughout the post-conviction testing process. Many of these crimes were committed decades ago, and victims may not have been notified of their rights at the time of the crime. In fact, cases may have predated many of the victims’ rights laws now in place. Informing victims of the rights they have during the post-conviction testing process can help alleviate some stress and help victims regain a sense of control. Advocates should be knowledgeable about victims’:

- Right to notification. In many instances, victims have an express or implied right to be notified about a post-conviction test.
- Right to be present. In some jurisdictions, victims may have a right to be present at certain criminal justice proceedings.
- Right to apply for compensation. Victims may have the right to apply for victim compensation to cover counseling needs resulting from the new events in the case.
- Right to proceedings free from unusual delay. Victims in many states have the right to proceedings free from unusual delay.

Victim Notification

The right to notice is a crucial right for victims. It is often called the “threshold right” because all other victims’ rights flow from it. Some state and federal statutes expressly provide victim notification in post-conviction testing cases. In states that do not have such a law, victims may have the right to be treated with “fairness, dignity, and respect throughout the criminal justice process” (or similar language). Arguably, these rights should apply to post-conviction proceedings. In other states, victims have the right to notification about “a change in status of the case”—a provision that may apply in post-conviction testing cases.

Establish a Notification Protocol

It is important for those working with victims in post-conviction and exoneration cases to have a clear plan for contacting victims. Establishing a protocol for victim notification will help ensure that victims receive notice in the least intrusive and traumatic manner. The responsibility for contacting victims and providing services in these cases generally lies with the prosecutor or attorney general’s office, which will most likely create a notification protocol. While the majority of these agencies have a victim assistance professional who provides support in these cases, those agencies without such providers should partner with their local community-based victim service professionals to provide victim-sensitive services for survivors. Some important factors to consider when creating a victim notification plan include:

When should the notification occur? Many victims are registered with the state or local jurisdiction Department of Corrections’ automated victim notification system and will be contacted when a defendant is taken to another location (e.g. for DNA testing). It is important that victims hear first from the prosecutor’s office, rather than the media or another source, that a post-conviction test has been ordered.

The post-conviction testing process includes many steps, and jurisdictions should carefully consider when victim notification should occur, taking into

consideration any statutory requirements for victim notice. Requests for DNA testing can be denied, and even if the test is ordered, it must be determined if there is DNA evidence to analyze. To reduce the chance of unnecessarily disrupting victims' lives, some jurisdictions notify victims only when the test has been approved and the evidence located. Victims should receive notice of test results, even if the defendant's guilt is confirmed. Victims may have a right to protest parole in the future or speak at a related proceeding.

How should notification be carried out? Privacy is an important factor to consider when notifying a victim about a post-conviction test request. Victims may not want to share information about their cases with everyone in their lives. In many cases, a phone call may be the best and most confidential method. If the victim cannot be reached by phone, law enforcement professionals may consider visiting victims' homes and leaving a confidential note asking the victim to contact them.

Whenever possible, victims should receive critical information in person or, at the very least, on the phone. In cases that result in a defendant's exoneration, the victim should be notified in person by a trained victim assistance professional, in the presence of a family member or other support person of the victim's choosing, if possible.

Who should notify? The office handling the case—typically the office of the attorney general or the prosecutor—generally provides notification, preferably by or with a victim assistance professional or someone with whom the victim has worked closely before. Ideally, such offices should designate someone as a primary contact to answer any follow-up questions the victim may have. Agencies that are responsible for notification but lack an on-staff victim assistance professional should include a local, community-based victim assistance organization in their notification plans.

Supporting the Victim

Victim service professionals and others who interact with victims in post-conviction testing and exoneration cases need to be prepared to address a wide range of needs and answer many questions that will arise from these situations. The following list of suggestions for victim service professionals may help you provide effective and sensitive victim support:

Post-conviction Testing Cases

- Provide referrals to agencies that can support the victim during and after the entire process if your agency cannot fulfill this role. Tell the victim what support your agency can provide during the process and in the future.
- Respond to and respect victims' individual needs. Although some victims want to be informed of everything, others want no information at all.
- Be prepared for many questions, and be patient.
- Provide information on timelines and possible outcomes. Victims may want to know why a test can be ordered at a specific time, and they often wonder if they will have to go through a trial again or testify at hearings.
- Explain that a post-conviction test may actually confirm the defendant's guilt and affect future parole or probation options.
- In sexual assault cases, inform the victim that consensual sexual partners (at the time of the crime) may be asked to provide a DNA sample for exclusionary purposes. Some victims will be uncomfortable with this request. Explain that such testing is necessary to distinguish the DNA of the victim and other consensual sexual partners from the offender's DNA.

- Take steps to decrease disruption to the victim's life. If you must meet a victim in person (for an exclusionary sample, for example), choose a place that is comfortable and convenient for the victim.

Exoneration Cases

- Provide notice of an exoneration in person, with a trained support person and supportive family member, if possible.
- Victims may feel significant guilt when the defendant is exonerated. Assure victims they did the best they could do with the information they had at the time of the crime.
- Explain the significant advances in forensic DNA testing methods and why evidence available now may not have been available at the time of the trial.
- Explain that DNA databases may contain evidence that may lead to identifying the real offender.
- Let victims know that law enforcement will do their best to investigate their case; however, it's possible that the case may remain unsolved for some time.
- Offer a current photo of the exoneree. Some victims may fear retaliation by the exoneree and may feel safer if they know what the exoneree currently looks like.
- Let victims know that the state may not be able to prosecute the true offender if the statute of limitations has expired.
- Inform the victim that if the true offender is apprehended, the prosecutor may accept a plea bargain. Victims should have the opportunity to be consulted and to provide input on the disposition of the case (and may have the legal right to do so, depending on the applicable victims' rights statutes in the state).
- Let the victim know whether an audiotape of the real offender admitting guilt is available to listen to if the victim chooses. Victims may still believe in the guilt of the exoneree and hearing the true offender admit guilt may help convince the victim that the exoneration is justified.
- Exoneration cases often make the news. Remind victims that they have the right to refuse to talk to the media and suggest they may want to avoid reading blogs or other opinion pieces about the case.
- Consider forming a support group if you are working with more than one survivor who has experienced an exoneration.

Additional Resources

- The National Center for Victims of Crime DNA Resource Center
www.ncvc.org/dna
- Chris Jenkins, "Helping Victims in DNA Exoneration Cases"
www.tdcaa.com/node/4200
- Advancing Criminal Justice Through DNA Technology
www.DNA.gov
- Wisconsin Department of Justice (DOJ) Office of Crime Victim Services (OCVS) and the Attorney General's Crime Victims Council
www.doj.state.wi.us/cvs/cold-case/cold-case.asp
- The Innocence Project
www.innocenceproject.org ■

Helping Victims of Crime Rebuild Their Lives

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