

What Happened with the Sexual Assaults Reports? Then Vs. Now

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This report provides data describing how sexual assault reports that were not previously indicted were initially processed through the system from the Reporting Phase, to the Initial Investigative Phase, and the Prosecution Phase. We then track what is currently happening with these cases as part of the Cuyahoga County Sexual Assault Kit (SAK) Pilot Research Project.

Key Findings

Then

- Of the 243 sexual assaults, all but three were reported to the police.
- After the initial report, the sexual assaults were assigned to a detective for investigative follow up. The average amount of time from initial reporting to the first investigative activity on the case was 5 days.
- Victims were not (or not able to be) contacted in at least 40% of the cases. When victims were contacted, in half of the cases, the contact occurred within a day or less of the start of the investigation.
- Initial investigations remained open for an average of 40 days, with approximately a quarter of the investigations remaining open one day or less and half remaining open for one week or less.
- Over half of the cases that were investigated were closed due to police being unable to locate the victim or the lack of victim follow up.
- Less than half of all cases that were investigated were referred to the City Prosecutor. Of the cases that were referred, over 75% were ruled “no prosecution” and closed by the City Prosecutor.
- None of the cases reviewed resulted in an indictment.

Now

- None of the coded sexual assault cases were precluded by law from being prosecuted (e.g., not previously adjudicated, within the statute of limitations, and not abated by suspect’s death).
- After reinvestigating these cases, 74% of the cases had been indicted.
- Almost 40% of the 243 cases have resulted in a conviction (a plea or a guilty verdict) and almost 25% were closed due to insufficient evidence by the County Prosecutor’s Office.
- Convictions were more common with sexual assaults committed by strangers.
- Approximately a quarter of these sexual assaults involved specific mentions of the victims being involved in (or suspected of being involved in) prostitution, using drugs or

alcohol at or near the time of the sexual assault, or having a mental illness (victim “vulnerabilities”).

- Victims with these “vulnerabilities” were almost as likely to have their cases result in a conviction compared to victims without these documented “vulnerabilities.”
- For current investigations closed by the Prosecutor due to insufficient evidence, the most likely reasons for closure were victims that might be perceived as unreliable or victims with no or poor memories of the sexual assault.

Data and Methodology

In August 2015, we began with a list of cases that had completed the investigative workflow (e.g., a series of investigative tasks in order to determine whether or not to prosecute a sexual assault) and had been closed by the Cuyahoga County Prosecutor’s Office and either (1) resulted in prosecution or (2) not pursued due to insufficient evidence.

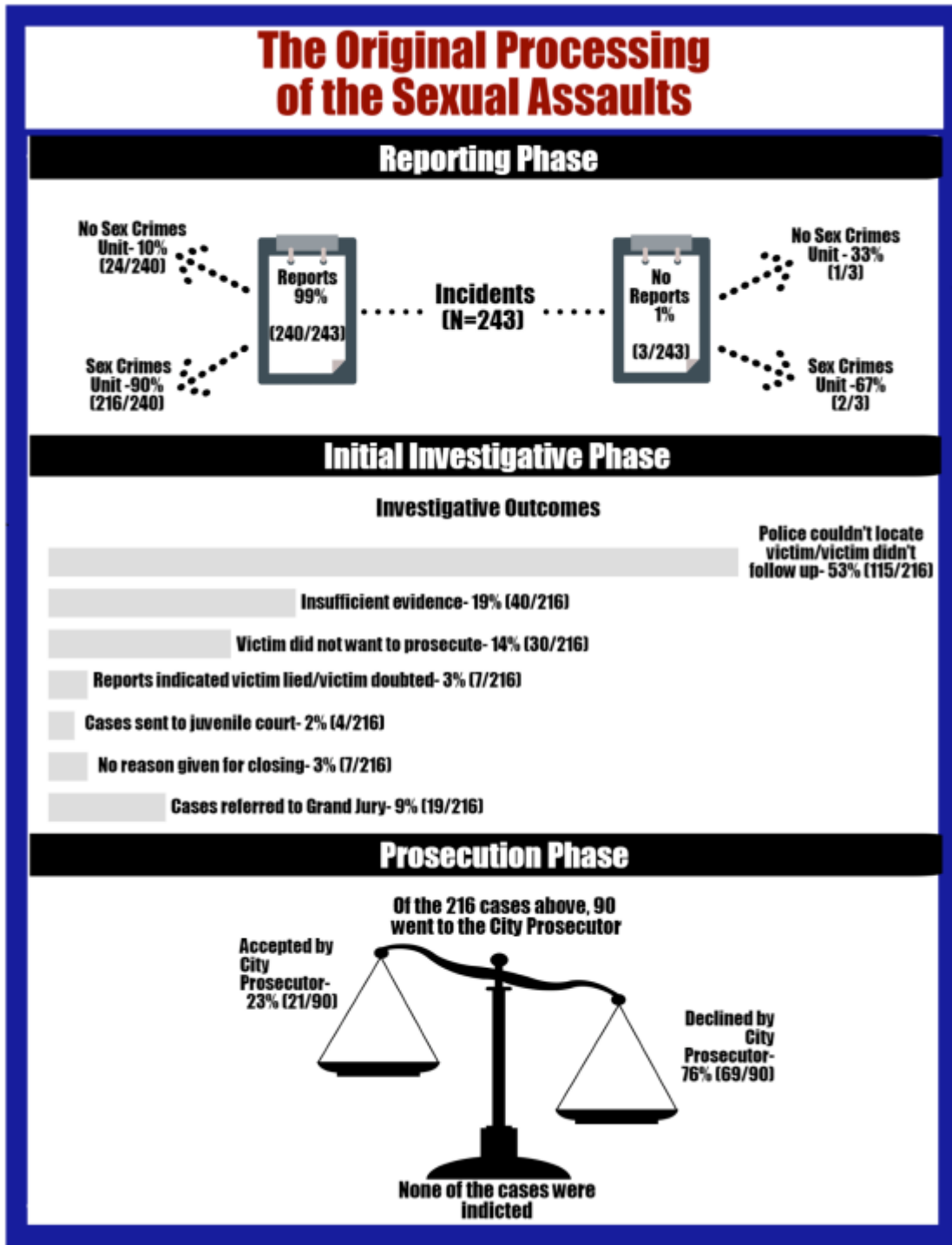
From the case files we coded police and investigative reports, forensic lab reports, and criminal histories on a random sample of 210 cases representing 243 Sexual Assault Kits (SAKs). For the findings presented here (except those with multiple unsubmitted SAK hits), the same offender is represented more than once but for separate sexual assaults. These assaults were reported between March 1993 and May 2014; however, the majority of the assaults (74.1%) occurred between 1993 and 1997, which reflect the statute of limitation prioritization for prosecution at that time.

For a more complete description of the history of the unsubmitted SAKs in Cuyahoga County, the SAK Task Force, and a more detailed description of these data, see “The Cuyahoga County Sexual Assault Kit (SAK) Task Force: Describing the Process of Testing, Investigating, and Prosecuting Unsubmitted SAKs” and “The Cuyahoga County Sexual Assault Kit (SAK) Pilot Research Project: Data and Methodology.” (<http://begun.case.edu/sak/>)

Then: What initially happened with the sexual assault reports?

Figure 1 depicts how the sexual assault reports were initially processed through the system, through three phases—the Reporting Phase, the Investigative Phase, and the Prosecution Phase. These outcomes are based upon the initial police reports.

Figure 1. The Original Processing of the Sexual Assaults According to the Police Report



Reporting Phase

The Reporting Phase of a sexual assault investigation begins with the reporting of a sexual assault and/or sexual assault kit. After a police report has been made, the reporting officer(s)

refers the case to detectives for investigation. In CPD, sexual assault reports are referred to the Special Crimes Unit (SCU) for investigation. CPD SAKs comprise the vast majority of SAKs—237 of the 243 (98%) were CPD SAKs. The other 2% of cases were from other police departments in the county.

As illustrated in Figure 1, the overwhelming number of sexual assaults included police reports. Of the 243 sexual assaults analyzed, 240 (99%) were reported to the police. For the remaining three sexual assaults, the victims did not wish to make a police report.

How long did it take from initial report to investigation?

Of the 240 sexual assaults with a police report, 216 (90%) showed evidence of investigative follow up according to the police report. *Thus, 10% (n=24) of the sexual assault reports indicated no follow up in the coded police report.*

Not all police reports included dates for all phases. From initial reporting to investigation, we have data on dates from 158 of the 216 investigations. From these 158 reports, the average response time from initial report to the first investigative activity was 5 days. More than a third (43%) of the sexual assaults (n=68) showed investigative activity on the same day. In the vast majority of cases (88%, n=139), an investigation began within a week of the initial police report.

How long did it take to contact and/or interview the victim?

An important component of a sexual assault investigation is contacting and/or interviewing the victim. Of 218 sexual assaults, 40% (n=88) indicated that SCU did not contact the victim during the investigation, 45% (n=97) indicated that SCU contacted the victim one time, and 7% (n=15) indicated that SCU contacted the victim more than once. Additionally, 6% (n=13) of the cases indicated that the victim missed several appointments with SCU and in 2% (n=5) of the cases, victim contact was not specifically mentioned.

In almost three-quarters of cases (73%), police reports did not indicate that SCU interviewed the victim. In 25% of the cases, police reports indicated SCU interviewed the victim once. In 2% of cases, police reports did not specifically state whether the victim was interviewed.

Of the cases that included victim contact and the dates of the contacts (n=84), victims were contacted the same day that SCU began the investigation in 44% of the cases and within a day or less in over half of the cases. Of the cases that included victim interviews and the dates of the interviews (n=44), victims were contacted the same day that SCU began the investigation in 41% of the cases and within a day or less in over half of the cases.

What about the 10% of cases that indicated no investigative follow up?

We further examined the 24 sexual assault reports that did not indicate investigative follow up in the initial police report. A SAK Task Force member and CPD officer looked up these reports in CPD's records management system to determine what, if any, follow up occurred. In April 2016, the CPD officer provided us the following information on these 24 cases:

- 10 of the 24 (42%) were followed up at some point by CPD's SCU although the initial coded police report did not indicate this. Of these 10 cases, 5 were closed because there were no further investigative leads and 5 provided no details as to why they were closed.
- 8 of the 24 (33%) were closed because the victim could not be located
- 3 of the 24 (13%) were received by SCU but not assigned to a detective
- 2 of the 24 (8%) were East Cleveland Police Department cases, and therefore the CPD detective was unable to access additional information on the reports
- 1 of the 24 (4%) had no additional information

Thus, of the 24 that initially did not indicate investigative follow up by SCU, 10 were found to have some degree of investigative follow up at or near the time of the initial report.

Of the 240 cases with reports, a total of 216 cases (90%) proceeded to the subsequent phase, the Investigative Phase.

Initial Investigative Phase

The Investigative Phase begins when a sexual assault report is assigned to an investigator for follow up.

In this phase we had complete data on dates from 118 investigations. From these 118 investigations, we found that for the initial investigation, the average amount of time the investigations remained open was 40 days, with:

- 25% of these cases being closed the same day as detectives received the case
- 48% were open for one week or less
- 62% were open for two weeks or less
- 71% were open for a month or less

What are the outcomes of the initial investigation?

Figure 1 depicts the outcomes of the 216 investigations with investigative follow up in the coded police report. The majority of 216 investigations (53%, n=115) were closed because the police reported that the *victim could not be located or did not follow up*. For these cases (that had data on dates), investigations remained open for an average of 45 days from the initial SCU investigation, with 49% remaining open for two weeks or less and 81% remaining opening for two months or less. The minimal amount of time these cases remained open was 0 days and the maximum was 282 days.

The second most common reason for closing an investigation was due to *insufficient evidence* (18.5%, n=40). For these cases (that had data on dates), investigations remained open for an average of 60 days, with 68% remaining open for two weeks or less and 82% remaining open for two months or less.

Thirty of the 216 (13.8%) investigations were closed due to the *victim not wanting to prosecute*. For these cases (that had data on dates), investigations remained opened for an average of 6 days,

with 86% of cases remaining open for two weeks or less, and 100% remaining open for one month or less.

Seven of the 216 (3.2%) investigations were closed due to the *victim stating she had lied about the sexual assault or the police officer stating in the report that she/he believed the victim was lying*. For the small number of these cases (that also included dates), investigations were closed much sooner than with the other cases—they remained open for an average of 7 days, with 50% remaining open for 5 days or less, and 100% remaining open for nine days or less.

For the remaining 30 cases, 9% (n=19) were referred to the Grand Jury for indictment, 3% (n=7) were closed for unknown reasons (e.g., a reason for closing was not provided in the police report), and 2% (n=4) were referred to juvenile court.

Of the 216 cases, a total of 90 cases (42%) proceeded to the subsequent phase, the Prosecution Phase.

Initial Prosecution Phase

Once an investigation is completed, a case is referred to Prosecutors for review and possible indictment (the Prosecution Phase). Cuyahoga County is unique in that cases are first referred to the City Prosecutor's Office and then the County Prosecutor's Office if the City Prosecutor's Office accepts the case (e.g., rules papers). A little less than half (42%, n=90) of the 216 assaults were referred to City Prosecutor's Office.

Not all of the 90 cases that were referred to City Prosecutor's Office included dates. For those that included data on dates, investigators referred these cases to Prosecutors on average within 58 days from the start of the initial investigation, with 52% (n=32) being referred within two weeks or less of from the start of initial investigation and 60% (n=37) referring within a month or less.

Of the 90 referred cases, 21 (23%) were accepted by the Prosecutors for possible indictment, with the remaining 69 cases being declined by Prosecutors. Cases accepted by the Prosecutor's Office would have been referred to the County Prosecutor's Office for possible indictment.

Of the 21 cases accepted by City Prosecutor's Office, 19 (90%) were taken to Grand Jury for indictment by the County Prosecutor's Office. *None of these cases were indicted by the Grand Jury* (although, again, this sample only consists of cases there were not previously adjudicated).

Now: What is currently happening with the sexual assault reports?

Starting in 2013, the SAKs associated with these 243 sexual assaults were submitted for DNA testing. Upon receiving the results of the DNA testing, the Sexual Assault Kit Task Force reopened investigations for all 243 sexual assaults.

Below we present data on the current outcomes for these 243 sexual assaults.

How many SAKs had a “hit”?

Of the 243 sexual assault kits tested for DNA, 70% (n=171) had a “hit” in the federal DNA database, the Combined DNA Index System (CODIS). A hit could be a hit to a named or an unnamed offender in the database—144 (85%) had a hit to a known offender and 27 (16%) had a hit to an unknown offender. The remaining 72 SAKs either did not have DNA in the SAK, had DNA in the SAK but the DNA did not match to a DNA profile in CODIS, or had DNA in the SAK but the DNA sample was insufficient for upload in CODIS.

The 70% “hit rate” for these 243 sexual assaults is higher than the hit rate for all the tested SAKs in this Initiative, which is due to our sample of SAKs being derived from SAKs that were able to be prosecuted (e.g., those that were indicted or closed due to insufficient evidence by the SAK Task Force) and prioritized for prosecution by the Task Force. For more detail about the SAK Task Force “hit rate” see Lovell, Butcher, and Flannery, 2016.

What are the current outcomes for these sexual assault cases?

Once indicted, the unit of analysis changes from a sexual assault incident/report to a prosecutorial case where there can be more than one defendant (e.g., group sexual assault) and/or more than one sexual assault incident (e.g., serial offenders).

At the time the coding ended for the pilot project of the 243 sexual assaults, 74% (n=181) of the cases had been indicted by the Task Force.

Of the 243 cases,

- 39% (n=96) of the sexual assaults investigations had resulted in a *conviction* (defined as a plea or a guilty verdict)
- 24% (n=58) did not proceed to indictment due to the SAK Task Force closing the case for *insufficient evidence*
- 17% (n=42) had been *indicted but the defendant was capias*
- 10% (n=25) were *still in the process* (e.g., indicted but no disposition)
- 7% (n=18) had *gone to trial and were found not guilty*
- 2% (n=4) were *listed as closed/inactive by the Task Force*

What are the factors that might be contributing to more favorable prosecutorial outcomes?

Below we present SAK characteristics by prosecutorial outcomes to explore possible factors that contribute to more favorable prosecutorial outcomes.

Table 1. SAK Characteristics by Prosecutorial Outcomes

SAK Characteristics	Prosecutorial Outcomes				
	Convicted (n=96 of 243)	Not Convicted (n=18 out of 243)	Still in Process (n=25 out of 243)	Closed/Inactive (n=4 out of 243)	Insufficient Evidence (n=58 out of 243)
% CODIS hit	95% (n=91 of 96)	72% (n=13 of 18)	80% (n=20 of 25)	75% (n=3 of 4)	53% (n=31 of 58)
% CODIS hit to a known offender	84% (n=81 of 96)	67% (n=12 of 18)	72% (n=18 of 25)	50% (n=2 of 4)	48% (n=28 of 58)
% initially closed due to lack of victim follow up	51% (n=49 of 96)	39% (n=7 of 18)	48% (n=12 of 25)	25% (n=1 of 4)	45% (n=26 of 58)
% initially closed to due to insufficient evidence	18% (n=17 of 96)	17% (n=3 of 18)	12% (n=3 of 25)	50% (n=2 of 4)	19% (n=11 of 58)
% initially closed b/c victim not want to prosecute	13% (n=12 of 96)	17% (n=3 of 18)	20% (n=5 of 25)	0% (n=0 of 4)	12% (n=7 of 58)
% offender was stranger to victim	60% (n=58 of 96)	39% (n=7 of 18)	52% (n=13 of 25)	75% (n=3 of 4)	43% (n=25 of 58)
% involved one perpetrator	89% (n=85 of 96)	94% (n=17 of 18)	76% (n=19 of 25)	75% (n=3 of 4)	81% (n=47 of 58)
% involved suspect identified at the time	45% (n=43 of 96)	67% (n=12 of 18)	56% (n=14 of 25)	50% (n=2 of 4)	53% (n=31 of 58)

Table 1 shows that SAK investigations that resulted in a conviction more frequently had a CODIS hit and a hit to a known offender compared to all other outcomes. SAKs that resulted in conviction were also more likely to involve a stranger than those that went to trial but did not result in a conviction (60% vs. 39%) and less likely to involve a suspect who was identified at the time of the assault (45% vs. 67%) but these differences were not statistically significant.

Victim Vulnerabilities

We further explored victim “vulnerabilities” to assess whether this might impact prosecutorial outcomes. We focused on the vulnerabilities that might be more likely to lead to the victim being “blamed” for the assault or not believed—the most common types of victim vulnerabilities that we coded. More specifically, we coded documented history of *prostitution* if it was mentioned in the initial police report (as this reflects what the police knew and documented at the time—thus, a conservative measure) and is not based the victims’ criminal histories; victims’ documented history of *drug/alcohol use at or near the time of the sexual assault* and victim’s documented *mental illness* as mentioned in the initial police report or medical records. As shown in Table 2, approximately a quarter (24%) of victims had these “vulnerabilities.”

Table 2. Victim “Vulnerabilities” by Prosecutorial Outcomes

Prosecutorial Outcomes	Victim had documented history of prostitution, drug/alcohol use, or mental illness		
	No (n=182)	Yes (n=56)	Total*
Not convicted	8% (n=15 of 182)	5% (n=3 of 56)	8% (n=18 of 238)
Convicted (plea, guilty verdict)	40% (n=73 of 182)	38% (n=21 of 56)	40% (n=94 of 238)
Still in process	12% (n=21 of 182)	5% (n=3 of 56)	10% (n=24 of 238)
Closed/Inactive	2% (n=3 of 182)	2% (n=1 of 56)	2% (n=4 of 238)
Insufficient evidence	21% (n=39 of 182)	30% (n=17 of 56)	24% (n=56 of 238)

*Total is 238; 5 cases have missing values

Victims with a documented history of prostitution, drug/alcohol use, or mental illness were more likely than those without these vulnerabilities to have their cases closed due to insufficient evidence and less likely to have their cases still in the process of being prosecuted (although the number is small). *However, victims with these documented vulnerabilities were almost as likely to have their cases result in a conviction compared to victims without these vulnerabilities.*

For those that resulted in conviction, we further explored whether victims with a documented history of prostitution, drug/alcohol use, or mental illness were more likely to have their cases result in a plea vs. guilty verdict compared to victims without these vulnerabilities. We did not find any statistically significant differences.

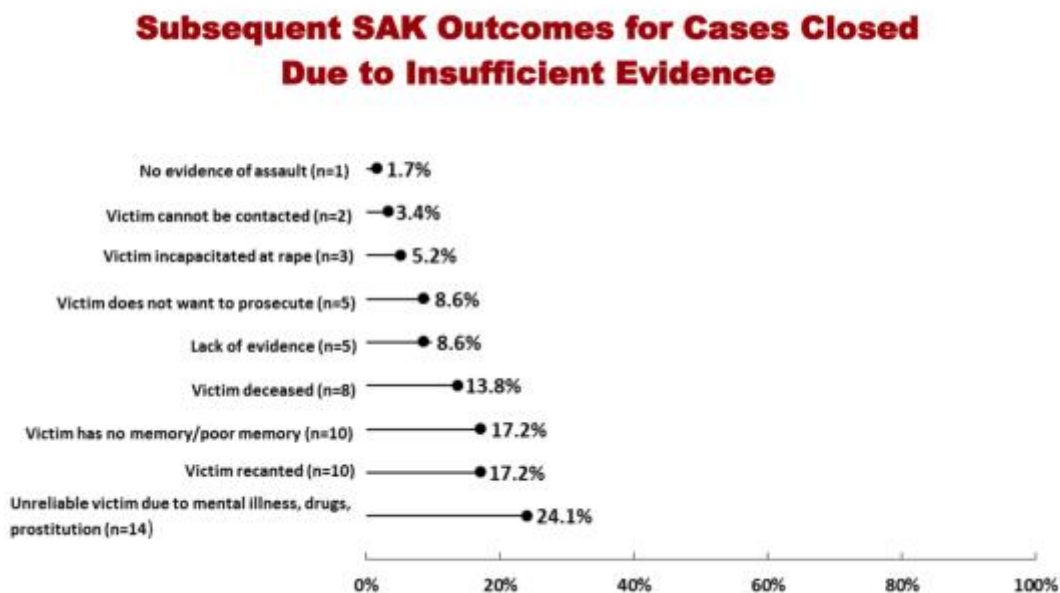
Next, we wanted to explore whether the defendants in the cases where the victim had these vulnerabilities (compared to when the victim did not have these vulnerabilities) were more likely to get “lighter” sentences—either by a reduction in the severity of the charge (e.g., felony 1 to felony 3) or a reduction in the number of charges (e.g., 3 counts of felony 1 rape to 1 count of felony 1 rape). The only statistically significant differences in the sentences for defendants in the cases where the victim had the vulnerabilities compared to those cases where the victim did not have these vulnerabilities was in the total counts. *Defendants in cases where the victim had these vulnerabilities saw a statistically significant reduction in the number of counts but not the severity of the counts they were convicted on compared to defendants in cases where the victim did not have these vulnerabilities.*

For current investigations, why were cases closed due to insufficient evidence?

We examined possible reasons why current investigations were closed due to insufficient evidence. These reasons were not specifically provided in the case files, as the Prosecutor’s Office does not keep data on this. Instead, the reasons provided here reflect the researchers’ summative classification of closure based upon a number of variables primarily related to the victim but also data contained in the current investigative reports of the sexual assault by Task Force investigators.

Figure 2 presents the likely reasons why cases were closed due to insufficient evidence. Most of the reasons for closure are victim-dependent.

Figure 2. Now: Likely Reasons why SAKs Were Closed Due to Insufficient



For example, of the 58 insufficient evidence cases, 14 (24%) were likely closed due to victim being unreliable due to mental illness, drug/alcohol use, or prostitution. A victim's lack of memory was likely the reason for classifying as insufficient evidence in 13 of the 58 cases (22%)—either because the victim was incapacitated (n=3) or did not have a memory or a poor memory of the event (n=10).

A smaller percentage of cases (n=10 of 58; 17%) were deemed insufficient evidence because the victim recanted.

A lack of victim availability at the time of current prosecution was likely the reason why cases were closed due to insufficient evidence in 10 of the 58 cases (17%), either because the victim could not be contacted (n=2) or because the victim was deceased (n=8).

The availability of evidence does not appear to be a significant issue with these cases as a total of 7 out of the 58 (12%) were likely closed because of either no evidence of a sexual assault (n=1) or a lack of sufficient evidence for indictment (n=6).

A small number (n=5) of the cases were closed due to insufficient evidence because the victim did not want to prosecute.

How can these findings inform practice?

Our sample of sexual assaults is derived from SAKs that had not been submitted for DNA testing and were still prosecutable (thus not previously adjudicated, still within the statute of limitations, and where the suspect was not deceased). Thus, these represent the “forgotten” cases—missed opportunities to provide justice for the victims and justice for the community.

Understanding what initially happened with these sexual assault reports provides an important opportunity to assess where in the process the investigations and prosecutions were stalled, why they were stalled, and how long this process took in order to help more cases reach a quicker, more favorable final disposition. Furthermore, understanding what currently is happening with the same sexual assault reports provides an important opportunity to assess possible improvement in the criminal justice system's response to sexual assault.

The findings show that most of the victims wanted to report the crime to authorities, as almost all made police reports. However, it should be noted that these SAKs are from victims who sought medical attention and agreed to the administration of a SAK.

Approximately 10% of the sexual assault reports initially indicated no follow up in the police report. For those cases with investigative activity, the majority of them were closed because the victim could not be contacted or the victim did not follow up. Less than half of the investigations were referred to prosecutors and of those that were referred, over 75% were declined for prosecution. None of the 243 sexual assaults resulted in indictments.

We coded for specific mentions of victims who, at the time, might have been involved in or perceived as involved in prostitution, have a mental illness, or was using drugs and/or alcohol at or near the time of the sexual assault (e.g., victim "vulnerabilities"). While we are relying on official documentation of these factors (thus, a conservative measure), the findings indicate that at least in Cuyahoga County, *SAKs that were never submitted for DNA testing are not primarily cases whether the victim was involved (or was perceived to be involved) in prostitution, mentally ill, or a drug and/or alcohol user*—24% of these assaults involved specific mentions of the victims having at least one of these vulnerabilities. The findings also illustrate, after re-opening the cases, very few victims recanted—less than 2% of the entire sample.

The current activity on the sexual assaults show that approximately one-fourth of these cases were closed due to insufficient evidence; *however, 74% had been indicted, 40% had a conviction and only 7% had a not guilty verdict*. Thus, these unsubmitted SAK cases are not necessarily "no-win" cases.

In fact, current prosecutorial outcomes indicate that victims with documented histories of prostitution, mental illness, and drug/alcohol use at the time of the sexual assault were almost as likely to have their cases result in conviction as victims without these histories. This finding contradicts the assumption that convictions are unlikely if the victim was a sex worker, mentally ill, or a drug/alcohol user. Hopefully, these findings can be used to encourage prosecutors to be willing to prosecute cases where the victim has these and other types of "vulnerabilities," and speak to the probative value of the DNA evidence.

While we present data on the most likely or probably reason for closing, cases are likely closed for a combination of factors and we have no data on the combination of factors that lead to a case closing for insufficient evidence. However, currently, two prosecutors must be in agreement in order to close a case. If they are not in agreement, then a senior-level prosecutor is the tiebreaker, thereby reducing the chance that a "weaker" case is easily closed.

The data also show that during the initial process, investigations were opened on average 5 days after reporting and remained open for 40 days on average. However, 25% were closed the same day and almost half were closed within a week. Cases were referred to prosecutors on average 59 days after the start of an investigation. While these data are informative, the amount of time the case remained at each phase of the process does not necessarily speak to the amount of effort expended in each phase. During the time period when most of the sexual assaults occurred in Cleveland, the high number of reported sexual assaults and small number of CPD detectives assigned to investigate the sexual assaults (Atassi 2014; Dissell 2012), *CPD detectives could not have possibly been able to fully investigate, all or even most, of the sexual assault reports.* If police departments do not or are not able to adequately staff units responsible for investigating crimes that are statutorily considered to be second only to murder, victims will be denied justice and offenders will continue to sexually offend, thereby further and needlessly harming even more victims and the community.

There are many ways that a victim can “fall through the cracks.” The findings show a drastic siphoning off of cases through the bureaucratic process and present opportunities for improvements in the criminal justice’s response to sexual assault. *This analysis shows the onus for the investigation and prosecution of sexual assault is most often placed, heavily, on victims—* victims of one of the most traumatic events that could happen to a person and often immediately following the traumatic event.

Victims are expected to be able to continue to advance the investigation and prosecution in all stages of the bureaucratic process and when this does not occur, the case fails to advance. Victim “cooperation” is expected by the system but often fails to provide the victims the needed support and information to ensure continued “cooperation.”

The data show that at the time of the initial investigation, victims were not (or not able to be) contacted in at least 40% of the cases. Currently on the Task Force, investigators do not close a case before contacting the victim, except in instances where the victim, after much searching, cannot be found or is completely unwilling or unable to give a statement. This practice may account for the fact that, currently, victims with “vulnerabilities” are equally as likely to have their case result in a conviction as victims without “vulnerabilities.”

The system treats (the often vulnerable) victims of sexual assault in the same manner in which they would treat a victim of vehicle theft or any other crime. More recent criminal justice practices are beginning to incorporate what we know now about how trauma impacts the victim’s brain and behavior to positively improve the process for victims of sexual assault. These findings give further support as to why these types of improvements are necessary but not sufficient. There is still much more work to be done.

By using data to inform practice, efforts can be focused on ensuring all sexual assault reports are followed up on and are able to be fully investigated, supports are provided to victims throughout the process, and that prosecutors are willing to prosecute the cases.

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