

# Montana Department of Justice Sexual Assault Kit Initiative



## Survivor Notification Protocol

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## **Guidelines for Montana Sexual Assault Survivor Notification**

### **Introduction**

One of the primary areas of focus for Sexual Assault Kit Initiative projects has been identifying best practices for survivor notification.

Testing previously unsubmitted sexual assault kits may create complex legal and psychological issues for the survivor. Notifying survivors about the status of their sexual assault case may trigger painful memories and feelings regarding the assault, causing re-traumatization and other trauma-based reactions. The Montana Sexual Assault Kit Initiative (MT SAKI) remains committed to creating survivor-centered, trauma informed recommendations to guide the notification process to mitigate re-victimization as a result of these efforts.

With an appreciation for the uniqueness of every case and the recognition of the challenge in conducting a statewide effort, the MT SAKI project established a set of guiding principles to allow for the ability to evaluate every potential notification on a case-by-case basis.

This document provides guiding principles for conducting trauma-informed survivor notifications based on research from the BJA supported National SAKI projects across the country, feedback from survivors, and input from taskforce members. Several decision points are addressed regarding how and when to notify survivors. These decisions must be made on a case-by-case basis by conducting a thorough analysis about how to best reduce trauma reactions and potential re-victimization, honor survivors' experiences, and mitigate the potential for harm.

### **Guiding Principles**

The following basic principles should be applied in every notification. These guiding principles are based on research of trauma-informed, national practices.

- Notifications should be conducted in an empathetic, sensitive, and kind manner which ensures safety, confidentiality, and survivor agency/autonomy.
- Notifiers shall have completed specific training on trauma-informed principles and effective communication for supporting people who have experienced sexual trauma. Notifiers should be prepared to provide a notification that promotes survivor empowerment, healing, and when desired by the survivor, reengagement in the criminal justice system.
- Additional considerations regarding survivor safety need to be considered, including whether the suspect was a family member or intimate partner.
- Notifications should be timely. Appropriate time frames will be decided on a case-by-case basis.
- Notifiers should offer choices and control over decisions to survivors, including opt-in and opt-out options.
- Notifiers should begin any conversation with an apology for what the survivor has had to experience/go through. Doing so will start to build trust.

- Notifiers should be aware of survivors' reactions to receiving information and mitigate harm when possible. Survivors may be angry that their evidence kits were not tested earlier. Expressed frustrations should be listened to and validated.
- Notifiers should strongly support the well-being of survivors.
- Notifiers should build trust, provide education, and support survivors to promote informed decision-making and survivor healing and engagement.

## How and when to Notify

### **Survivor-Initiated Contact:**

As a means of offering control and choice to survivors, Montana's Sexual Assault Kit Initiative (MT SAKI) Project will implement both a toll-free hotline and web-based platform for survivors to initiate engagement in the process and specify their preferences regarding future contact, information, and support between the hours of 8am and 4pm MST, Monday through Friday. Support will also be provided outside of normal working hours if deemed necessary by the DOJ MT SAKI Team. The MT SAKI Hotline and website will be heavily promoted via local news, radio, poster/billboard campaigns, social media, and through coordinated efforts with local agencies across Montana.

- Information shared via the hotline and website will be minimal until MT SAKI staff can verify client identity. The MT SAKI team will verify caller identity on a case-by-case basis, by connecting them with a community-based advocate, public assistance agency, medical professionals, law enforcement, or others as deemed necessary.
- Survivors initiating contact will have the opportunity to opt-in or opt-out of notification, as well as specify their preferred method of contact and frequency of contact.
- Survivors will also be given the choice to opt-out of sending their kit for testing, thereby removing the kit from the process. The survivor's identity will be verified by the same methods listed in the guiding principles, through contact with community-based advocates, law enforcement, or other professionals. Survivors will also have the option to submit their kit for review in the future and will receive a document as part of the MT SAKI packet with information related to statutes of limitations of their case.
- If the SAK has already been sent to the lab for testing, the advocate should explain that even if the Survivor does not want to proceed, the SAK has already been submitted for DNA analysis. Adding DNA to the Combined DNA Index System (CODIS) is beneficial if repeat, or previously unidentified offenders may be identified.

### **System-Initiated Contact:**

In situations where a survivor has not initiated contact and specified their preferences for involvement or contact, local law enforcement agencies and advocates, as well as the MT SAKI Site Coordinator will be tasked with identifying when and how the survivor is notified. The decision of when to notify a survivor is often a case-by-case situation as each case is unique and sensitive. Factors to consider include but are not limited to current living situation of the survivor, incarceration status of the perpetrator, statute of limitations on the case, and other safety factors as deemed important by the MT SAKI Team. The MT

SAKI Team consists of the Site Coordinator, the Crime Analyst, and the Cold Case Investigator. The MT SAKI Team will consult with other Department of Justice subject matter experts, the local Sexual Assault Response Team and State SAKI Task Force Members on a case-by-case basis. Four main decision points and recommendations are listed below to help address the most common scenarios.

### When to Notify

- If the survivor hasn't reached out to the Montana SAKI Hotline or web-based platform to express their preferences for contact, the following decision points for initial contact should be followed. The following recommendations are based on trauma-informed research to help empower survivors and mitigate potential harm and re-victimization.
- These protocols are guidelines to guide MT SAKI staff through the notification process, however, they are not absolute. The survivor's well-being and choice are of utmost importance and will be the guiding factor in decision making on notification. MT SAKI staff will be assessing cases individually to ensure that all needs are being met.
- Survivors will have the choice to opt-in or opt-out of notification and case proceedings by contacting MT SAKI through the website, information hotline, or email platform. They may also opt-in or opt-out at any point throughout the process by means of communication with the MT SAKI team.

#### **Decision Point 1:** When evidence kits are sent for testing

Recommendation: It is recommended that survivors are **not** notified when a kit is sent for testing *unless*:

- The survivor-initiated contact and indicated they wanted to be notified at every stage of the process,
- Notification has already occurred, and/or
- Law enforcement/involved advocates/medical professionals have remained in contact with the survivor and feels it is appropriate to notify the survivor.
- If the case is unlikely to move forward, the recommendation is to not notify a survivor. This is meant to help minimize potential and unnecessary trauma if a prosecution is unlikely to happen because of their kit being tested.

#### **Decision Point 2:** The evidence kit was tested, but no DNA profile could be created.

Recommendation: It is recommended that survivors are **not** notified when there was not enough material to develop a DNA profile *unless*:

- The survivor-initiated contact and indicated they wanted to be notified at every stage of the process,
- Notification has already occurred, and the survivor was notified their kit was sent to the lab for testing (unless they indicated they did not want further contact/notification).

- Law enforcement/involved advocates/system response has remained in contact with the survivor and feels it is appropriate to notify the survivor.
- If the case is unlikely to move forward, the recommendation is to not notify a survivor. This is meant to help minimize potential and unnecessary trauma if a prosecution is unlikely to happen as a result of their kit being tested.

**Decision Point 3:** A profile was developed and uploaded to CODIS but does not result in a “hit” (DNA match).

Recommendation: If a DNA profile did not result in a CODIS hit, it is recommended that survivor notification be on a **case-by-case basis**. By contacting the survivor, law enforcement and an advocate will be able to update them on the status of their evidence. They may also be able to help prepare a survivor that contact may be made in the future if there is a subsequent CODIS hit. (For example, if a survivor had called into the hotline inquiring about their kit, a follow-up call should be made.)

**Decision Point 4:** A profile was developed and uploaded to CODIS, resulting in a hit.

Recommendation: It is recommended that a survivor **should be notified** when a DNA profile attached to their case results in a CODIS hit. Notification should include all CODIS hits, including a hit to a known suspect living or deceased, an unknown suspect, or a known convicted offender who may or may not be incarcerated.

*The SAKI Team will conduct an initial notification to law enforcement and County Attorney’s to let them know that they have CODIS eligible cases and begin the planning process on case handling needs.*

*A SAKI Team member will contact community-based advocates in the specific jurisdiction to inform them that there are CODIS eligible cases and let them know what to expect in terms of upcoming advocacy needs.*

## **Guidelines and Recommendations for Survivor Notifications**

### **Who should conduct survivor notifications:**

- Notifications should be conducted utilizing a multi-disciplinary team approach, including a trained law enforcement representative in partnership with a trained, community-based victim advocate, and/or a MT SAKI Team member.
- The MT SAKI Team member should conduct the initial phone notification.
- When possible, it is recommended that a trained, community-based victim advocate is utilized to provide confidential support and connection to long-term support. Community-based advocates are protected by advocate privilege in most cases, and this protection is preferred when notifying survivors.
- Local jurisdictions should survey their local community-based advocates before conducting a notification to determine if there are available advocates and any current relationship to the victim.
- If a trained, community-based victim advocate is unavailable, it is recommended that either the MT SAKI Site Coordinator or a trained, systems-based (victim-witness) advocate is utilized.
- If a community-based advocate will participate in these notifications, the county attorney and law enforcement need to keep the advocate informed with the appropriate information-sharing of confidential criminal justice information so that the community-based advocate can fully participate in the notification.

### **How should notifications occur:**

- The initial contact should be made by the MT SAKI Team member by phone to provide preliminary information. The MT SAKI Team member should request to meet the survivor in person to discuss case details further. They may also provide contact information for the community-based advocate at this time.
- If the survivor chooses, the second contact should include the MT SAKI Team member, a local community-based advocate, and the appropriate investigator.
- Community-based advocates should be present at the secondary notification, if possible. Case details will be learned by this advocate in real time as the notification occurs. The community-based advocate can provide confidential support services to the survivor and should continue a relationship beyond the notification.
- All notifiers should receive training and support to ensure that they implement a trauma-informed approach. If they are not trained in conducting a trauma informed approach, they should utilize the MT SAKI Team.
- Notifiers should rely solely on an empathetic and sensitive approach in all contacts with survivors.
- Notifiers should conduct notification in a culturally competent and inclusive manner by partnering with organizations serving specific communities or utilizing the resources through the MT SAKI Team.

- Notifiers should be aware of the case details and be prepared to address any potential concerns for survivor safety or well-being. SAKI staff will review the case in advance of the notification. Notifications should consider a survivor's current life circumstances and culture to mitigate potential safety risks and re-traumatization.
- Regardless of method of notification, notifiers should offer choices and decision-making control to survivors (including opt-in/out of notification and future contact)
- Notifiers should understand research shows the tone of how the notification is conducted is far more important than the specifics of how the notification occurs including the gender or profession of the notifier.
- Notifiers should specify their roles and address any limitations to confidentiality. Community-based advocates should explain their privilege protections. Systems-based advocates should make explicit their own confidentiality protections and limitations.
- Employ a multi-stage approach when appropriate. If a victim needs a few days to process all the information presented to them, plan to allow for multiple visits. Not all case information needs to be presented or decided at the first notification. If law enforcement or the cold case investigator plan to re-interview the survivor after the original notification, it is advised that they wait up to two days to allow the survivor time to collect their thoughts. Further, notifiers should remain available to take a victim's call for a few days after notification. For example, when possible, notification should **not** take place on a Friday afternoon when the notifying professionals are not free again to speak with the survivor until Tuesday.

### **Incarcerated Survivors:**

- For incarcerated survivors, it is important to find a point of contact within the corrections or local jail system who can help facilitate a victim centered approach to notification. A victim liaison or a victim information officer is an ideal starting point. If a facility does not have any victim advocates associated with that agency, it is best to start with the Warden, Sheriff or Chief of Police to obtain the protocol that they would like you to follow.
- The survivor should be notified as to why you will be making a visit and given the option to opt-out of notification. This can be done through an introductory letter, phone call, or conversation with the victim officer working within the facility.
- Then, a visit must be scheduled with the warden or person in charge of visits at the facility.
- Whenever possible, coordinate with the victim officer and case manager to conduct the notification around the incarcerated person's schedule. This person can also help facilitate free phone calls and letters between the advocate and survivor, as well as provide continued support and resources to the survivor within the system.
- When making an in-person notification, attempt to use a private setting such as a visitation room or a case manager office where the survivor will be away from other incarcerated persons as to provide confidentiality for the survivor.

- Resource packets should still be provided but avoid the use of paperclips or staples in the paperwork.
- Before the visit, ask the facility what is allowed to be brought in such as case files. Officers may have to view/search anything brought in so be prepared to answer questions the survivor may have without bringing case files to maintain confidentiality.

### **Unable to locate:**

- If a local jurisdiction or SAKI investigator is not able to locate a survivor after exhausting all avenues known to them, it is recommended that the local law enforcement agency leave the case listed as “inactive” as opposed to “closed” in the event the survivor reaches out to the jurisdiction later.

### **What information should be included in the notification:**

- Rely solely on an empathetic approach, follow the survivors’ lead, and recognize that the notification is a lot more than a transaction about test results.
- Empower the survivor and provide them accurate information so they can make informed decisions.
- Offer an apology for what the survivor has had to experience/go through. For many survivors, receiving an apology may be important. Recognizing the impact of the wait for answers may help in mitigating trauma and creating trust.
- Offer resources. Notifiers must be prepared to offer resources/referrals for confidential sexual assault support.
- Share details. Notifiers must be prepared to answer questions about the process, the criminal justice system, who to contact/call for support, ongoing details about the process, survivor rights, and additional resources. Some survivors may need additional explanations of terminology and procedures.
- Offer print materials. Notifiers should leave hand-outs including a booklet addressing common questions, important contact information and resources, as well as links to websites with more information about the process.

### **Phone contact:**

- This is the recommended method of initial contact to provide brief, initial interaction and offer choices to survivor about pre-arranging a time and place to meet in-person (allow survivor to define the date, time, and location for an in-person meeting) or to reject any meeting.
- If the survivor chooses to continue contact by phone only, the MT SAKI team should take steps to ensure that identity is verified in a manner that does not make the survivor feel that they are not believed. The MT SAKI advocate should ensure that the survivor is connected with appropriate resources and law enforcement.



- Avoid caller ID and leaving messages because either of those could result in safety concerns for the survivor.
- If a message is required, be brief, leave no confidential information, and indicate there is no emergency.
- If initial phone contact is made, recommendations for opening the conversation may include:
  - “I’m contacting you regarding an incident you reported to law enforcement. Do you remember contacting the police in (year) when something happened to you?”
  - “Is this a good time to talk? (If not) “When can I call you back?”
  - “If you’d be open to speaking with us, I’d like to find a time and place that works for you to discuss the case in more detail”

#### In-person contact:

- In-person contact (at the survivor’s preferred meeting location) will allow notifiers to assess survivors’ reactions in real-time and make appropriate/ timely referrals.
- In-person contact conveys that the investigation of the crime is a priority, and it relays concern for the survivors’ well-being.
- In-person meetings allow law enforcement representatives an opportunity to provide immediate answers to questions.
- Meet the survivor at a location and manner that provides as much confidentiality as possible.
- Ensure the survivor knows they can choose to bring someone to support them, have a victim advocate present, or both.
- Law enforcement should arrive in plain clothes and an unmarked car, accompanied by a victim advocate (preferably a community-based advocate who can provide confidential sexual assault resources and support).
- Victim Advocates should assess and respond to the needs of the survivor by initiating any intervention or offering support services that are required or requested.
- Victim Advocates should remain available to the survivor for ongoing support, information, and needs related to the case.
- Notifiers should provide written materials, including contact information, websites, and resources for the survivor so survivors can take the information with them and revisit the information/accompanying resources at their own pace/time.

#### U.S. mail notification:

This is the least confidential method of contact and should be used only after exhausting all other efforts to connect a survivor via phone or in-person. The letter should be written as generically as possible to maintain as much confidentiality for survivor as possible.

A letter including more information may be sent only after survivor approval.

[SEE APPENDIX A.](#)

**Email Notification:**

Email notification should only be utilized **as a last resort** method of initial contact. It creates a permanent electronic document that could be accessed by others, it is often viewed as impersonal, and it may be misdirected or opened by someone other than the survivor.

The email sent to the survivor should be written as generically as possible to maintain as much confidentiality for survivor as possible.

**SEE APPENDIX B.**

**Contact Montana SAKI email hotline:**

The email will have an automatic reply (example below) function, to ensure that the survivor gets the best assistance possible.

**SEE APPENDIX C**

## APPENDIX A

{AGENCY LETTERHEAD}

{Insert date}

{Survivor Name}

Address Line 1

Address Line 2

Dear {Survivor Name},

My name is {name}, and I am an employee of the Montana Department of Justice. I have some new information about a case that occurred in {year}.

Please contact me at your earliest convenience. I can be reached by phone at 888-548-5463. Please be aware that you will be directed to a voice message and asked for some basic information for me to return your call.

Please feel free to leave a message with your contact information and whether I have permission to leave a message at that number or email address. Calls and emails are returned Monday- Friday 8:00 am to 4:00 pm.

Thank you.

Sincerely,

{name}

{Insert formal signature}

## **APPENDIX B**

Subject Line: Attention {Survivor Name}

Dear {Survivor Name},

My name is {name}, and I am an employee of the Montana Department of Justice. I have some new information about a case that occurred in {year}.

Please contact me at your earliest convenience. I can be reached by phone at 888-548-5463. Please be aware that you will be directed to a voice message and asked for some basic information for me to return your call.

Please feel free to leave a message with your contact information and whether I have permission to leave a message at that number or email address. Calls and emails are returned Monday- Friday 8:00 am to 4:00 pm.

Thank you.

Sincerely,

{name}

{Insert formal signature}

## APPENDIX C

Thank you for contacting the Montana Department of Justice.

If you are a recent victim of crime and need emergency assistance, please dial 911. If you are currently working with an investigator, please let us know in this message and we will connect you with the right person.

Your information is kept confidential within the criminal justice system unless you tell us otherwise.

If you would like us to contact you to learn more about your case, please tell us your name, email address, case number if known, and phone number if you would like to be called.

You may also opt-out or opt-in to case information at any time by contacting us and letting us know.

Emails will be returned in the order that we receive them, usually within 72 business hours.

If you would like to speak with the DOJ advocate, dial 888-548—5463, or visit our website at <http://dojmt.gov/saki> to find a community- based advocate or other resources near you. Thank you again for contacting the Montana Department of Justice. We will return your email as soon as possible.