



**Hearing on Implementation of the Sexual Assault Survivors' Bill of Rights and
Clearing the DNA Backlog
Written Testimony of Rebecca O'Connor of the
Rape, Abuse & Incest National Network (RAINN)
Before the U.S. House Judiciary Committee
Subcommittee on Crime, Terrorism, Homeland Security and Investigations
February 27, 2018**

Chairman Sensenbrenner, Ranking Member Jackson Lee and members of the subcommittee, thank you for convening today's hearing and for the opportunity to address you on the *Sexual Assault Survivors' Bill of Rights* and related matters.

I am Becca O'Connor, vice president of public policy for the Rape, Abuse & Incest National Network, or RAINN, the nation's largest anti-sexual violence organization. RAINN founded and operates the National Sexual Assault Hotline (NSAH) in partnership with more than 1,000 local sexual assault service providers across the U.S. The hotline, which has helped more than 2.5 million victims of sexual assault, serves as the nation's primary resource for victims of sexual violence. RAINN also operates, on behalf of the Department of Defense, the DoD Safe Helpline, which serves members of the US military affected by sexual assault. Additionally, we educate more than 130 million Americans each year about sexual assault prevention and recovery and reform policy.

Rape is a crime that reaches every corner of our society – once every two minutes, an American is sexually assaulted, according to the Justice Department. Despite progress, it's also a crime where too often the only one who pays a price is the victim.¹ Sex offenders are less likely to go to prison than those who commit crimes of assault and

¹ The term "victim" is used throughout this testimony to refer to individuals who have experienced sexual assault because it is the term used in relevant statutes and the criminal justice system. RAINN appreciates, however, that many people who have experienced sexual violence prefer the terms "survivor" or "victim/survivor." We respect those preferences and mean no disrespect by our choice of language.

battery or robbery.² This is particularly concerning when you consider that rapists tend to be serial criminals, striking more than once. One underlying reason for this: More than two-thirds of sexual assaults go unreported. That's why RAINN is dedicated to improving the criminal justice response to rape and enhancing and enforcing rights that support victims' healing and participation in that system.

The *Sexual Assault Survivors' Bill of Rights* paints a picture of the ideal: how we expect society should respond to and support victims in the wake of sexual violence. Providing rights that support victims' unique needs goes to creating a system where more victims will feel comfortable reporting and more sexual predators can be held accountable.

This legislation marked a positive step and made a promise to victims and those working to address sexual assault. We share the committee's keen interest in seeing this law's promise fulfilled.

Implementation and Beyond: Opportunities to Maximize and Build Upon this Law's Impact

We hope and anticipate that, as in the past — with efforts including the Office for Victims of Crime's Vision 21 Initiative,³ the National Institute of Justice-led SAFER Working Group⁴ and the Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI)⁵ — the

² For related cites and additional background, please see: <https://www.rainn.org/statistics/criminal-justice-system>

³ The 2013 *Vision 21: Transforming Victim Services Final Report*, published by the Department of Justice's Office of Justice Programs, Office on Victims of Crime, presented a cohesive and comprehensive framework for strategic change in the victim services field and addresses ways to overcome political, policy, and philosophical challenges in the field. OVC intended the report to catalyze important steps in the strategic direction and focus of the victim assistance field. Executive Summary and Final Report available here: <https://ovc.ncjrs.gov/vision21/outcome.html> (last accessed February, 2018).

⁴ As required by the Sexual Assault Forensic Evidence Reporting (SAFER) Act of 2013, PL 113-4, Title X. Final report available here: <https://www.ncjrs.gov/pdffiles1/nij/250384.pdf> (last accessed February, 2018).

⁵ <https://www.sakitta.org/>. RAINN serves as a member of the DOJ-appointed SAKI Training and Technical Assistance Team.

Departments of Justice and Health and Human Services will seize the opportunity this law presents to memorialize, enforce and continue to advance expert-informed, evidence-based policy proposals.

For example:

- **The Bill of Rights provides that a survivor of sexual assault has the right “not to be prevented from, or charged for, receiving a medical forensic examination.”** This is in keeping with the *Violence Against Women Act*, which Congress has now twice amended to ensure that victims’ access to these forensic examinations is unhampered.⁶

This is particularly critical when the dual — equally important — goals of these exams are considered:

First: the medical treatment rendered in the course of the exam can be a deciding factor in a victim’s immediate and long term healing and recovery from the assault. During the exam, a trained professional will treat minor injuries and address concerns such as pregnancy or sexually transmitted infections.⁷

Secondly: the forensic evidence collection undertaken during these exams can be the difference between a conviction and the rapist walking free to strike again. During the exam — which can take up to eight hours — the victim’s body is a

⁶ In the 2005 Reauthorization of VAWA, language was added to specify states and territories 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, reimbursed for charges incurred on account of such exam, or both.” VAWA 2013 retained these provisions with two key changes. First, a clarification that victims cannot be required to pay any out-of-pocket costs to obtain a medical forensic exam (under VAWA 2005, jurisdictions were permitted to bill victims for the cost of the exam as long as they were fully reimbursed). The reauthorization also stated that government entities (U.S. states, territories, tribal governments) will only be eligible for federal STOP grant funding if they coordinate with regional health care providers to notify victims of sexual assault of the availability of medical forensic exams at no cost to the victim.

⁷ Serious injuries are treated separately.

crime scene, from which forensic evidence is carefully collected and stored in a victim-centered, trauma informed manner. A professional will document injuries and other indicators of assault (including drugging) to support identifying the perpetrator.

Even with improvements to federal law, implementation — ensuring all victims have equal access to free forensic medical exams — has been challenging.⁸ Recently, New York State Attorney General Eric Schneiderman uncovered victims seeking rape exams at in-state hospitals were wrongly charged for exam expenses. The result: administrators at a cluster of hospitals are reportedly issuing checks to reimburse victims.⁹ We can do better.

To that end and as appropriate, we hope the Sexual Assault Working Group formed under this Act will continue the important work of closely evaluating federal law for opportunities to even further clarify what costs must be covered by the states in relation to a medical forensic exam. Finally, we also stand prepared to work with this Committee, members of the Working Group, and other stakeholders to better ensure all victims have access to the invaluable specialized services of Sexual Assault Nurse Examiners.

I'd like to offer one additional example of an opportunity to maximize this law's impact:

- **The law grants victims the right to have their rape kit (or its probative contents) preserved, without charge, for the shorter of either the maximum applicable statute of limitations or 20 years. Moreover, a victim may, upon**

⁸ See, *Who Pays for Sexual Assault Medical Forensic Exams? It Is Not the Victim's Responsibility*, Denver, Megan, Newmark, Lisa C. and Zweig, Janine M. May 14, 2014 available at: <https://www.urban.org/research/publication/who-pays-sexual-assault-medical-forensic-exams> (last accessed February, 2018).

⁹ See, https://www.washingtonpost.com/news/morning-mix/wp/2017/11/29/a-brooklyn-hospital-illegally-billed-dozens-of-rape-victims-for-their-forensic-exams-says-new-york-ag/?utm_term=.8ef127abe597 (November 29, 2017. Last accessed February, 2018).

written request, be granted further preservation of the kit or its probative contents. We supported inclusion of this provision for a number of reasons.

First: as the world evolves, so should our laws. Statutes of limitation were put in place in part to discourage convictions based on “unreliable witness testimony,” including memories of events that occurred years in the past. As our understanding of the physical, emotional, and psychological effects of sexual violence and the reasons a victim may not immediately report have evolved, so too has technology. In recent years, the availability of evidence that does not erode over time, including DNA from rape kits, has spurred a wave of state reforms, including the adoption, in the majority of states, of exceptions that toll sex crime statutes of limitations when DNA evidence is available. Moreover, states have stepped up and established evidence retention policies to ensure heightened transparency and informed decision making in this area.¹⁰

Despite this progress, the system remains fractured. We unfortunately do still hear stories about victims who have come forward seeking justice within the statute of limitations only to learn their rape kit was destroyed. These stories are again part of why RAINN enthusiastically supported this measure and why we hope to see it fully implemented. We note that it also aligns directly with a recommendation issued by the Justice Department’s multidisciplinary SAFER Working Group just last year.¹¹

¹⁰ For additional information, including RAINN’s Statute of Limitations Legislative Drafting Guide, visit: <https://www.rainn.org/statutes-limitations> (last accessed February, 2018).

¹¹ See, *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, National Institute of Justice, August, 2017. This report, required by the 2013 SAFER Act, compiled best practices and a set of 35 recommendations designed to positively impact sexual assault responses and experiences of victims and promote safer communities. These recommendations, developed through consensus between Working Group experts empaneled by NIJ representing victims, victim advocates, SANEs, forensic laboratories, law enforcement agencies, and the judiciary including the following: “Unreported sexual assault kits (SAKs) should be retained for at least the statute of limitations or a maximum of 20 years.” (at p. 68) Notably, the same report included a recommendation that “Jurisdictions that do not have evidence retention laws should adopt them ... and preserve evidence from uncharged or unsolved cases for 50 years or the

Moreover, the reality is that these are often complicated cases. The investigation of sex crimes, once reported, can be time and labor intensive, even in the best of circumstances. Challenges — such as the nation’s rape kit backlog which has lead to delays in processing rape kit evidence — only further exacerbate the problem.

We owe it to both victims and the professionals working tirelessly to solve these crimes to ensure a meaningful opportunity for justice. Our preference is for the elimination of the statutes of limitations for at least all felony level sex crimes. In fact, more and more states are moving to make this change. At minimum, we should be doing everything we can to ensure a rape kit is never destroyed while the statute of limitations is still running.

Closing

The codification of victims’ rights is nothing new: since the 1980s, all 50 states and the federal government have enacted at least one set of rights for those impacted by violent crime. RAINN was an avid supporter of the original *Justice For All Act*, which provided and strengthened clear, enforceable legal rights for victims of crime at the federal level.

In the years since, Congress has built upon that foundation, renewing and strengthening this and other laws to ensure, among other things, the power of DNA to solve crimes is maximized. In fact, very soon we’ll be returning to the Hill to urge reauthorization of one of the *Justice for All Act’s* most successful programs: the Debbie Smith Act.

length of the statute of limitations, whichever is greater.” The report notes that this recommendation differs from the “recently enacted” Sexual Assault Survivor Bill of Rights “because of the need to maintain SAK evidence for postconviction purposes.” (*Id.*)

But first, we look forward to working with you to support this law's seamless and timely implementation and ongoing improvement. The timing of this law's enactment was in some ways fortuitous.

Since the #MeToo movement captured the nation last fall, the NSAH has been overwhelmed with calls for help and support. Last month, RAINN's victim service programs helped 20,782 survivors, up 47% from the prior year. Some visitors have waited up to three hours to speak to our staff. The 209,480 survivors helped in 2017 was the most for any year since RAINN's 1994 founding. We're doing all we can to meet demand: we recently added 40 employees to our staff of approximately 200 and stepped up volunteer recruiting.

This trend represents, in some ways, good news. More victims are reaching out. More amplifying their voices, seeking avenues for healing and justice and helping to turn the tide on this crime which the FBI ranks just below murder in its seriousness. This trend also underscores just how critical it is that we do all we can to support these survivors: implementation of this law is a key step.

Thank you again for the opportunity to address and bring awareness around the importance of this law's implementation and I look forward to further discussion.