



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, the politics that compel them, and the important work of democracy.

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Testing Rape Kits | OAS Episode 63

Gene: Welcome to “Our American States,” a podcast of meaningful conversations that tell the story of America’s state legislatures, the people in them, the politics that compel them, and the important work of democracy. For the National Conference of State Legislatures, I’m your host, Gene Rose.

An estimated 25 million Americans are rape survivors. The FBI reported 135,000 sexual assaults alone in 2017. The Bureau of Justice Statistics three years ago estimated that only 23% of rapes or sexual assaults are likely to be reported to law enforcement.

For those that do report the assault, it is compounded by the difficulty in navigating the legal and medical systems and the lack of knowledge on the status of their rape kits and how long the results of those kits are allowed to be used. In addition, sometimes the victims are charged for the cost of those rape kits.

We have two guests who have been strong advocates to clarify the legal status of rape kits and victims’ rights to those kits, including a woman who was raped while as a student at Harvard, which led her to achieve an unprecedented change in federal law in just two years.

Later in the program we will hear from Kemp Hannon, who as a New York State senator successfully passed legislation in that state’s handling of rape kits.

First our interview with the student who gave up dreams of working in the aerospace industry to help victims of sexual assault... We’re grateful to have as our guest today Amanda Winn, who is the founder of RISE, a nonprofit that fights for the civil rights of sexual violence survivors. Her efforts have resulted in the passage of more than 20 laws regarding sexual violence including a 2016 federal Sexual Assault Survivor Bill of Rights.

The measure, among other things, established civil rights for victims, including needed access to medical and legal information. Amanda, welcome to our program.

Amanda: Thank you so much for having me.

Time Marker (TM): 2:12

Gene: So tell us about RISE and what your mission is.

Amanda: RISE started from a very personal place. You know, my background is actually in astrophysics. I worked at NASA, I researched astro at Harvard, but after my rape, after walking out of my hospital, I discovered a broken criminal justice system where rape survivors in some states have their evidence or rape kits destroyed before the statute of limitation.

In some states survivors are charged for their evidence collection; it can cost up to \$2,000. In some states survivors have to fight to have a copy of their police report among many other atrocities.

I realized that right now in the United States there wasn't justice and equality under the law for survivors. So I had a choice: accept the justice or rewrite the law; and so I rewrote it. In 2014 I founded RISE and we were a group of people from different walks of life who were just dedicated to drafting and passing the Sexual Assault Survivor Bill of Rights.

And in October, 2016 it passed unanimously in both chambers of Congress. Then President Obama signed it into law. The federal law guarantees civil rights for 25 million rape survivors in the United States of America.

TM: 3:34

Gene: And not too many groups have success in such a short period of time. What do you attribute your success to?

Amanda: I'm really grateful to all of the senators and representatives that championed us, but at the end of the day, it was by getting members to see not only the moral reason, but the political reason why they should set aside their differences and work on this that helped us get the law unanimously passed.

So what's remarkable isn't that we only passed the first federal unanimously; it's that since that time we've passed a total of 23 laws unanimously across the United States, and that's in large part because many people reached out to us after President Obama signed the law and said: Hey, in my own community I'm experiencing this too. I'd like to do what you've done. Can you help me pen my own civil rights legislation.

TM: 4:29

Gene: So let's dive into some of these issues here. As you explained, you learned a lot about the status of rape kits following the attack on you. Is there a uniform system for the collection and retention of rape kits across the country?

Amanda: That's a great question. The short answer is no. There are differences, not only from state to state, but even from county to county, and one of the main purposes of established codified civil rights for survivors is to have standard operating procedures so that there aren't these discrepancies that can have massive ramifications on people's rape cases.

TM: 5:05

Gene: So how long do law enforcement agencies retain the kits? Is there any type of standard?

Amanda: The standard that we've created, which many states across America have adopted, and in federal court, the federal law that Congress passed is adopted, is at least until the statute of limitations. Now that's pretty standard with other crimes; evidence is never destroyed except in rape cases, and that's a double standard.

So holding onto the evidence doesn't only protect the survivor; it also helps law enforcement officers be able to find the truth, and it also exonerates the accused.

TM: 5:42

Gene: Can you give us an overview about how many untested rape kits there are in the United States?

Amanda: Sadly I can't, and the reason why is because states across America need to do a little bit more data and digging to find out: Well, what is actually the breadth of rape kits that are still left in these examination or police labs?

And we know that there are hundreds of thousands of kits, but that number is still a low-ball number across the United States.

Time Marker (TM): 6:15

Gene: You touched on this before, but I'd like to dive a little bit deeper on why those rape kits were not tested.

Amanda: So, euphemistic answer, and that answer is: Look, there are a lot of things that happened and the benefit of the doubt is that these kits may have just been overlooked. But if one really wants to know the real answer, it's that the majority of rapes aren't taken seriously, and by that I mean rape is notorious for having an underreported figure.

People, survivors, don't feel like they can trust law enforcement, and their fears often aren't unfounded. One of the key points in that is that if evidence is collected from your body, which is a crime scene, that becomes a rape kit and that rape kit and the evidence doesn't even get tested, doesn't go anywhere.

And then on top of that sometimes, like in my case, it could even be destroyed. My rape kit personally wasn't destroyed because I fought for it, and then I had to write a law to preserve it. But unfortunately there are so many other survivors who found out after the fact that their evidence was destroyed, which barred them from accessing justice.

TM: 7:22

Gene: Tell us a little bit more about the legislation you're promoting across the country. How many states have adopted it and do you see that trend continuing?

Amanda: I absolutely do. I'm incredibly hopeful. When President Obama signed the Sexual Assault Survivor Bill of Rights in Congress, over a million people reached out. Those people didn't only include survivors; they included, critically, state legislators.

So, because most rape cases are adjudicated in state courts, even though we passed it on the federal level, we still need to pass this state by state. And there is no more critical person that can help anyone in their community, survivors, allies alike, to pass these critical civil rights than state legislators. And to do so, we're so proud to say that we've passed a total of 23 laws.

Some of these laws are (garbled) laws in specific states, but we have a goal of getting to all 50 states because of the quality under the law.

TM: 8:21

Gene: Let's talk more about the victims here. What's it like for them to have to navigate the legal and medical systems after they've been assaulted?

Amanda: Yeah, those are two different issues. I say this and I still stand by it: the worst thing that happened to me wasn't being raped; it was being betrayed by America's broken criminal justice system.

And even though I felt like I was let down by America's criminal justice system, I still have a deep belief in democracy and the change that legislation, our legislative process, can bring, and that's why I've worked hard to not only pen my own civil rights existence, but to train other organizers to do so.

You know, those laws that we've passed, the 23 laws, they impact around 40 million people. And the best part, the most remarkable of it isn't that I did this; it's that I trained other organizers, other survivors and allies in their own communities who reached out to us and said: Hey, I want to do this too.

So for folks who are listening in, it is so possible to create change, even on something that is as, and could have been controversial like rape or sexual violence.

TM: 9:34

Gene: I understand there's been a statewide rape tracking system approved in a few states. Can you explain to our audience what that is and why it's important?

Amanda: Yeah. If you can track your Domino's Pizza, then you should be able to track something as critical as evidence in Class A violent felonies like rape. Now, in a lot of states, it's quite hard to figure out after the rape kit has been done where the evidence is. And I have to say, this is not only for the survivor; critically it's for the law enforcement officer.

So police officers should be able to know exactly where evidence from their case is, and that's what these tracking procedures that have been put into place aim to do.

TM: 10:20

Gene: And in the legislation you're proposing, the rape kits are retained in accordance with the statute of limitation laws, is that correct?

Amanda: That's correct. So the Sexual Assault Survivor Bill of Rights is a comprehensive list of rights that have legal precedence across the United States, even before my first law, the federal law passed. All of these were taken as best practices in communities where it was proven and worked.

And the first right, the most high-profile one because it pertains to my specific case, is to not have your essence, the rape kit, be destroyed before the statute of limitations. Another right that's in the bill is the right to have access to your own police report. Another right is the right to be notified of your rights, because in moments of trauma, access to information acknowledges power. And in certain states another right is establishing a tracking system.

TM: 11:15

Gene: I want to ask you about a new project you're embarking on, but I want to ask if there is any other aspect of this issue that you'd like to address.

Amanda: Yes. One of the things that I'm really proud of today is that over the past four years we've passed these 23 laws and we've been able to do so unanimously every single time. And one of the reasons why is because we're not there to push a certain political agenda. It's really people in their communities who want to bring legislators, public servants from wherever they come from to hear their voices and work on issues as those who run for office want to do.

And so in the past eight months we've been able at RISE to expand and create the next phase of RISE, which is taking the resources and knowledge we've attained, the networks we've attained and to give that to the next generation of folks to train people who are activists, who want to change a law and to help them pen their first law into existence. And we call our next phase RISE Justice Lab.

Essentially it's an accelerator for social movement. It models itself off of Silicon Valley tech accelerators. So just like in the tech community, when an entrepreneur has an idea, based on the merit of their idea they can pitch to VC firms and then get funding, seed funding, get training and essentially the barrier to entry to their market at their success accelerated. That doesn't exist for civil rights until now.

The first group we are so proud to work with are incredible folks called Zero USA. They're our first incubation and they're working to pass extreme risk protective orders in 12 states. So this legislation gives law enforcement a tool to prevent mass shootings and combat our nation's suicide epidemic. Robert Schentrup, their founder, recently testified in Colorado on behalf of this legislation and the bill has been signed into law by the Governor.

TM: 13:23

Gene: As I understand it, the model you're sharing with these groups is the one you used to pass the federal Sexual Assault Survivor Bill of Rights.

Amanda: That's correct. So after the first law passed and after we successfully passed 20-something laws, we figured we were doing something right and I created a theory of organizing called Hope-a-nomics™. We gamified the process of passing a law and then we added diplomacy to it.

Essentially all of our organizers are taught from the very beginning that they should enter a meeting with any senator or any representative knowing everything that they want to pass, all the facts, and then critically exercising what we call courageous and radical advocacy, so being able to put our political tribalism, our personal feelings, out the door and walking in to negotiate these rights with an open mind and seeing from the other side.

Gene: We've been talking with Amanda Winn, who is the Founder of RISE, a nonprofit that fights for the civil rights of sexual violence survivors. Amanda, thanks so much for taking the time to share your knowledge about these issues.

Amanda: Of course. Thank you for having me.

MUSIC

Gene: We have on the line former New York State Senator Kemp Hannon. Kemp, welcome to our program.

Kemp: Good to be with you.

TM: 14:48

Gene: So Kemp, you successfully sponsored legislation that was signed by the Governor three years ago that guarantees that all rape kits are tested in New York. Walk us through some of the key provisions of that bill if you would.

Kemp: I think the first step that we had to take was overcoming the presumption that many in law enforcement felt that all rape kits were already being tested. It turns out that given the individual nature of this crime and the victims, that many of the rape kits were not being tested. And we need to walk people through the circumstances that were taking place and get people to change their mind.

We first had to identify the problem and that was this misidentification of the solution. There is a group called Joyful Hearts and there are a couple of other groups of people who are in the community who are survivors from a rape and they were the ones who pointed out that there was a deficiency.

I had read some articles about this from some of the smaller, upstate New York cities and during the summer Summit meeting for NCSL, came across the Joyful Hearts booth as an

exhibitor and had a long conversation with them, and came back to the legislative session with an idea of moving this forward.

We wrote some legislation, we had it passed, and then we had the difficulty of convincing district attorneys, police departments, the criminal justice system, the people who do the records for the state, that this was something that was: a) a lack in the current system, and b) achievable as we would go forward.

So we were able to pass a statute. Then after we passed it, negotiated a bit with the Governor's office, and finally we passed what they call a chapter amendment and had a version passed in 2017, so that we have now as of February, 2017, all new rape kits must be forwarded to a lab within 10 days, and the lab must report within 90 days.

We also had to deal with the fact that there was a backlog of untested rape kits. And so we had specific provisions for that. We said that it required all agencies to inventory what they had, report the results of the inventory, and then start sending those kits off to the lab.

We probably have reduced the untested kits substantially; it's hard to put numbers on it. But we think we had about 2,000 kits that were in existence, but had not been tested, and we've been whittling that down distinctly.

In order to get all that done, we appropriated half a million dollars and we continue to work on it because this is a heinous crime and it leaves the victim sometimes totally scared, totally frightful going forward, not wanting to prosecute charges because frankly it puts the victim really in the crosshairs of the discovery process and the prosecutorial system.

So one of the things that we had to do was to try to sort out the difficulties for the victim and we came up with a Victim's Bill of Rights so that the victim is given a set of what rights they have and when they have to exercise it. And the second thing we did, because sometimes it takes a good while for the victim to decide I want to prosecute this... you know, the initial shock, the initial shame, the initial outrage, all of that can change a little bit one or two or three/four years down the road.

So we now require in New York that the rape kits be preserved for 20 years so that if anything comes about, or if there's further DNA information that comes about linking the possible perpetrator with this crime, you will have the rape kit on hand. That was a fairly big thing we did.

Along the way we increased monies to support rape crisis centers. We also increased money to train sexual assault forensic examiners in emergency rooms throughout the state. And because you can't have a trained examiner in every hospital, we set up a system of tele health initiatives with several hundred thousand dollars so that hospitals around the state could be connected to trained examiners and develop the information that way.

So it required a lot of information. I know one of the key things that was essential was the support of the community and the support of the group that calls itself End the Backlog. And End the Backlog... otherwise the group is called Joyful Hearts – they were essential in connecting us with people who have been victims.

And then at crucial times, we had some press conferences with the victims to try to make this a lot more realistic and practical than just some type of academic exercise. And those press conferences were crucial in getting the legislation passed.

TM: 20:20

Gene: When you were doing your research for this initially, Kemp, were you surprised? Were you angry about what the current situation was at the time?

Kemp: Well, I've always been angry about the crime of rape. It's both an assault because of gender and it's an assault because of force, and always seemed to me one of the most heinous crimes that takes place. And the harm to it is not only immediate, but it can last for generations.

So, most people had presumed that the rape kits were all tested in New York. They presumed that it had been taken care of. In fact, one of our prominent district attorneys had generated money from forfeiture funds; it was proposed to him using that to test backlog rape kits; and he sent the money outside of New York. He was in total agreement with the goal, thought all of the rape kits had been tested in New York.

Well, thanks to Joyful Hearts and a few other people digging through freedom-of-information requests, it turned out that was not the case and there was work to be done right here in New York.

TM: 21:29

Gene: What haven't we talked about that you believe needs to be highlighted, particularly about how this country processes rape kits and treats victims of sexual assault?

Kemp: First of all, you're dealing with, for all of this day and age of frankness in the media and frankness in conversation, you're still dealing with intimate facts. You're dealing with the subject of sex. And so many people don't want to discuss it.

Second, you're dealing with a whole process that many in law enforcement feel they have already addressed and resolved, where in reality they have not. Even going through the process of having a victim be examined and tested and giving up fluids and all of that for what they call a rape kit is a difficult process. It needs training to the examiners. It needs preservation of the evidence. It needs a place to keep the evidence.

For instance, when the Governor decided to pick up the issue, it was proposed: oh, you can keep the rape kits for five years and you can keep them in hospitals. Anybody who has ever known the wherewithal of a hospital, they don't have any space for anything. So we had to change the time for keeping the rape kits to 20 years, and then we had to propose that these be done statewide in one central location where there is a verbal commitment to try to do that.

It's a more intricate process than one would think. Criminal justice, prosecuting a crime, defending a crime, has become an enormously complex area of expertise. When you add into it the question of where the evidence is key, then this gets even more complicated.

TM: 23:12

Gene: So what advice would you have for legislators from other states about how to address the backlog of rape kits in their systems?

Kemp: That approaching it on a multidimensional process – go look for people in the community to be supportive and to give you some testimony and some facts as to what's happened in their experience when they've gone through the criminal justice process for a rape; go through and look at people who might have peripheral expertise such as those who are helping victims of domestic violence; and then go through the police departments and the district attorneys, and to have gentle conversations, avoiding putting them on the spot such as: oh, you're not doing enough; but: Is it possible that we could improve upon this process? And how can we go forward?

And you're going to have to be somewhat determined to do it. It requires any number of different successes along the way in making a change in law.

Gene: We've been talking with former New York State Senator, Kemp Hannon. Kemp, thanks for being a guest on "Our American States."

Kemp: Thanks for having me.

Music and Gene VO:

And that concludes this edition of "Our American States." We invite you to subscribe to this podcast on iTunes and Google Play. Until our next episode, this is Gene Rose for the National Conference of State Legislatures. Thanks for listening.