

SAN DIEGO POLICE DEPARTMENT PROCEDURE

DATE: 01/03/2014

NUMBER: 6.11 – PATROL

SUBJECT: PHYSICAL EXAMINATION OF SEX CRIME VICTIMS AND SUSPECTS

RELATED POLICY: [6.11](#)

ORIGINATING DIVISION: INVESTIGATIONS I

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: DP 6.11 – 09/16/2008

I. PURPOSE

This Department procedure establishes guidelines for completing physical examinations of sexual assault victims and/or suspects of violent crimes.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

Examinations of sexual assault victims and/or suspects of violent crimes can provide valuable evidence to substantiate the crime, identify or exonerate the suspect, and/or aid in the successful prosecution of the case.

IV. DEFINITION

The Sexual Assault Response Team (SART) is comprised of three disciplines: law enforcement, the sexual assault examiner, and a rape crisis advocate. SART is dedicated to providing the best service possible to ensure that each person makes the transition from "victim" to "survivor" as quickly and smoothly as possible.

V. PROCEDURES FOR OBTAINING FORENSIC EXAMINATIONS FOR VICTIMS

A. Criteria for Authorizing Sexual Assault Forensic Examinations

1. All victims of crimes of sexual violence shall be examined for forensic evidence if the nature of the assault indicates evidence may be present.
2. Sexual assault exams should generally be obtained immediately, within the first 72 hours of the sexual assault. However, Field Sergeants should advise the on-call Sex Crimes Unit Sergeant when determining whether a forensic examination should be obtained after the 72 hours have passed. The following guidelines should be considered:
 - a. Evidence of bodily secretions such as semen, blood, and saliva, which may be used to identify the assailant, is critical in assaults by strangers. This type of evidence may be detected for several days, or longer, after the incident.
 - b. Complaints of vaginal or rectal discomfort or pain beyond the normal 72-hour window may indicate the continued presence of genital trauma. The circumstances should be evaluated by the on-call Sex Crimes Unit Sergeant, who will determine whether a forensic exam should be authorized.
3. In assaults involving acquaintances and intimates, the defendant will generally claim that the sexual act was consensual. In these cases, evidence of injury or resistance is crucial to overcoming a consent defense. Young girls and women who have not been sexually active will generally show visible evidence (genital injury) of a rape or sexual assault for a longer period of time than sexually active women.
4. It is not necessary for the suspect to ejaculate for evidence to be present. For example, pre-ejaculation body fluids and pubic hairs are often exchanged during the assault.
5. Forensic examinations may also be appropriate in attempted sexual assaults if the suspect had his mouth on any part of the victim's body or if the victim struggled with the suspect.

B. SART Hospitals and Procedures

1. All examinations of victims will be conducted pursuant to a contractual agreement between the Police Department and the SART facility or hospitals, and there will be no charge to the patient. This contract does not provide for treatment of injuries or follow-up medical care, and payment

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for any such services will be the responsibility of the patient. The victim may be eligible for State Victim Assistance funds. The officer shall provide the victim with this information. The victim may obtain information on available funds by calling the Victim Assistance Program listed on the Marcy's Law Handout.

2. Victims 18 Years of Age and Older

Independent Forensic Services (IFS), located at 4529 College Avenue San Diego, CA 92115, is the primary service provider for the San Diego Police Department for sexual assault examinations for victims 18 years of age and older. SART examinations of adult and juvenile suspects are conducted at Headquarters only by IFS.

- a. Once the need for a forensic examination is determined, IFS will be notified, via Communications Division at (877) 608-4899, to page the on-call SART nurse to respond. Communications Division staff will advise the nurse of the following information:
 - (1) The officer's estimated time of arrival.
 - (2) Whether the victim has any special needs as a result of disability, language and/or sexual orientation.
 - (3) Whether a suspect is in custody, possibly requiring a response by a second forensic examiner.
- b. After the forensic examination, the victim will be transported home, or to the Police Department, as appropriate, by the initial reporting officer. VICTIMS ARE NOT TO BE LEFT "STRANDED" AT IFS. When possible, victims should be transported in the front passenger seat of the patrol unit. Riding in the back of a patrol unit can be traumatic for some victims and should be avoided, if at all possible.
- c. In the case of a sexual assault victim who is an undocumented person, the officer shall notify the duty detective who will make arrangements for the victim to be held as a material witness with the victim's consent.
- d. It is the responsibility of the reporting officer to attach a note to the crime report including where the victim can be reached and an emergency phone number. This is critical if the victim is transient or if the victim plans on staying at a temporary location.

3. Victims under 18 Years of Age

Children's Hospital, 3020 Children's Way, (858) 576-1700, is contracted to perform evidentiary examinations for victims under 18 years of age and victims over 18 years of age who are severely developmentally delayed.

- a. All sexual assault forensic examinations at Children's Hospital must be authorized by the on-call Sex Crimes Unit Sergeant.
- b. After hours, the on-call Sex Crimes Unit Sergeant must authorize forensic examinations at Children's Hospital. The on-call Sex Crimes Unit Sergeant can be contacted by cell phone during non-working hours or on weekends via the Watch Commander.
- c. Unit supervisors or on-call detectives are available after working hours to provide expert assistance on major or unusual cases. Contact the Watch Commander's Office for appropriate call-out procedures.
- d. Children's Hospital's Chadwick Center, 3020 Children's Way, (858) 966-5980, is normally operational between 0800 and 1700 hours. The procedure for taking victims to the Chadwick Center is to call the appropriate duty detective or supervisor for approval. After obtaining authorization for the examination, the Watch Commander will arrange to have the Chadwick Center advised of the need for a forensic examination and the officer's estimated time of arrival.
- e. Between 1700 and 0800 hours, children will be examined at Children's Emergency Room, 3020 Children's Way, (858) 966-8800. The Watch Commander will arrange to have the Emergency Room notified.

4. Uninjured Sex Crime Victims

- a. Adult victims not requiring medical attention shall be taken to IFS.
 - (1) Pomerado Hospital is a SART hospital; however, the Department does not have a contract with Pomerado Hospital. Generally, exams will not be authorized at Pomerado Hospital unless the victim is injured and transported by paramedics. In this case, the reporting officer shall call the on-call Sex Crimes Unit Sergeant for approval prior to the examination.

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- b. As soon as the need for a forensic examination is determined, the transporting officer shall advise Communications, who will call IFS to notify them that a subject for a special examination is en route, and give them an estimated arrival time. (Victims shall not be referred to as a "rape" victim.)
- c. Officers of the opposite sex are not to remain in the examination room during the examination of a victim.
- d. The transporting officer shall remain at IFS until the examination is complete.
- e. SART nurses have been trained in the examination and collection of evidence and all necessary materials and containers have been provided to them. The Sexual Assault Nurse Examiners at IFS will impound the victim's rape kit and clothing at the hospital. (This procedure does not apply to Pomerado Hospital or Children's Hospital.) Officers will continue to be responsible for impounding any crime scene evidence.
- f. The SART staff responds on a call-out basis. Therefore, it is imperative that officers notify IFS immediately if the exam is canceled.

5. Injured Sex Crime Victims

- a. Although sexual assault victims are treated for sexually transmitted diseases and pregnancy, sexual assault examinations are considered evidentiary and not medical.
- b. It is the responsibility of the preliminary reporting officer to determine whether a sex crime victim should receive medical attention at a hospital. Those victims who are injured to the extent that immediate medical attention is necessary shall be taken to the nearest emergency treatment facility.
- c. If a victim is unconscious or unable to give consent due to impairment, and evidence exists that a sexual assault occurred, a search warrant must be obtained before an evidentiary examination can be performed. The on-call detective should be immediately notified so he or she can respond to the hospital and assist in obtaining a search warrant.
- d. If a victim is at the hospital after a miscarriage or planned abortion, the on-call Sex Crimes Unit Sergeant shall be notified so he or she can have a detective respond, if necessary.

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- e. If the victim is released after receiving medical attention at any hospital other than Pomerado Hospital, the officer should then transport the victim to IFS for an evidentiary examination.
- f. If the victim is admitted for further treatment or observation at any hospital other than one of the SART hospitals, the officer shall call the duty Sex Crimes detective or supervisor who will arrange for the evidentiary examination by requesting that a mobile SART examiner respond from IFS.

VI. VICTIM RIGHTS, COMMUNITY-BASED ADVOCATES AND RESOURCES

- A. The Center for Community Solutions (CCS) has a memorandum of understanding with the San Diego Police Department to provide advocacy services for sexual assault victims.
- B. Once an officer advises that he or she is en route to IFS with a victim, the SART nurse will notify the rape crisis advocate who will respond to the hospital to provide support for the victim during the examination.
- C. When CCS advocates are not available, the SART nurse may ask the patrol officer to request one of the Department's Crisis Intervention Team members.
- D. If assistance is needed at the crime scene, or if there is a significant delay in transporting the victim to the hospital, officers should request that a crisis interventionist respond to the scene.
- E. In accordance with 264.2 PC, sexual assault victims shall immediately be given the "Information for Victims of Domestic Violence/Sexual Assault" form (PD-964-FOS). The form outlines procedures that victims should follow after an assault. In addition, it lists various services available to sexual assault victims, as well as the victim's right to advocacy pursuant to 679.04 PC.
- F. In accordance with the Victim's Bill of Rights Act of 2008, (Marsy's Law) Penal Code Section 679.026(c)(1) mandates that all crime victims be provided with an information card advising them of various rights to which they are entitled. To comply with Marsy's Law, officers will provide a Marsy's Law Rights Card to all crime victims at the time of initial contact and include a sentence at the end of the "investigation" section narrative detailing all persons to whom a Marsy Rights Card was provided. In the event the officer conducting the initial investigation was not able to provide the card to the victim, the assigned investigator shall provide the required brochure to the victim.

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1. Pursuant to PC 264.2(b)(2), in a SART exam, the victim has the right to a sexual assault counselor and a support person. The support person may be excluded if it is determined that the presence of the support person would be detrimental to the conduct of the SART exam.
2. Pursuant to PC 679.04(a), in an interview, the victim has a right to a victim advocate and a support person. The support person may be excluded if it is determined that the presence of the support person would be detrimental to the conduct of the interview.

G. Penal Code Sections 293 and 293.5 require that sexual assault victims be advised that his or her name and address will become a matter of public record unless the victim requests otherwise.

1. Any officer taking a report of a sex crime will advise the victim of his or her right to anonymity. The reporting officer will forward the original of the Domestic Violence/Sexual Assault Information form (PD-964-FOS) signed by the victim to the appropriate investigating unit.
2. According to 293 PC, victims of Penal Code Sections 220, 261 through 267, and 281 through 292 have a right to anonymity.
3. No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections, hearing officers of the parole authority, or other persons or public agencies where authorized or required by law, the name of a person who alleges to be the victim of a sex offense, if that person has elected to exercise his or her right pursuant to this section and Section 6254 of the Government Code.
4. Officers will use the victim's true name when completing their paperwork (i.e., crime and arrest reports, property tags, hospital records, etc.). These records are necessary and a part of the criminal investigation.

VII. FORENSIC EXAMINATION PROCEDURES FOR SUSPECTS

- A. All forensic examinations of sexual assault suspects will be conducted at Police Headquarters.
- B. Officers of the opposite sex are not to remain in the examination room during the examination. However, the Forensic Examiner (SART Nurse) should not be left alone with suspects. If needed, arrangements will be made for an officer of the same sex to stand by during the exam.
- C. Suspects cannot refuse a SART exam. The SART can be done on the suspect on a "search incident to arrest" theory to prevent destruction of evidence of victim's

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DNA and fluids. However, each incident should be separately evaluated for the need of a search warrant to obtain evidence from the suspect.

- D. The Forensic Examiner can respond directly to a hospital if the suspect is injured. However, any deviation from responding to Police Headquarters must be approved by the Watch Commander, the duty detective, or the on-call Sex Crimes Unit Sergeant.
- E. In any event, injured suspects and victims shall not be taken to the same hospital.
- F. Anytime homicide detectives, while investigating a homicide, suspicious death or Officer Involved Shooting incident, process a prisoner suspected of also being involved in one or more sex crimes, in addition to their routine suspect processing, the detectives will follow the established protocol described in the paragraphs listed above.

VIII. EVIDENCE COLLECTION AND IMPOUNDS

- A. All clothing worn by the suspect at the time of the offense shall be impounded.
- B. Clothing worn by the victim that may be contaminated or contain evidence, shall be impounded. If a victim's clothing is to be impounded as evidence, whenever possible, the officer shall have the victim take a change of clothing to the hospital.
- C. Victim and suspect clothing must be impounded in separate paper bags. Do not impound in plastic bags.
- D. Evidence that cannot be collected by the reporting officer (i.e., biological evidence on a stationary piece of property) must be protected until the assigned investigator determines if a forensic specialist is needed to respond to the scene to process the evidence in the field.
- E. All other items that could possibly contain evidence (i.e., drink containers, bedding, condoms and packaging) should be collected, bagged separately, and impounded.
- F. All evidence containers (i.e., sexual assault kits, clothing, paper bags, and biological evidence) may be impounded in the same bin, however, officers shall indicate, on the outside of the evidence container, whether the evidence came from the suspect or the victim. Officers shall itemize all property and, when applicable, and mark the SART drop down box under "Item type."
- G. If the examination was done at Children's Hospital, the pink copy of the Forensic Examination Form (OCJP 925) shall be attached to the rape kit before being

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impounded. All other copies will be forwarded to the appropriate investigative unit with the preliminary investigation.

H. If the examination was done at IFS, the Forensic Examination Form (OCJP 925) will be faxed to the Sex Crimes Unit by the Forensic Examiner upon completion. The original copies will then be forwarded to the appropriate investigative unit.

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I. All physical evidence collected in a felony sexual assault investigation should be impounded at the Headquarters Property Room.

J. If the assault occurred in a vehicle, the vehicle should be impounded as evidence at the police impound lot at 9265 Aero Drive, with a hold for the appropriate investigative unit.

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IX. NON-INVESTIGATIVE REPORTS (NIR)

A. The Federal Violence Against Women Act (VAWA) of 2005 says, “States 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 an exam, or both.” Senate Bill 534 (Corbett) brought California into compliance with the above Federal law. PC 13823.95 provides that a medical evidentiary examination shall be provided to the sexual assault victim without any requirement for participation in the criminal justice system. Costs for the exam are to be charged to the local law enforcement agency in whose jurisdiction the alleged offense was committed and the agency may seek reimbursement from the Office of Emergency Services

B. If an adult victim chooses the non-investigative reporting option he/she may receive medical treatment, advocacy services, counseling, and an optional sexual assault forensic exam for the collection of physical evidence, but law enforcement will not be notified. The non-investigative report will NOT trigger a police investigation; therefore, no action will be taken against the offender(s) as the result of this report.

C. Patients who choose the non-investigative reporting option will be responsible for their own transportation to the SART facility if they do not want law enforcement involvement.

D. Officer Procedures

1. Officers responding to a SART facility for a sexual assault victim who does not wish to initiate or participate in a criminal investigation shall:
 - a. If possible, contact the victim and confirm that the incident occurred within the City of San Diego, and confirm they do not wish a criminal investigation to be undertaken. If possible explain

to the victim that a crime report will not be written and their identity will not be documented by the San Diego Police Department.

- b. If the victim is unwilling to speak to the officer, contact the SART nurse to obtain the location (specific address and City location or landmark, indicating how location was determined to be in the City of San Diego) of where the incident occurred. This is needed for jurisdiction so the SART facilities can bill the appropriate agency. This information must be documented in the dispatch via incident notes.
- c. If the incident occurred in another agency's jurisdiction, the officer shall notify the SART nurse of the responsible agency (i.e., Chula Vista, El Cajon) and take no further action. The Officer shall document on the CAD incident the SART nurse's name, the agency responsible, and clear the incident with a "K". The officer shall forward a copy of the CAD incident print-out to the Sex Crimes Unit at MS 744 by end of their shift.
- d. If the victim refuses to speak with the officer, the officer is to confirm with the SART nurse that the victim signed the "San Diego County Sexual Assault SART NIR Report Patient" form, electing not to initiate or participate in a criminal investigation. The officer will not receive a copy of the form; they only need to confirm the forms were completed.
- e. The officer shall provide the SART nurse with the CAD Incident Number as well as the officer name and ID number.
- f. The officer shall obtain the SART facility's NIR tracking number, the location of occurrence, and SART nurse's name.
- g. If the crime occurred in San Diego, the officer shall document, via the MCT on the CAD incident, the NIR tracking number provided by the SART facility, the location of occurrence, SART nurse's name, and clear the incident with an "N". The officer shall forward a copy of the CAD incident print-out to the Sex Crimes Unit at MS 744 by the end of their shift.
- h. Officers are not required to transport the victim to the SART facility. Transportation to the facility is the responsibility of the victim. However, if the victim is unable to obtain transportation, an officer is not precluded from offering to provide transportation to the victim.

E. Evidence

1. The SART facility will hold other evidence and information collected during the sexual assault exam (exam forms, photos, etc.). Evidence held by the SART Facility will include victim name, contact information, and NIR tracking number.
2. At a later date the SART Facility will turn over for storage any physical evidence (kits, clothing, etc.) collected during a NIR sexual assault exam to the law enforcement agency with jurisdiction over the location of the assault. Evidence turned over to law enforcement will include a CAD incident number and NIR reference number, but will not include the victim's name or contact information.
3. Physical evidence will only be held for a period of 18 months from the date of the exam.
4. The victim may report the offense at a later time (within 18 months from the date of the exam) to law enforcement for investigation. If the victim decides they would like to make an investigative report to law enforcement, they are responsible for calling the SART facility that conducted their exam.
5. In assaults where a victim does not want law enforcement involvement, but requests a SART exam for future criminal prosecution, field sergeants shall contact the on-call Sex Crimes Unit sergeant, who will determine whether a forensic exam should be authorized.

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X. PROCEDURE FOR ACTIVATING A CRIMINAL INVESTIGATION

At the time of the exam, the SART nurse will advise patients if they decide to report the incident to law enforcement at a later date, they should contact the SART facility that performed the exam. The patient's evidence and documentation will be accessed using the tracking number generated by the SART facility. The SART facility will contact the appropriate law enforcement agency for investigation. An updated authorization form, signed by the patient, will be required to initiate a law enforcement investigation and to examine the physical evidence collected.

The SART facility will then notify the law enforcement agency with jurisdiction over the incident and the appropriate advocacy agency. The victim will be informed that law enforcement will contact them to proceed with a criminal investigation and processing of physical evidence.

XI. CRIMINAL INVESTIGATION OF NON-INVESTIGATIVE REPORTS,:

If an officer is dispatched to investigate a sexual assault where a non-investigatory SART examination was previously completed, and the victim has now elected to cooperate in a criminal investigation, the officer shall confirm the victim has contacted the facility where the SART was completed. The SART facility will confirm that the crime occurred within the 18-month window from the date the SART kit was obtained. The officer shall contact the on-call Sex Crimes Unit Sergeant for further direction.