

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: MARCH 24, 2020

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: **EXTENSIVE CHANGES**

SUPERSEDES: DP 6.11 – 07/09/2019

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 as close in time to the assault as possible, or within the first 120 hours after the sexual assault. Field Sergeants should advise the on-call Sex Crimes Unit Sergeant when determining whether a forensic examination should be obtained, especially after 120 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 120-hour window, may indicate the continued presence of genital trauma. The circumstances surrounding the continued discomfort 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 suspect will generally claim 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 display visible evidence (genital injury) of 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.

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5. Forensic examinations may also be appropriate in attempted sexual assaults if the suspect placed 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 for any such services will be the responsibility of the patient. The victim may be eligible for State Victim Assistance funds. Before the exam or any interview is conducted of the victim, the victim will be provided with a copy of the Marsy's Law Handout. The victim may obtain information on available funds by calling the Victim Assistance Program listed on the Marsy's Law Handout.

2. Victims 18 Years of Age and Older

There are three locations where SART examinations can be provided. This will be determined by the Sex Crimes Unit Sergeant. The three locations will be:

Palomar Health (PH), located at 15615 Pomerado Road, Poway, CA 92064

Family Justice Center, located at 1122 Broadway, 2nd Floor, San Diego, CA 92101

Forensic Health Services, located at 121 N. Fig Street, Escondido, CA 92025.

Palomar Health is the primary service provider for the San Diego Police Department for sexual assault examinations generally for victims 18 years of age and older. SART examinations of adult suspects are conducted at Headquarters, only by Palomar Health.

- a. Once the need for a forensic examination is determined, Palomar Health 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) To determine what supervisor approved the SART examination.

- (2) The location the supervisor directed the investigating officer to.
- (3) The officer's estimated time of arrival.
- (4) Whether the victim has any special needs as a result of disability, language and/or sexual orientation.
- (5) Whether a suspect is in custody, possibly requiring a response by a second forensic examiner.
- (6) A good contact number for the investigating officer, used to coordinate with the SART nurse.

b. After the forensic examination, the victim will be transported home, or to the Police Department, as appropriate, by the initial reporting officer. The initial investigating officer shall transport the victim, unless the victim has requested another mode of transportation or has made other arrangements. (i.e. Has called her mother/friend to transport her back home instead of riding in a police vehicle for confidentiality.) VICTIMS ARE NOT TO BE LEFT "STRANDED" at Palomar Health. 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.

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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 a material witness with the victim's consent.

d. It is the responsibility of the reporting officer to indicate in the crime report where the victim can be reached and an emergency phone number for the victim. This is critical if the victim is transient or if the victim plans on staying at a temporary location.

e. If officers respond to the Balboa Naval Medical Center to investigate a report of sexual assault, and the victim is active duty military or a dependent of an active military member, the victim may elect to participate in a military SAFE (SART) examination at the medical center.

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3. Victims under 18 Years of Age

Rady Children's Hospital, 3020 Children's Way, 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 to be conducted at Children's Hospital must be authorized by the 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, 3365 Kearny Villa Road, is normally operational between 0800 and 1700 hours. After the investigating officer has **obtained** authorization for the examination from a Sex Crimes Unit Sergeant, the investigating officer's supervisor will call the Chadwick Center, (858) 966-8951 to advise of the need for a physical examination and the officer's estimated time of arrival.
- e. Between 1700 and 0800 hours, children may be examined at Children's Hospital's Chadwick Center, 3365 Kearny Villa Road. After the investigating officer has **obtained** authorization for the examination from a Sex Crimes Unit Sergeant, the investigating officer's supervisor will call the Children's Hospital main line, (858) 576-1700, ext 0, to advise of the need for a physical examination and the officer's estimated time of arrival.

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4. Uninjured Sex Crime Victims

- a. Adult victims not requiring medical attention shall be taken to Palomar Health.
 - (1) Palomar Health 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 and approved by the Sex Crimes Unit Sergeant, the field Sergeant shall advise Communications. Communications will call Palomar Health to notify them 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 Palomar Health 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 Palomar Health 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 Palomar Health 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.
- 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 Palomar Health 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 Palomar Health.

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 on the way to Palomar Health with a victim, the SART nurse will notify the sexual assault 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 Penal Code section 264.2, 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 Penal Code section 679.04.
- 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.

1. Pursuant to Penal Code section 264.2(b) (1), 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 conduct the SART exam.
 2. Pursuant to Penal Code section 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 conduct the interview.
- G. Penal Code section 293 requires that sexual assault victims be advised that their name and address will become a matter of public record unless they request otherwise. When the victim of a sexual assault elects to not have her or his name withheld from public records, Penal Code section 293.5 allows the victim to request a court order that the victim’s identity be referred to as Jane or John Doe in all records and all proceedings, if reasonably necessary to protect the person’s privacy while not unduly prejudicing the prosecution or defense.
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. In accordance with Penal Code section 293, officers investigating any crime defined by sections Penal Code sections 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6, shall inform the victim that her/his name becomes public record, unless the victim specifically requests that it not be made public.
 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. Generally, all adult forensic examinations of sexual assault suspects will be conducted at Police Headquarters, unless a suspect is admitted into a hospital.
- 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. A SART examination can be completed on the suspect only if the suspect consents or by obtaining a search warrant.
- D. The Forensic Examiner can respond directly to a hospital if the suspect is injured and admitted. 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.
- G. 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.

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VIII. FORENSIC EXAMINATION PROCEDURES FOR JUVENILE SUSPECTS

- A. Juvenile suspects 14 years of age and over are to be processed the same as adult suspects with the following exceptions:
- B. Prior to a SART exam of a juvenile suspect, a search warrant must be obtained.
- C. SART examinations on suspects 13 years-old and younger will be conducted at Rady Children's Hospital.
- D. After hours, a juvenile victim may also receive a SART exam at Rady Children's Hospital. Officers shall ensure that the victim and suspect will not be transported together or placed in the same area of the hospital.

In these instances where both the victim and the suspect will be at Rady Children's Hospital, officers should call the on-call Doctor. The purpose of the call is to allow the hospital staff to make arrangements to ensure the suspect and victim are treated in separate areas.

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Rady Children's Hospital on-call Doctor can be reached by calling (858) 576-1700, ext 0.

- E. All evidence collection on juvenile suspects at Rady Children's Hospital must be collected and impounded by the investigating officer or assigned detective.
- F. Evidence collected at Police Headquarters from suspects 14 years-old and older will follow the adult procedure.

IX. EVIDENCE COLLECTION AND IMPOUNDS

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- A. All physical evidence collected in a felony sexual assault investigation should be impounded at the Headquarters Property Room. Physical evidence related to a misdemeanor sexual assault investigation may be impounded at the area station property room.
- B. All clothing worn by the suspect at the time of the offense shall be impounded.
- C. 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.
- D. Victim and suspect clothing must be impounded in separate paper bags. Do not impound in plastic bags.
- E. 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.
- F. All other items that could possibly contain evidence (i.e., drink containers, bedding, condoms and packaging) should be collected, bagged separately, and impounded.
- G. 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."

- H. 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 impounded. All other copies will be forwarded to the appropriate investigative unit with the preliminary investigation.
- I. If the examination was done at a Palomar Health facility, 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.
- J. If the assault occurred in a vehicle, the vehicle should be impounded as evidence at Northwestern Division with a hold for the appropriate investigative unit.

X. 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. Penal Code section 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. If a sexual assault victim reports an assault to a mandated reporter, (i.e. hospital staff, counselor, therapist), and that mandated reporter or the victim calls the San Diego Police Department Communications Center, they will be advised of their right to a Non-Investigative (NIR) SART exam.

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1. If the victim does not wish to initiate (participate) a criminal investigation, but is interested in participating in a NIR SART exam, they will be directed to call Palomar Healthcare at the following numbers:
 - a. During business hours (0700 hours – 1700 hours):
760-739-2150
 - b. After hours: **888-211-6347**
2. The victim will be directed to the appropriate SART facility by the Palomar Healthcare Forensic Services representative.
3. When the victim arrives at the SART facility, the SART Nurse will determine where the assault occurred and when.
4. If the assault occurred within the established forensic timetable (120 hours), and within the city of San Diego, the SART nurse will contact the San Diego Police Department Communication Center.
5. The Lead Dispatcher will confirm the assault occurred within the city of San Diego.
 - a. If the assault occurred outside the city of San Diego, the Lead Dispatcher will refer the SART nurse to the appropriate law enforcement agency.
6. If the assault occurred within the city of San Diego, the Lead Dispatcher will generate a SART event noting the location of the assault, and SART nurse's name. They will then provide the event number to the SART nurse.
7. The SART nurse, in turn, will provide the Lead Dispatcher with the NIR tracking number which will be added as notes to the event.
8. The Lead Dispatcher will then close the event with a 'K'.

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- E. If Officers contact a sexual assault victim at a non-SART facility (i.e. hospital, counseling office, school), and the victim does not wish to initiate (participate) in a criminal investigation, officers shall:
1. Advise the victim of their right to participate in a Non-Investigative SART examination.
 2. Provide the victim with the telephone numbers of Palomar Health Forensic Services:
 - a. During business hours (0700 hours – 1700 hours):

760-739-2153

b. After hours: **888-211-6347**

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F. 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 should offer to provide transportation to the victim.

G. 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.

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2. 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 within 5 days of collection of the evidence. 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.

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3. Physical evidence will be held for a period of time in accordance with current state law.

4. The victim may report the offense at a later time 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.

XI. 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.

XII. 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.