



## RAPE KIT PROCESSING IN SAN MATEO COUNTY

[Issue](#) | [Summary](#) | [Glossary](#) | [Background](#) | [Discussion](#) | [Findings](#) | [Recommendations](#)  
[Requests for Responses](#) | [Methodology](#) | [Bibliography](#) | [Appendixes](#) | [Responses](#)

### ISSUE

In January 2016, a new state law went into effect, providing law enforcement agencies and forensic laboratories with timeframes to process and test forensic evidence from sexual assault cases. How are rape kits handled by local law enforcement and the Sheriff's Office Forensic Laboratory in San Mateo County? Is there a backlog of untested kits?

### SUMMARY

A July 2015 article in *USA Today* described a national backlog of tens of thousands of untested rape kits, including 138 in San Mateo County.<sup>1</sup> The article noted that prompt testing of all rape kits is critical to identifying rapists, especially those who are repeat offenders, and to bringing some degree of relief to victims.

AB 1517, known as the Sexual Assault Victims' DNA Bill of Rights, took effect in January 2016. The legislation establishes recommended timeframes for law enforcement and crime laboratories to process rape kits. AB 1517 encourages law enforcement agencies to send the forensic evidence collected from sexual assault crime scenes to forensic labs for processing within 120 days. The law is intended to prevent future backlogs by requiring that all rape kits be tested in a timely manner.<sup>2</sup> Importantly, the law does not mandate these procedures and timeframes. Were they to be mandated, the State would be required to provide funds to implement the law. So, to avoid those costs, AB 1517 simply recommends, but does not require, adherence to the timeframes.

The 2015-2016 San Mateo County Grand Jury investigated the current status of rape kit processing in the County and found that, as of February 2016, the Sheriff's Office Forensic Laboratory (the "Forensic Lab," or the "Lab") had eliminated the known backlog,<sup>3</sup> and it continues to process new kits in a timely way as they arrive. The Forensic Lab is adequately staffed and equipped to process rape kits promptly, within the timeframes recommended in the new law. The Forensic Lab enters qualified results into the Combined DNA Index System (CODIS), weekly as they are completed.<sup>4</sup>

---

<sup>1</sup> Steve Reilly, "Tens of Thousands of Rape Kits Go Untested across USA: Exclusive Nationwide Count by USA TODAY Reveals Abandoned Rape Evidence," *USA Today*, July 17, 2015.

<http://www.usatoday.com/story/news/2015/07/16/untested-rape-kits-evidence-across-usa/29902199/>.

The article indicated that there were 158 outstanding rape kits in San Mateo County, but the correct number is 138 (see Table 1).

<sup>2</sup> California Coalition against Sexual Assault, "Governor Brown Signs AB-1517."

<http://www.calcasa.org/2014/09/gov-brown-signs-ab-1517/>.

<sup>3</sup> The known backlog refers to the backlog of unassigned cases. The majority of cases are assigned to an analyst within one-two days of their arrival at the Forensic Laboratory.

<sup>4</sup> The Combined DNA Index System, or CODIS, is a system of national, state, and local databases that allows crime laboratory personnel across the U.S. to compare DNA profiles from known criminal offenders (and arrestees) with

The Grand Jury found that the Forensic Lab is currently operating within the guidelines of AB 1517 and recommends that the Lab formalize AB 1517's 120-day guideline for the processing of rape kits as its standard processing timeline.<sup>5</sup> In addition, the Grand Jury recommends the Forensic Lab report yearly statistics regarding the number of rape kits received and tested.

## GLOSSARY

**Combined DNA Index System (CODIS):** Developed in 1990 and maintained by the FBI, CODIS is a collection of local, state, and national DNA databases. It contains 12.3 million genetic profiles of offenders of any type and 2.3 million arrestee profiles. The results of any rape kit analysis can be compared to information in CODIS in order to identify unknown rapists or document serial rapists. CODIS information was utilized in solving 49,031 California investigations as of April 2016.<sup>6</sup> Forensic Labs are required to remove qualifying profiles from CODIS in the following circumstances: (1) when a defendant's conviction is overturned, or (2) if the charge against an arrestee has been dismissed, resulted in an acquittal, or no charges were ever brought.<sup>7</sup>

**Keller Center for Family Violence Intervention (Keller Center):** Founded in 2001 and located at the San Mateo Medical Center, the Keller Center provides comprehensive services such as emergency medical treatment and forensic examinations to victims of child abuse, elder abuse, sexual assault, and domestic violence. In San Mateo County all sexual assault victims are taken to the Keller Center for a forensic examination following a medical examination if needed. Local law enforcement utilizes the offices at the Keller Center for their interviews with victims. The Keller Center has served as a model for other such centers throughout the state, and it remains the only center that serves adults, adolescents, and children in the Bay Area.

**Rape Kit:** A sexual assault kit, or rape kit as it is more commonly called, is a collection of forensic evidence taken during the physical examination of a sexual assault victim. The evidence must be collected in a strictly proscribed manner by a sexual assault nurse examiner and in a specific medical facility. The evidence collected usually includes swabs of the vagina, anus, and mouth, combing of pubic hairs, and scrapings from fingernails. Photographs might be taken of any bruises on the victim's body. The procedure can take from four to six hours. The victim is advised of the procedure before the exam and has the right to refuse. Per the Sexual Assault Response Team Protocol,<sup>8</sup> the victim may have an advocate (known as a sexual assault

---

biological evidence from crime scenes. See <http://victimsofcrime.org/docs/default-source/dna-resource-center-documents/dna-sak-victim-brofinal.pdf?sfvrsn=2>.

<sup>5</sup> To clarify terminology: A rape kit is *collected* from the victim at the Keller Center by forensic examination. It is *processed* at the Sheriff's Office's Forensic Laboratory. Processing includes testing, analyzing DNA profile results, and uploading qualified DNA profiles into CODIS.

<sup>6</sup> FBI Laboratory Services. CODIS—NDIS Statistics. <https://www.fbi.gov/about-us/lab/biometric-analysis/codis/ndis-statistics/#California>.

<sup>7</sup> FBI Laboratory Services. Frequently Asked Questions on the CODIS Program and the National DNA Index System. <https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet>.

<sup>8</sup> Originally developed in 2009, the Sexual Assault Response Team Protocol is an established protocol for dealing with sexual assault cases in San Mateo County. The protocol was created by a Multidisciplinary Committee with representatives from law enforcement, the Keller Center, the Sheriff's Office Forensic Laboratory, and other agencies that deal with sexual assault victims.

counselor) present for any or all of the exams and for the police interview. The police are not present during the exams.

**Sexual Assault Counselor:** A state-certified individual who is an advocate for the victim. Sexual assault counselors are allowed to accompany victims through the examinations, police interviews, and court proceedings if the victim so chooses. They also continue to assist victims for as long as the victims want their help.

**Sexual Assault Nurse Examiner:** A nurse certified by the state to conduct rape examinations and to collect forensic evidence. Sexual assault nurse examiners are trained in collecting and preserving evidence that can be used for DNA analysis.

**Sheriff's Office's Forensic Laboratory (Forensic Lab):** Located at 50 Tower Road in San Mateo, the Forensic Lab provides a wide array of specialized scientific and forensic services. It is tasked with processing rape kits collected at the Keller Center. As an accredited lab, it can enter eligible data into CODIS.

**Victims/Survivors/Patients:** Individuals who have experienced sexual assault are called *victims* by law enforcement, *survivors* by sexual assault counselors, and *patients* by the Keller Center. For the purposes of this report, the Grand Jury uses the term *victim*.

## BACKGROUND

In his 2015 *USA Today* article, Steve Reilly suggested the number of untested rape kits in 2014 nationwide might be as high as 70,000. While the article singled out Alameda County as having more than 2,000 untested kits, it counted only 158 in San Mateo County. Upon investigation by the Grand Jury, it was learned that there were errors in the information printed in *USA Today*. The total for 2014 was actually 138, which is reflected in Table 1.

Table 1. Untested Rape Kits in San Mateo County

<b>Atherton</b>	<b>2</b>
<b>Belmont</b>	<b>4</b>
<b>Brisbane</b>	<b>1</b>
<b>Broadmoor</b>	<b>2</b>
<b>Burlingame</b>	<b>0</b>
<b>Colma</b>	<b>0</b>
<b>Daly City</b>	<b>14</b>
<b>East Palo Alto</b>	<b>5</b>
<b>Foster City</b>	<b>2</b>
<b>Hillsborough</b>	<b>2</b>
<b>Menlo Park</b>	<b>3</b>
<b>Pacifica</b>	<b>7</b>
<b>Redwood City</b>	<b>24</b>
<b>San Bruno</b>	<b>13</b>
<b>San Mateo (City)</b>	<b>23</b>
<b>Sheriff's Office</b>	<b>26</b>
<b>South San Francisco</b>	<b>10</b>
	<b>138</b>

*Source:* Steve Reilly, "Tens of Thousands of Rape Kits Go Untested across USA: Exclusive Nationwide Count by *USA Today* Reveals Abandoned Rape Evidence," *USA Today*, July 17, 2015. Data provided to the Grand Jury by the San Mateo County Forensic Lab.

*Note:* The Sheriff's Office includes Half Moon Bay, Millbrae, Portola Valley, San Carlos, and Woodside.

According to law enforcement, the main reasons for testing these kits are:<sup>9</sup>

- To identify an unknown suspect
- To link DNA profiles between crime scenes to find serial rapists
- To eliminate suspects

However, victim advocacy groups indicate that there are other important benefits to be realized from rape kit collection and timely processing:<sup>10</sup>

- To offer some comfort and closure to sexual assault victims who have undergone the intrusive and detailed four- to six-hour rape-kit collection process
- To encourage other victims to report rapes
- To send a message to perpetrators that they will be held accountable for their crimes

<sup>9</sup> The National Center for Victims of Crime. Sexual Assault Kit Testing: What Victims Need to Know. <http://victimsofcrime.org/docs/default-source/dna-resource-center-documents/dna-sak-victim-brofinal.pdf?sfvrsn=2>

<sup>10</sup> End the Backlog. Why Testing Matters. <http://www.endthebacklog.org/backlog/why-testing-matters>. Officials from the Keller Center: interview by the Grand Jury.

When a rape kit is analyzed and enough DNA evidence is found, the Forensic Lab uploads the qualified DNA evidence into CODIS allowing a search for matching DNA to previous or current crimes. This is a valuable procedure even if the case is ultimately dropped. When a case against an alleged perpetrator is not pursued by law enforcement or the district attorney or if the conviction is overturned, then the DNA profiles must be removed from CODIS.

In some cases, the forensic test does not yield DNA evidence and the Lab is unable to develop a DNA profile of the perpetrator. This could happen for several reasons: the perpetrator may not have left any DNA behind; too much time passed before the victim had a rape kit exam performed; or the rape kit evidence may have been improperly stored or handled.<sup>11</sup>

Across the country, concern over untested rape kits has spurred millions in state and federal funding aimed at preventing future backlogs. Victims' rights' groups worry that the backlog will lead to fewer victims reporting sexual assaults. Knowing that rape kits might not be tested is clearly "a deterrent" to victims undergoing the testing who may decide not to come forward and even report a sexual assault, according to Sandra Henriquez, executive director of the California Coalition against Sexual Assault.<sup>12</sup>

"A rape kit going untested means there could be a predator walking the streets who has not been arrested, not held accountable, not prosecuted, and not locked up," said State Attorney General Kamala Harris. "That's scary not only for the victim to whom the crime already occurred, but any potential victims."<sup>13</sup>

In 2014, Governor Jerry Brown signed legislation AB 1517 to amend California's Sexual Assault Victims' DNA Bill of Rights (see Appendix A). In effect since January 2016, it encourages universal testing of rape kits and is also an effort to prevent future backlogs. The suggested timeframes direct law enforcement agencies to submit forensic evidence, and crime labs to test and upload DNA profile information into CODIS as soon as possible. Only 23% of rapes reported in California result in the arrest of a suspected perpetrator. The new law is intended to increase that percentage, according to the legislation's sponsor, Assembly Member Nancy Skinner.<sup>14</sup>

---

<sup>11</sup> Forensics for Survivors, Healing, Justice. <http://www.surviverape.org/forensics/sexual-assault-forensics/answers-to-faq>.

<sup>12</sup> End the Backlog. "Why Testing Matters." <http://www.endthebacklog.org/backlog/why-testing-matters>.

<sup>13</sup> Melody Gutierrez, "Rape Kit Wait Puts Justice on Hold".

<sup>14</sup> Nancy Skinner, "Guest Commentary: Governor's Signature of 'Rape Kit' Bill Would Be Step Toward Justice," *East Bay Times*, September 25, 2014. [http://www.eastbaytimes.com/endorsements/ci\\_26568278/guest-commentary-governors-signature-rape-kit-bill-would](http://www.eastbaytimes.com/endorsements/ci_26568278/guest-commentary-governors-signature-rape-kit-bill-would).

In terms of rape kit processing and victim notification, AB 1517 encourages<sup>15</sup> the following:

- Law enforcement agencies should submit rape kits to the local forensic lab within 20 days after the evidence is obtained from the victim.
- The forensic lab should process the evidence and upload DNA profile information into CODIS as soon as possible, but no later than 120 days after receiving it.
- Law enforcement agencies are instructed to inform rape victims if the DNA evidence is not analyzed within certain time limits and the statute of limitations on potential criminal charges is about to expire. Previously, such notification was provided only in cases where the identity of the perpetrator was unknown.
- Additionally, qualified DNA evidence that is obtained as a result of the testing of rape kits should be compared promptly to the profiles in CODIS.
- Finally, law enforcement agencies are directed to inform victims of the status of the DNA investigation, regardless of whether the identity of the perpetrator is an issue.

In most cases, DNA evidence needs to be collected within 72 hours of a sexual assault in order to be analyzed by the Forensic Lab.<sup>16</sup> Although such evidence must be collected promptly, in the past rape kits often remained untested on a storage shelf for many years. The Grand Jury learned, however, that when a previously untested rape kit is tested, the evidence is still valuable in catching and prosecuting the perpetrators of sexual assault.

The value of an old rape kit was illustrated in a recent article in the *San Francisco Chronicle*.<sup>17</sup> In May 2008, two Berkeley teens were getting into their car when a man with a gun jumped into the backseat. He ordered one girl to drive while he held the other girl's head in her lap. "Don't look at me," he ordered. After parking the car at the end of a dead end street, he raped one girl and assaulted another. Then he walked away, telling the girls to "have a good day."

The girls reported the rape to Berkeley police and were taken to Highland Hospital for rape examinations. The collected evidence sat on a shelf in a Berkeley Police Department evidence room for six years. Starting in 2014, Alameda County attempted to deal with all the kits sitting untested on shelves. The kits of the two Berkeley teens were found in storage and sent to the lab for testing. It took four months to process the kits, for forensic experts to verify their accuracy, and for the DNA profile to be submitted to both state and national CODIS databases. There was a match.<sup>18</sup> Had the rape kits been processed at the time of the original assault, this evidence

---

<sup>15</sup> As indicated previously, the State encourages rather than mandates these procedures and timeframes to avoid having to provide funds to pay for their implementation.

<sup>16</sup> RAINN is the nation's largest anti-sexual violence organization. See: RAINN, What Is a Rape Kit? <https://www.rainn.org/articles/rape-kit>.

<sup>17</sup> Melody Gutierrez, "Rape Kit Backlog: DNA Matches Suspect to Teens' Rape 6 Years Later," *San Francisco Chronicle*, March 12, 2016. <http://www.sfchronicle.com/politics/article/Rape-kit-backlog-DNA-matches-suspect-to-teens-6886780.php?t=20907a4f0e1210a92f&cmpid=twitter-premium>.

<sup>18</sup> Gutierrez, "Rape Kit Wait Puts Justice on Hold."

would have pointed to an Antioch man with a lengthy criminal record who was already in the database. In February 2015, another assault victim provided DNA evidence matching the man who assaulted the young women seven years earlier.<sup>19</sup>

## DISCUSSION

San Mateo County's method for collecting and keeping custody of rape kits follows a somewhat different, yet effective, procedure from that followed by most other California counties. In San Mateo County, all forensic exams are conducted at the Keller Center for Family Violence Intervention, which is part of the San Mateo Medical Center. The Keller Center, established in 2001, is located in a calm area between the emergency room and the radiology department; it is the only one of its kind in the state where all assault cases from the County are handled in one location.<sup>20</sup> When patients arrive at the Keller Center, any medical issues are assessed and attended to first. The next step is an examination and only then do patients meet with detectives. The Grand Jury learned from several interviewees that the Keller Center is viewed as a neutral and non-threatening place.<sup>21</sup>

A local nonprofit advocacy group sends trained, volunteer sexual assault counselors to assist the patients through what could be a traumatic process. The counselors provide warm blankets and, when evidence collection is complete, clean clothes. Before the Keller Center opened, patients were treated for any medical issues and then they were required to travel to the police station for interviews with the police. Now, all police interviews take place at the Keller Center.

The Keller Center has won praise from law enforcement and domestic-violence prevention groups for helping alleviate many of the difficulties victims of sexual assault face. The Center serves 18 law enforcement agencies throughout the County. In an interview with the *San Francisco Chronicle*, San Mateo County Assistant District Attorney Karen Guidotti, who is in charge of investigating sexual assault and domestic violence for the County, said the Center has helped investigations by having all parties—health experts, law enforcement, and social services and rape trauma services—in one place.<sup>22</sup>

After rape kit evidence has been collected at the Keller Center, it is sent directly from the Keller Center to the Forensic Laboratory for testing. When all processing is complete, including testing, analysis, and uploading to CODIS, the Lab then returns the evidence to the law enforcement agency handling the case.<sup>23</sup>

---

<sup>19</sup> Ibid.

<sup>20</sup> Christopher Heredia, "Where Help Comes Together / Keller Center in San Mateo Medical Center Gathers All Agencies in One Place for Victims of Sex Abuse or Domestic Violence," *San Francisco Chronicle*, December 2, 2005. <http://www.sfgate.com/health/article/WHERE-HELP-COMES-TOGETHER-Keller-Center-in-San-2591604.php>.

<sup>21</sup> Representatives from the Keller Center: interviews by the Grand Jury.

<sup>22</sup> Christopher Heredia, "Where Help Comes Together / Keller Center in San Mateo Medical Center Gathers All Agencies in One Place for Victims of Sex Abuse or Domestic Violence," *San Francisco Chronicle*, December 2, 2005.

<sup>23</sup> Representatives from the Forensic Laboratory: interviews by the Grand Jury.

The Grand Jury began investigating the status of rape kit processing in San Mateo County by contacting the various local law enforcement agencies listed in the *USA Today* article. Those agencies that were contacted then advised the Grand Jury that although the rape kits used to be held in police custody until the decision was made to test, the rape kit evidence is now collected at the Keller Center and picked up directly from the Keller Center by the Forensic Lab on a weekly basis.

Once a rape kit is logged in at the Forensic Lab, the analyst calls law enforcement to verify it wants the kit tested. Law enforcement agencies have the authority to decide whether or not kits should be tested and are responsible for the cost of the testing. The Lab invoices police agencies monthly. Those cities/towns that have contracted with the Sheriff's Office for law enforcement services (Half Moon Bay, Millbrae, Portola Valley, San Carlos, Woodside) are not charged because these costs are included as part of their Memorandum of Understanding with the Sheriff's Office.

Although the majority of kits are tested, the Grand Jury was informed that there are reasons why law enforcement agencies may decide not to authorize testing of every kit:<sup>24</sup>

- The victim might have recanted or the perpetrator might have confessed.
- The victim might have decided not to go forward with the case.
- In situations where the rapist is known to the victim and the DNA evidence would not further the case (i.e., where the issue is consent rather than identification), law enforcement might feel that the cost of testing is not warranted.

In early October 2015, when the Grand Jury first inquired into the backlog of untested kits, senior staff of the Forensic Lab said the backlog consisted of 70 kits. When the Grand Jury later interviewed Forensic Lab personnel on October 23, 2015, the backlog number had been further reduced to 48. The Grand Jury was informed that, going forward, the Forensic Lab would comply with the new Sexual Assault Victims' Rights Law, which became effective on January 1, 2016. Officials from the Lab indicated that the Lab was committed to testing all the outstanding rape kits and entering qualified results into CODIS. Currently, with a staff of eight analysts, two interns, and one director, the Forensic Lab receives kits at a rate of three to five per week. On February 3, 2016, officials from the Forensic Lab advised the Grand Jury that it had addressed all remaining backlog issues per the schedule required by AB 1517.

The Lab's goal is to meet or beat the 120-day requirement for testing required by AB 1517 measured from the date they log the kit into the Lab to the date they upload the results into CODIS. It is possible for a high-profile case to be processed in as little as 2-5 days; however, most rape kits take much longer.<sup>25</sup> For 2016 cases, the Lab's average is 41 days to process a rape kit, including CODIS entry, if applicable.

---

<sup>24</sup> Ibid.

<sup>25</sup> The National Center for Victims of Crime. Sexual Assault Kit Testing: What Victims Need to Know.



At present, the Lab does not report any statistics to the public regarding its testing and analysis of rape kits specifically. For internal purposes, it does record the number of rape kits it receives, tests, and returns to law enforcement agencies. The Lab also notes when an agency cancels testing; reasons for cancelling are contained in the Lab's case files. Officials from the Lab said that the kind of records it keeps on rape kits could provide statistics on its monthly or yearly activities in this area.<sup>26</sup>

The Lab does compile counts of evidence from "major cases" it receives and tests. This information is available to the public and reported to the County Manager's Office, but it is not broken out by crime committed. The Lab also reports on DNA cases and CODIS matches to various federal agencies in order to comply with the requirements of grant monies it receives.

The Grand Jury applauds both the Forensic Lab and the Keller Center for their efforts to comply with the new law and for testing in a timely manner. The Forensic Lab should be especially commended for its acknowledgement of the importance of eliminating the backlog of rape kits, and for successfully undertaking this task. With adequate staffing and procedures in place, the Forensic Lab is in a position to comply with the law on a going-forward basis.

In 2002 San Mateo County established a protocol for handling sexual assault cases. Known as the Sexual Assault Response Team (SART) protocol, a Multidisciplinary Team came together and agreed on best practices for how responsible agencies should handle sexual assault allegations. According to a report issued by the 2003-2004 Grand Jury, the SART procedures were designed to "ensure that those traumatized by this intensely personal abuse receive physical healing and emotional support while assisting the criminal justice process."<sup>27</sup>

The Multidisciplinary Team updated the SART protocols in 2009 and 2011, and they are still in effect today (see Appendix B). All affected agencies signed off on the protocols.<sup>28</sup> The protocols detail the responsibilities of all agencies on the Multidisciplinary Team:

- Office of the District Attorney
- All law enforcement and investigative agencies within San Mateo County
- Keller Center for Family Violence Intervention
- San Mateo County's Children and Family Services Division
- San Mateo County Mental Health Services
- Rape Trauma Services<sup>29</sup>

---

<sup>26</sup> Officials from the Forensics Lab: email to the Grand Jury.

<sup>27</sup> Superior Court of California, 2003-2004 San Mateo County Grand Jury, "Sexual Assault Cases in San Mateo County." [http://www.sanmateocourt.org/documents/grand\\_jury/2003/SexualAssaultCasesInSanMateoCounty.pdf](http://www.sanmateocourt.org/documents/grand_jury/2003/SexualAssaultCasesInSanMateoCounty.pdf).

<sup>28</sup> Superior Court of California, 2003-2004 Civil Grand Jury, "Sexual Assault Cases in San Mateo County," [http://www.sanmateocourt.org/documents/grand\\_jury/2003/SexualAssaultCasesInSanMateoCounty.pdf](http://www.sanmateocourt.org/documents/grand_jury/2003/SexualAssaultCasesInSanMateoCounty.pdf).

<sup>29</sup> Rape Trauma Services is a local nonprofit advocacy group. See <http://rapetraumaservices.org/>.

- San Mateo County Victim Services<sup>30</sup>
- Sheriff's Office Forensic Laboratory

The Grand Jury was informed that the Multidisciplinary Team, which meets monthly, is in the process of revising the SART Protocols to conform to AB 1517 and that the new protocols are expected to be in place in summer 2016.

## FINDINGS

- F1. The testing of rape kits in a timely manner is vital to law enforcement as well as to victims.
- F2. AB 1517 (the Sexual Assault Victims' DNA Bill of Rights) recommends that forensic laboratories process all rape kits within 120 days of receipt.
- F3. As of June 2016, there is no backlog of new rape kits in San Mateo County. The procedures employed by local law enforcement, the Keller Center, and the San Mateo County Sheriff's Office Forensic Laboratory result in the timely processing of rape kits, according to the timeframes recommended by AB 1517.
- F4. The procedures and timeframes in AB 1517 are recommendations and not mandates; the State of California can only encourage counties to adopt the guidelines because the State does not provide any funding.
- F5. The Sheriff's Office Forensic Laboratory does not currently report comprehensive statistics on rape kit processing to the public; however, the Lab keeps records on rape kit testing and analysis that could be compiled and released.

## RECOMMENDATIONS

- R1. The Sheriff's Office Forensic Laboratory should follow the recommendations of AB 1517—the Sexual Assault Victims' DNA Bill of Rights—as their standard procedure and should test and analyze rape kits and enter qualified data into CODIS within 120 days of receipt.
- R2. The Sheriff's Office Forensic Laboratory should annually produce a publicly available report concerning its processing of rape kits that includes, but is not limited to: the number of rape kits received from the Keller Center, the law enforcement agency associated with each kit, the number of kits tested and analyzed by the Lab, the number of DNA profiles uploaded to CODIS, the number of rape kits not tested at law enforcement request, and the reasons for not testing. Statistics should also include the number of days from login at the Lab to completion of processing.

---

<sup>30</sup> Victim Services is an organization within the District Attorney's Office that assists victims of violent crimes with claims for financial reimbursement from the state for such things as housing, relocation, and therapy.

## REQUEST FOR RESPONSES

Pursuant to Penal code Section 933.05, the Grand Jury requests responses as follows:

From the following elected official or governing body:

- San Mateo County Sheriff's Office —**R1** and **R2**

## METHODOLOGY

### Documents

The Grand Jury conducted general research online regarding the backlog of untested rape kits both nationwide and statewide.

### Site Tours

The Grand Jury toured the Keller Center and the Sheriff's Office Forensic Laboratory.

### Interviews

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

The Grand Jury conducted in-person interviews with personnel at the Sheriff's Office Forensic Laboratory, the Keller Center, the Victim's Advocacy Agency, and individual local city/town law enforcement agencies.

## BIBLIOGRAPHY

Clary, Mike, Lisa J. Huriash, and Andy Reid. "More Than 13,400 Rape Kits Untested, State Says." *Sun-Sentinel*, 2016. <http://www.sun-sentinel.com/news/fl-rape-kit-testing-state-report-20160104-story.html>.

EndTheBacklog.Org. "The Backlog: New York City." Joyful Heart Foundation. <http://www.endthebacklog.org/new-york-city>.

Gutierrez, Melody. "Lawmakers Focus on Untested Rape Kits." *San Francisco Chronicle*, February 28, 2016. <http://www.sfchronicle.com/politics/article/Lawmakers-focus-on-untested-rape-kits-6859587.php>.

Gutierrez, Melody. "Rape Kit Wait Puts Justice on Hold." *San Francisco Chronicle*, March 13, 2016. <http://www.pressreader.com/usa/san-francisco-chronicle/20160313/281509340291683/textview>.

Heredia, Christopher. "Where Help Comes Together / Keller Center in San Mateo Medical Center Gathers All Agencies in One Place for Victims of Sex Abuse or Domestic Violence." *San Francisco Chronicle*, December 2, 2005. <http://www.sfgate.com/health/article/WHERE-HELP-COMES-TOGETHER-Keller-Center-in-San-2591604.php>.

Marin, Carol, and Don Moseley. "Backlog in Rape Kit Testing Persists: State Says Outside Agency Will Soon Begin to Test Kits." NBC Chicago. June 11, 2015. <http://www.nbcchicago.com/results/?keywords=%22Don+Moseley%22&byline=y&sort=date>.

Noyes, Dan. "I-Team Finds Untested Rape Kits in the Bay Area." *ABC 7 News, KGO TV*, May 13, 2013. <http://abc7news.com/archive/9102961/>.

Reilly, Steve. "Tens of Thousands of Rape Kits Go Untested across USA: Exclusive Nationwide Count by USA TODAY Reveals Abandoned Rape Evidence." *USA Today*, July 17, 2015. <http://www.usatoday.com/story/news/2015/07/16/untested-rape-kits-evidence-across-usa/29902199/>.

*Sexual Assault Victims' DNA Bill of Rights*. California Penal Code Section 680. September 30, 2014. [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=680.&highlight=true&keyword=dna+evidence](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=680.&highlight=true&keyword=dna+evidence).

## APPENDIX A SEXUAL ASSAULT VICTIMS' DNA BILL OF RIGHTS

### California Codes Title 17

#### Penal Code Section 680. Sexual Assault Victims' DNA Bill of Rights

(a) This section shall be known as and may be cited as the "Sexual Assault Victims' DNA Bill of Rights."

(b) The Legislature finds and declares all of the following: (1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a powerful law enforcement tool for identifying and prosecuting sexual assault offenders.

(2) Victims of sexual assaults have a strong interest in the investigation and prosecution of their cases.

(3) Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.

(4) The growth of the Department of Justice's Cal-DNA databank and the national databank through the Combined DNA Index System (CODIS) makes it possible for many sexual assault perpetrators to be identified after their first offense, provided that rape kit evidence is analyzed in a timely manner.

(5) Timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. It is the intent of the Legislature, in order to further public safety, to encourage DNA analysis of rape kit evidence within the time limits imposed by subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.

(6) A law enforcement agency assigned to investigate a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289 should perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner in order to assure the longest possible statute of limitations, pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.

(7) For the purpose of this section, "law enforcement" means the law enforcement agency with the primary responsibility for investigating an alleged sexual assault.

(c) (1) Upon the request of a sexual assault victim the law enforcement agency investigating a violation of Section 261, 261.5, 262, 286, 288a, or 289 may inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case. The law enforcement agency may, at its discretion, require that the victim's request be in writing. The law enforcement agency may respond to the victim's request with either an oral or written communication, or by electronic mail, if an electronic mail address is available. Nothing in this subdivision requires that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing absent a specific request from the victim or the victim's designee.

(2) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims have the following rights:

- (A) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from their case.
- (B) The right to be informed whether or not the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence has been entered into the Department of Justice Data Bank of case evidence.
- (C) The right to be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation.
- (3) This subdivision is intended to encourage law enforcement agencies to notify victims of information which is in their possession. It is not intended to affect the manner of or frequency with which the Department of Justice provides this information to law enforcement agencies.
- (d) If the law enforcement agency elects not to analyze DNA evidence within the time limits established by subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803, a victim of a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289, where the identity of the perpetrator is in issue, shall be informed, either orally or in writing, of that fact by the law enforcement agency.
- (e) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case prior to the expiration of the statute of limitations as set forth in Section 803, a victim of a violation of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written notification by the law enforcement agency of that intention.
- (f) Written notification under subdivision (d) or (e) shall be made at least 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence from an unsolved sexual assault case where the election not to analyze the DNA or the destruction or disposal occurs prior to the expiration of the statute of limitations specified in subdivision (i) of Section 803.
- (g) A sexual assault victim may designate a sexual assault victim advocate, or other support person of the victim's choosing, to act as a recipient of the above information required to be provided by this section.
- (h) It is the intent of the Legislature that a law enforcement agency responsible for providing information under subdivision (c) do so in a timely manner and, upon request of the victim or the victim's designee, advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware. In order to be entitled to receive notice under this section, the victim or the victim's designee shall keep appropriate authorities informed of the name, address, telephone number, and electronic mail address of the person to whom the information should be provided, and any changes of the name, address, telephone number, and electronic mail address, if an electronic mailing address is available.
- (j) A defendant or person accused or convicted of a crime against the victim shall have no standing to object to any failure to comply with this section. The failure to provide a right or notice to a sexual assault victim under this section may not be used by a defendant to seek to have the conviction or sentence set aside.

(j) The sole civil or criminal remedy available to a sexual assault victim for a law enforcement agency's failure to fulfill its responsibilities under this section is standing to file a writ of mandamus to require compliance with subdivision (d) or (e).

## APPENDIX B ADULT SEXUAL ASSAULT RESPONSE TEAM (SART) PROTOCOL

### I. PURPOSE

The purpose of this protocol is to establish guidelines for achieving a “best practices” response to criminal allegations of sexual assault or abuse upon persons age 18 and older in San Mateo County. These guidelines are designed to ensure a cooperative and coordinated effort between trained personnel from county law enforcement agencies, the Keller Center, Rape Trauma Services, the District Attorney’s Office, the Victim Center, Adult Protective Services and the San Mateo County Forensic Laboratory, to achieve our shared mission.

### II. MISSION STATEMENT

A cooperative and coordinated Sexual Assault Response Team (SART) among all participating disciplines seeks to reduce the ongoing trauma experienced by victims of sexual assault and abuse. Our mission is to maintain the well-being of an individual victim while gathering evidence to bring the responsible person(s) to justice.

### III. GOALS

The SART will:

- A. Provide a sensitive and caring response to victims of sexual assault by all disciplines
- B. Ensure that victims are aware of their rights to have a Sexual Assault Counselor (SAC) at medical-legal evidentiary exams and all subsequent interviews
- C. Provide culturally competent, quality services to all people, regardless of social conditions, including but not limited to language, ethnicity, religion, gender, sexual orientation, disability and age
- D. Provide “best practices” forensic medical interviews and medical examinations per Cal EMA standards
- E. Facilitate follow-up medical care
- F. Provide crisis intervention support and follow-up counseling resources for primary and secondary victims
- G. Ensure competent, coordinated and effective intervention by all disciplines, including initial and ongoing training of team members

### IV. TERMINOLOGY

#### A. Steering Committee

The Steering Committee is an entity composed of the directors and chiefs of participating agencies or their designees. The essential functions are oversight, high-level community support, allocation of resources, agency coordination, consultation to the SART team, and periodic review of the protocol.



## **B. Advisory Committee**

Advisory Committee is an oversight entity for both the Adult Sexual Assault Response Team (SART) Protocol and the Children's Sexual Abuse (MDIT) Protocol. It is composed of supervisors, managers and agency designees who oversee and establish operational policies and procedures that govern the work of the Sexual Assault Response Team (SART). Advisory Committee functions may also include case review and cross training to new members of the SART, as well as ongoing training as needed.

### **1.) Case Review**

Case reviews provide a forum to identify and discuss issues and areas of concern in the SART process, and allow team members to rectify identified problems. Multidisciplinary case reviews will be done on a periodic basis, ideally every other month, using regularly scheduled advisory committee meeting time. Cases to be reviewed may be chosen by any advisory committee member. Responsibility for choosing cases for review should be rotated among participating agencies.

## **C. Sexual Assault Response Team (SART)**

Sexual Assault Response Team (SART) is composed of: a law enforcement officer, a medical provider and Rape Trauma Services (RTS) sexual assault counselor (SAC). Subsequent members of the team will be a Deputy District Attorney, Victim Center advocates and San Mateo County forensic laboratory personnel. Together they fulfill the primary functions of: specialized forensic interviews, forensic medical examinations, advocacy and counseling for primary and secondary victims, and case coordination. The team may also include a forensic interview specialist (FIS). For developmentally disabled or dependent adult victims not living in licensed care facilities, an Adult Protective Services (APS) case manager may also be a member of the team.

## **D. The Keller Center**

The designated facility in San Mateo County, located at the San Mateo Medical Center, for the medical treatment and forensic examination of sexual assault victims. Suspect forensic examinations can also be performed at the Center.

## **E. Forensic Interviews**

The Keller Center is the desired location for the complete forensic interview and medical evaluation of the victim.

- 1.) The first responding officer should determine only the basic information pertaining to the sexual assault such as jurisdiction, time frame of events (approximate dates when possible), basic elements of the crime and identity of the perpetrator(s) if known.
- 2.) Once this basic information is learned, the victim should be transported, upon the victim's consent, to the Keller Center for the forensic interview and forensic medical examination.

- 3.) The law enforcement officer, or his/her agency, shall immediately notify RTS when a victim of sexual assault or abuse is transported to the Keller Center for a medical evidentiary or physical examination. (Penal Code 264.2 (b)).
- 4.) A Forensic Interview Specialist is available to conduct interviews of developmentally/psychiatrically disabled or dependent adults, upon request. Contact Keller Center staff to schedule.

## **V. ISSUANCE AND DISTRIBUTION OF SART PROTOCOL**

- A. The Advisory Committee shall have the responsibility of developing and recommending the Adult Sexual Assault Team Protocol (the “Protocol”).
- B. The Steering Committee shall have the responsibility for approving and implementing the Protocol.
- C. The Advisory Committee will review this Protocol periodically or at the request of the Steering Committee or any participating agency.
- D. The Protocol shall be made available to members of the Steering Committee, the Advisory Committee, the SART members, the Keller Center and all participating agencies.
- E. To encourage active compliance with the Protocol, participating agencies shall be charged with distributing the Protocol to appropriate staff and training personnel.

## **VI. THE SEXUAL ASSAULT RESPONSE TEAM (SART) PROTOCOL**

### **A. Overview**

Sexual assault and sexual abuse cases may be complex and difficult to legally substantiate. There may be few, if any, physical findings, no eyewitnesses or other forms of corroborating evidence to substantiate the victim’s allegation. Interagency coordination and planning is crucial to provide the best possible environment for forensic evidence collection. A cooperative team response is also an effective way to prevent retraumatization of victims. Following this protocol and responding as a multidisciplinary team will allow the highest likelihood of maintaining the well-being of victims and bringing perpetrators to justice. General referral criteria for employing the SART process include:

1. An allegation of sexual assault or abuse occurring within San Mateo County.
2. An allegation of sexual assault or abuse occurring outside San Mateo County, or in an unknown jurisdiction, for which a courtesy report may be accommodated and for which collection of perishable evidence may be accomplished.

## **B. Initial Contact/Assessment**

Initial contact with the SART may be made in a variety of ways. Law enforcement, Keller Center, and Rape Trauma Services are the most likely points of contact for initiating the SART process. An ideal response includes:

1. “Minimal facts” interview by first responder;
2. Informing the victim of her/his right to have an RTS Sexual Assault Counselor (SAC) or other victim advocate present during the SART process;
3. Prompt gathering of SART members;
4. Thorough forensic medical examination by SANE;
5. In-depth forensic interview in order to minimize the number of times a victim must describe the assault;
6. Ensuring the victim’s questions are answered regarding the investigative process;
7. Ensuring the victim is connected to ongoing support services.

## **C. Team Member Roles and Areas of Responsibility**

The participating agencies and their representatives have varying roles and areas of responsibility during the course of the investigation and all ensuing justice system involvement. Participating agencies work together to minimize ongoing trauma to the victim while ensuring the highest likelihood of achieving justice.

# **VII. LAW ENFORCEMENT ROLE AND RESPONSIBILITIES**

## **A. Law enforcement’s most significant roles in sexual assault cases are to:**

1. Protect the victim and support her/him by linking to appropriate community resources.
2. Attempt to apprehend the suspected assailant.
3. Protect the crime scene and gather evidence needed to ensure successful prosecution.

## **B. Role of the Dispatcher**

1. The dispatcher shall ask if the victim is in a safe place and assure her/him that help is on the way.
2. The dispatcher shall attempt to obtain the following information:
  - a) Victim’s name
  - b) Location of the call
  - c) Whether the victim is otherwise physically injured
  - d) Location, date, and time of the assault
  - e) Name and/or description of the perpetrator(s), including identifying traits or marks
  - f) Direction and means of perpetrator’s flight
  - g) Whether any weapons were used

3. Dispatch assistance immediately, using a code to protect the victim's privacy.
4. If possible, keep the victim on the line until police arrive.

**C. Law Enforcement duties are to:**

1. Respond to sexual assault allegation.
2. Determine the identity of the alleged assailant(s).
3. Gather information concerning identification of the assailant and relay to the dispatcher.
4. Render aid to the victim:
  - a) If the victim has sustained life-threatening injuries and is taken to a medical facility other than San Mateo Medical Center for treatment, the officer will notify and consult with a Keller Center Sexual Assault Nurse Examiner (SANE). If the victim can be treated and released within a few hours, the officer shall transport the victim to the Keller Center for a forensic medical examination. If the victim must remain at the treating facility, the officer will notify the Keller Center SANE nurse to arrange for a subsequent forensic examination. The transporting officer will also direct the dispatcher to contact Rape Trauma Services (RTS) 24-hour Crisis Line (650) 692-7273 that they are bringing a victim to a medical facility.
  - b) If the injuries are not medically acute, the victim will be transported to the Keller Center for a forensic medical examination.
5. The transporting officer will direct the dispatcher to notify the forensic medical examiner (the SANE) and Rape Trauma Services (RTS) (650 692-7273) that they are bringing a victim to San Mateo Medical Center and give an estimated time of arrival. The officer shall provide the victim information about team members who will be present.
6. When the victim is a developmentally disabled or conserved adult, the TIES (To Insure Elderly Support) 24-hour response line should also be called (1-800-675-TIES or 1-800-675-8137). Aging and adult services can then determine if Adult Protective Services will be involved. If the victim resides in a licensed care facility, Ombudsman Services of San Mateo will facilitate the law enforcement investigation.
7. Collect evidence:
  - a) Victims of sexual assault should be brought to the Keller Center as soon as possible and generally within 10 days after the assault for examination and evidence collection. It is possible to detect injuries or trace and biological

evidence after 10 days; examinations should be considered on a case by case basis after 10 days.

- b) Sexual assault kits will be retained at the Keller Center until collected by the forensic laboratory. All other evidence will be released to law enforcement to be booked into evidence.
  - c) Seek and execute search warrants where appropriate.
  - d) Crime scene evidence should be collected at the earliest appropriate time.
  - e) Conduct victim interview regarding details of event(s).
8. Arrest suspect where probable cause exists and circumstances warrant.
  9. Assist the District Attorney's office in the prosecution of cases.
  10. During business hours, notify the Sexual Assault Unit of the District Attorney's Office of a pending victim interview when the suspect is in custody prior to the filing of charges.
  11. Absent extraordinary circumstances or victim's refusal, the forensic interview shall be recorded. The DVD recording will be labeled and maintained by law enforcement. (See VII G: Recording Procedures.)

#### **D. Evidence Collection in "Fresh" Cases**

1. Crime scenes should be photographed before any evidence is removed. Attention should be paid to areas that appear to be disturbed.
2. Any physical evidence that may implicate the suspect should be seized (i.e., fingerprints; materials that potentially contain body fluids such as used condoms, bedding and towels; victim clothing, suspect clothing and belongings, hairs; etc.)
3. Note any evidence of alcohol and/or drug consumption by the suspect or victim. Collect any instrumentalities of such consumption whenever drug-induced sexual assault may be indicated.
4. If drug-facilitated sexual assault is suspected to have occurred within 96 hours, the victim should provide law enforcement with a urine sample as soon as possible. (Urine toxicology kits are obtained from the San Mateo County Forensic Laboratory.)

#### **E. Victims' Rights**

1. The officer shall inform the victim of her/his right to have a sexual assault counselor (SAC) and other support person of her/his choosing at the medical-legal evidentiary exam and any subsequent interview by law enforcement authorities, deputy district attorneys and defense attorneys. However, the support person (not to be confused with SAC) may be excluded from the interview if the presence of that person is detrimental to the purpose of the interview.

2. It is strongly recommended, but not required, that forensic interviews of adults take place at the Keller Center. The officer will call RTS to alert a sexual assault counselor (SAC) that an interview will be conducted.
3. Medical and law enforcement personnel shall wait a reasonable amount of time, minimally 45 minutes, for the sexual assault advocate-counselor and support person to arrive.
4. The officer shall provide the victim with a written copy of the Victims Bill of Rights (Marsy's Law).
5. The officer shall ensure that the victim is aware of services available through the Victim Center.
6. The officer shall inform the victim of her/his right to confidentiality pursuant to 293 PC.
7. Victim will meet in a confidential setting with RTS sexual assault counselor, and decide whether to have a SAC present for a medical and/or legal exam.

#### **F. Law Enforcement Role with Nonreporting Victims**

A sexual assault victim may not be willing to give her/his name or participate in a law enforcement investigation immediately after an assault. In the instance of acute (within 10 days) sexual assault of a nonreporting victim:

1. Law enforcement should refer the victim to Rape Trauma Services (650) 692-7273 to discuss her/his options. RTS will offer support, information, and other services, including local, state, and national referrals.
2. The victim will be informed that she/he has a right to a forensic exam, at public expense, regardless of her/his willingness to cooperate with law enforcement or the criminal justice system.
3. If a forensic exam is performed for a nonreporting victim, the law enforcement agency will provide an identification or case number for the evidence kit, which shall be maintained by the Keller Center for a period of three months. The officer will provide the victim with this identification number and information on how to contact the agency in the event she/he decides to pursue law enforcement investigation within three months.
4. The law enforcement agency will be responsible for deciding the disposition of the evidence. In those cases not pursued within the specified time, the victim will be notified by law enforcement if evidence is to be destroyed.
5. If a forensic exam is done, the victim will be provided assault related medical care by the Keller Center.

6. If forensic exam is declined, the victim should be encouraged to seek medical attention with a medical provider. The officer should explain that there may be a need for treatment of STDs, or possible pregnancy.

## **G. Recording Procedures**

The following procedures have been implemented to provide specific guidelines and protection for the creation, transfer and use of any Keller Center DVD. The protection of the victim's right to confidentiality must be respected in the handling of these DVDs, while complying with the rules of criminal discovery in court proceedings.

1. Equipment Use: It is the responsibility of the investigating police officer to activate and operate the recording equipment according to instructions posted in the observation room. Each police agency will provide blank DVDs. (Note: Require DVD+R)
2. Informing the Victim: The officer will advise the victim of the intent to record the interview, and of his/her right to refuse the recording. The victim will be informed of the reasons for the recording and the attempt to maintain confidentiality of the DVD, within the confines of the law.
3. Transfer of the DVD to Evidence: Once the interview is complete, the assigned officer will immediately take possession of the DVD, affix appropriate labels as specified in Section 8 below, and hand carry the DVD to his/her agency.
4. Documentation: The DVD will be entered into evidence either by the assigned officer or by the police department property clerk.
5. DVD Storage: Once logged, the DVD shall be stored in a secured location. This location will vary according to each law enforcement agency's current procedures. The DVDs will be kept until final adjudication of the matters in criminal court.
6. Duplication of recordings: The investigating officer will make a copy of the DVD to be delivered to the assigned Deputy District Attorney.
7. Release of DVD recording to the Defense: Recorded interviews of victims shall not be released to the defense without a court order that the recording will be kept confidential and used only for preparation of the court case without unnecessary disclosure to other persons.
8. Labeling the DVD: The original DVD and all copies shall be labeled with the victim's first and last name, or ("John" or "Jane Doe" when confidentiality is requested), the agency case number, the interview date and time, and the interviewer's name.
9. Destruction of the DVD: If the law enforcement agency so chooses, once a criminal prosecution is completed, including the conclusion of any appeals or appeal period, the DVD of the victim's forensic interview may be destroyed. For the purposes of this

protocol, “destroyed” means that the DVD recording will be rendered unrecognizable. It is unacceptable to simply throw it away without further destruction.

## **VIII. KELLER CENTER ROLE AND RESPONSIBILITIES**

### **A. Role and Responsibilities:**

The Keller Center at San Mateo Medical Center is the designated acute care center in San Mateo County for the examination of sexual assault/abuse victims. The Keller Center will provide staff, space, and equipment for sexual assault forensic medical exams. **A Forensic Interview Specialist is available to conduct interviews of developmentally/psychiatrically disabled or dependent adults, upon request.** The SANE (sexual assault nurse examiner) team will consist of physicians, nurse practitioners, physician assistants, or registered nurses. A supervising physician is available 24 hours a day from the Emergency Department. The Keller Center will comply with the standards set forth in Penal Code section 13823.11 for performance of sexual assault exams.

The role of the sexual assault forensic medical examiner is to conduct complete forensic medical sexual assault examinations, and to provide exam findings to the law enforcement agency and/or District Attorney’s Office requesting and authorizing the examination. Examiners must provide objective forensic medical consultation to law enforcement officers, deputy district attorneys, and defense attorneys. Examiner may provide forensic medical consultation to defense attorneys only after the deputy district attorney has released the information to the defense. Forensic medical examinations must be performed in accordance with the California Medical Protocol for the Examination of Sexual Assault and Child Sexual Abuse Victims and the mandated state forms. Required state forms are:

1. CalEMA 2-923 Forensic Medical Report: Acute Adult/Adolescent Sexual Assault Examination.
2. CalEMA 2-950 Forensic Medical Report: Sexual Assault Suspect Examination.

### **B. Patient Consent:**

1. Patients have the right to refuse an examination for the purpose of collecting evidence. Consent for evidence collection, once given, can be withdrawn at any time during the examination. Patients have the right to refuse the collection of reference specimens, such as pubic and head hair, blood and/or saliva for typing; and blood and/or urine for toxicology. Patients have the right to refuse photographs as part of evidence collection.
2. Informed consent for adults unable to give consent for a sexual assault forensic examination, such as minors less than 12 years of age or conserved adults, can be obtained according to San Mateo County Health Center policy, which requires court or public guardian/conservator authorization.



3. Suspects: Even if law enforcement does not require consent from a suspect for a forensic exam, San Mateo Medical Center requires patient consent for any medical exam or procedure. If he/she refuses an exam, the SANE will not perform a forensic medical exam against the suspects' wishes. In this instance, evidence collection can be done by a police officer. Photographs and evidence preservation can be facilitated by the SANE.

### **C. Forensic Medical Examination Procedure**

The sexual assault nurse examiner (SANE) will:

1. Contact law enforcement dispatch or officer involved to verify that SANE is needed for an acute exam.
2. Verify that Rape Trauma Services has been called by police or hospital staff. The SAC will be given 15 minutes with the victim before the forensic interview or medical exam. If the SAC has not arrived until after the 45 minute allocated arrival time, and the interviewer and/or nurse has begun, the SAC will gently announce their arrival and join the patient as soon as acceptable.
3. Arrive at the hospital within 60 minutes of notification.
4. Ensure that the patient is medically stable and cleared by the emergency physician before moving the patient to the Keller Center for forensic exam. If there are assault related injuries, SANE will make sure that the patient has information and follow-up instructions.
5. Obtain law enforcement authorization to perform the sexual assault forensic medical exam. However:
  - a) If sexual assault victim presents to SMMC requesting a forensic exam for evidence of sexual assault, but refuses law enforcement interview/involvement: The SANE will inform the patient that law enforcement will be notified (Cal PC Section 13823.11), and that she/he may choose not to be interviewed by law enforcement.
  - b) Patient has the right to forensic exam at public expense, regardless of law enforcement authorization. (VAWA 2005 Reauthorization)
6. Obtain patient consent per CalEMA 2-923 before performing forensic medical exam or collecting blood or urine specimens.
7. Obtain patient history through a joint or coordinated interview with law enforcement. Information obtained should include history of the assault. SANE may ask personal health history information in the privacy of the exam room without law enforcement present.
  - a) With the patient's permission, the interview will be recorded by law enforcement. This is at the discretion of law enforcement. SANE will explain DVD recording procedures to victim if used. The DVD recording will be maintained by law enforcement agency per protocol (see VII.G. Recording Procedures).

8. Conduct medical exam and evidence collection per California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims.
  - a) Evidence collection may include digital photos of body and/or genitals. If photos are to be taken, the SANE will initiate the photo series with a photo of patient's emergency room label, indicating name, DOB, and medical record number. A facial photo should be included, also for identification purposes. The SANE will photograph any assault related injuries, which are also documented on the CalEMA form. SANE will also take genital photos pertinent to the assault.
9. Provide sexual assault victim the option of emergency contraception and STD treatment, if indicated by history.
10. Complete the CalEMA 2-923 Sexual Assault Forensic Medical Report and the sexual assault evidence collection kit. Document all injuries and findings on the CalEMA form. Provide copy of CalEMA to law enforcement officer, place copy in the evidence kit, and retain the original for Keller Center record. Evidence kit will not be left unattended until it is completed and sealed.
11. Provide patient with written discharge information which includes a summary of services provided and medications given/to be taken. Discharge instructions will also include any follow-up recommendations and referral information to RTS and to the Victim Center.
12. Attach memory card with digital photographs to patient's record, and lock in Keller Center office.
13. Forensic Medical Exams outside the Keller Center: In the event a sexual assault victim is unable to be transported from another hospital to the Keller Center for a forensic exam, the Keller Center Clinical Coordinator is authorized to perform forensic medical exams at sites outside the San Mateo Medical Center. The exam will be done as early as feasible per above standards. The Keller Center examiner will notify RTS before scheduled off-site forensic examination.
14. Suspect exams: Suspected perpetrators of sexual assault may be examined in the Keller Center only after all victims have left the Center. The CalEMA 2-950: Forensic Medical Report: Sexual Assault Suspect Examination form will be completed. The suspect evidence kit will be used. A police officer will remain in the room at all times during the exam and evidence collection.

#### **D. Keller Center Responsibilities Following SANE Forensic Medical Examination**

1. Evidence Kits: The Keller Center will maintain security of evidence kits until they are picked up by the forensic lab staff.

2. Photo review: Keller Center will ensure a photo review for every case. Photo review will be done by Keller Center staff or contracted specialists. Photo review document will be forwarded to law enforcement.
3. Case Review: All adult/adolescent sexual assault exams will be reviewed. Case reviews will be done by Keller Center Medical Director or Keller Center medical staff (NP or MD).

#### **E. Keller Center Records**

1. Documents to be maintained in the Keller Center chart include:
  - a) Law enforcement authorization form
  - b) CalEMA form
  - c) Photo CD
  - d) Photo review form
2. Documents that are privacy protected (HIPAA) and require subpoena or written release:
  - a) Patient consent for medical treatment
  - b) Discharge/Aftercare instructions
  - c) Copies of lab test results
  - d) Emergency room medical treatment record
  - e) Any additional medical information, e.g. on SMMC progress record/clinic note forms.

### **IX. RAPE TRAUMA SERVICES (RTS) ROLE AND RESPONSIBILITIES**

#### **A. Role of the RTS Advocate-Counselor:**

1. Rape Trauma Services' (RTS') primary role is to provide information, support, accompaniment and advocacy and as well as counseling and follow-up support services which assure continuity of care to direct and indirect victims of sexual assault and abuse, from the first contact to case closure. These services are provided on a 24 hour, 7 day per week basis.
2. RTS' responsibilities include assuring implementation of victim legal rights to:
  - a.) Have RTS notified when they will be transported to the hospital for any medical evidentiary or physical examination.
  - b.) Have a RTS SAC present at any forensic interview or exam.
3. When a victim is uncertain whether to report a crime, RTS' role is to provide accurate, relevant and requested information likely to aid in restoring the survivor's sense of control and consequent personal dignity.

Recognizing the profound effects of sexual assault and abuse traumas, a core role of RTS is to provide counseling and support services to those who report crimes as well as those who decide not to report. RTS does not encourage or discourage cooperation with law enforcement and addresses this concern only when initiated by the victim. RTS provides crisis intervention, follow-up, in-person individual, group and family counseling after the event as well as referral information for other community resources likely to support the recovery and well being of survivors.

**B. Responsibilities of the RTS Sexual Assault Counselor (SAC) When Called to an Outreach:**

1. Responds when notified by police and/or Keller Center personnel and is expected to arrive within forty-five (45) minutes of notification.
2. Introduces self to the victim, explaining the primary role to provide advocacy and emotional support to the victim, her/his family and friends.
3. Explains the victim's legal and ethical rights to have a sexual assault counselor and other support person at any interview by police, deputy district attorneys, or defense attorneys. Makes it clear that the other support person may be excluded from the interview if law enforcement authorities deem that her/his presence would be detrimental to the purpose of the interview.
4. Explains other victim rights, responsibilities and relevant laws that may be pertinent to her/his concerns, with particular attention to the victim's right to confidentiality such that anything said to the SAC cannot be repeated without her/his permission.
5. Asks the victim whether she/he would like to exercise her/his right to have the SAC present during any or all parts of the forensic medical-legal process.
6. A victim may choose to have the SAC with her/him in one legal interview or medical exam but not another, or be at the site primarily for the support of family, friends or other support persons. If the victim does not choose to have the SAC there at all, she/he offers information about RTS services, including referrals to other pertinent resources, and leaves.
7. If the victim chooses to have accompaniment by the SAC in either the legal interview or medical exam or both, the SAC discreetly ensures that all core medical, police or district attorney personnel present understand that the victim has made this choice.
8. Introduces self to the other SART members, honoring the separate roles of other team members. In particular, takes care not to assist with the medical exam in any way that would confound the goals of evidence collection or compromise the confidentiality privilege by becoming part of the investigatory process.

9. Attempts to facilitate useful communication with police and medical personnel, supporting the creation of an environment which will minimize retraumatization and allow the victim to begin her/his recovery by exercising whatever meaningful choice and control are possible within the reporting experience.
10. Provides basic legal-medical information, answers any questions and periodically checks to see if the victim understands what is happening.
11. Provides verbal and written information about RTS services, including information about all pertinent available resources for the survivor, her/his family and friends, and the availability of RTS follow-up support.
12. Provides follow-up calls to identify ongoing needs, support and information.
13. Ensures the victim has received information about compensation and support services available through the Victim Center.

**C. Responsibilities of the RTS Counselor When RTS is the First Agency to Which Victim Reports:**

1. Explores the immediate environment of the victim for safety and ability to talk freely.
2. Communicates the victim's right to confidentiality, creating as safe a place as possible to talk about what happened.
3. Explains RTS role, provides support and information, answering any questions which will be useful in guiding the survivor to make informed choices regarding her/his situation.
4. Explores the need for acute medical care and communicates its importance for health and recovery, informing the victim of medical services provided at the Keller Center.
5. Asks whether the victim has considered a criminal report of the event(s) and provides basic information about the forensic medical-legal process, focusing on the initial steps and critical actions a victim should consider (e.g., time frame for gathering physical evidence, preservation of physical evidence, issues that enhance likelihood of prosecution).
6. Provides information about victim rights and RTS advocacy role during the medical-legal process. This role includes giving emotional support and clarifying information, facilitating useful communication with police and medical personnel and helping to create an environment that will minimize retraumatization. The goal is to support the victim to begin her/his recovery by whatever personal control may be exercised and meaningful control gained within the reporting experience.

7. When a victim decides to report, offers to meet her/him at the Keller Center or other place the forensic medical-legal process may be initiated.

## **X. FORENSIC LABORATORY ROLE AND RESPONSIBILITIES**

### **A. Role of the Forensic Lab:**

The forensic laboratory, which is part of the Sheriff's Office, analyzes and interprets evidence collected by medical, law enforcement, and forensic laboratory personnel. Its goal is to provide information useful for identifying or eliminating persons suspected of committing the crime charged, and reconstructing pertinent events that are in question.

### **B. Responsibilities of the Forensic Lab:**

Forensic scientists analyze biological evidence, soils, fingerprints, impression evidence, solid dosage drugs, toxicology samples, tools, and firearms collected from the crime scene, victim, and suspect. The forensic laboratory communicates its results to law enforcement personnel and the District Attorney's Office through written reports and to the courts through those written reports, as well as oral testimony. Since the recipients of these conclusions are often not scientifically trained, the forensic laboratory makes every effort to provide complete, technically accurate information, which is understandable to the lay audience. The forensic laboratory personnel are also involved in the training of law enforcement, medical, legal, and Rape Trauma personnel.

## **XI. DISTRICT ATTORNEY ROLE AND RESPONSIBILITIES**

### **A. Role of the District Attorney:**

It is the role of the District Attorney's Office to prosecute criminal violations of the law in the courts of San Mateo County. Cases are referred by the law enforcement agency in whose jurisdiction the crime occurred. The prosecutor reviews the report and decides whether or not to file criminal charges. If criminal charges are filed, it is the role of the District Attorney's Office to prosecute the case in conformance with California Law and policies and procedures of the San Mateo County District Attorney's Office, and to attempt to secure an outcome which is equitable and just for the defendant, the victim, and the community, in light of the circumstances of the offense and the defendant's criminal background. Additionally, the prosecutor will seek appropriate bail so as to keep the victim and community protected, and insures the defendant's appearance in court.

### **B. Responsibilities of the District Attorney:**

1. Vertical Prosecution: The San Mateo District Attorney's Office will utilize "vertical prosecution" in the handling of sexual assault offenses, whereby attorneys who are specially trained in the prosecution of these cases will attempt to keep the case from inception to completion in order to reduce trauma to the victim.

## 2. Victim Contact

- a) Privacy: The District Attorney's Office will make every effort to protect the privacy of the victim when requested. In that circumstance, the victim's name will be redacted from the police report. The victim's name will not be used in open court, and the victim's address will only be divulged to the defense attorney for legitimate discovery purposes. Also, whenever, pursuant to discovery, a recording of the victim interview is provided to the defense, the deputy district attorney will seek a protective order to prevent dissemination of the recording beyond that required for preparation of the defense.
- b) Victims' rights: The deputy district attorney will be knowledgeable of, and advise the sexual assault victim of his/her rights, including but not limited to:
  1. The right to request that the suspect be tested for the HIV virus;
  2. The right to confer with the prosecutor about the case disposition;
  3. The right to be heard at sentencing;
  4. The right to receive restitution.
  5. The right to have a sexual assault counselor present for any interview.
- c) Familiarity with victim: In order to assess the strength of a case, the prosecutor must interview the victim early in the process, and before the filing of charges whenever possible. The deputy district attorney will ascertain the victims concerns and wishes and consider them throughout the process. The prosecutor must keep in frequent contact with the victim and keep him/her advised of the progress of the case. Additionally, should dismissal of charges be required at any point, the prosecutor shall advise the victim of that necessity prior to the dismissal of the charges.
- d) Defense access to victim: The deputy district attorney shall advise the victim that she is not required to talk with anyone about the case, including the defense attorney and any private investigator. The victim should also be advised that should he/she wish to speak to someone about the case, the prosecutor or investigating officer will be present if the victim so requests.
- e) Victim's attendance in court: A victim's required presence in court should be scheduled so as to avoid unnecessary waiting. Arrangements should be made so as to avoid contact between the victim and the defendant or any defense witnesses. Additionally, the victim should be advised of his/her right to have support persons to accompany him/her.

## **XII. VICTIM CENTER ROLE AND RESPONSIBILITIES**

The Victim Center is the designated agency in San Mateo County mandated by California statute (13835 PC & 13962 GC) to provide specific services to victims of violent crimes who are California residents. The Victim Center is a division of the District Attorney's Office.

The goal of the Victim Center is to offer services (i.e. crisis intervention, emergency assistance, resource & referral assistance, filing for compensation of medical or therapy bills directly related to the crime & orientation/liaison with the criminal justice system etc.) to victims as expediently as possible following a crime.

Government Code Section 13954 (d) mandates that every Law Enforcement Agency shall provide the Victim Center a copy of any crime report where there is a listed victim of a violent crime, including 293 PC (confidential) cases. The crime reports are usually sent by the Record Room Clerks via “Pony” or FAX.

In situations where a victim may need emergency assistance (i.e. motel voucher, bus tokens, petty cash, etc.), staff from the Keller Center, the assigned detective and/or the Deputy District Attorney can contact the Victim Center and request the assistance of an Advocate, during regular business hours.

Once an Advocate establishes contact with a victim, they will remain as the assigned advocate for the duration of the investigation and/or criminal proceedings. The advocate will be available as a support person to a victim during interviews and/or court proceedings if requested by the victim.

The Victim Center maintains a list of therapists as well as specific programs in San Mateo County which offer counseling/therapy to crime victims. If a victim appears to be in crisis, the Advocate will refer the victim to our “Crisis Response Team” (sub-list of our master list) or Emergency Psychiatric Services, or call 9-1-1 if necessary.

In order to be eligible for services, a victim must cooperate with law enforcement in the investigation and prosecution of a case. If a victim is cooperative, but a suspect has not been identified or arrested, they are still eligible for services.

A victim’s legal status (documented alien) has no bearing on their eligibility for services.

### **XIII. ADULT PROTECTIVE SERVICES ROLE AND RESPONSIBILITIES**

When a sexual assault victim is a dependent adult (18 years of age or older), or a senior age 65 and older, the TIES (To Insure Elderly Support) 24 hour response line should be called (1 800 675-TIES or 1800 675-8437). Aging and Adult Services can then determine if Adult Protective Services will be involved.

For dependent adults not living in licensed care facilities, APS will be involved as a member of the SART. Licensed care facilities would involve the Ombudsman (650) 780-5707.

#### **A. Role of the APS Case Manager**

APS case managers investigate situations where seniors or vulnerable adults have been subjected to, or are at risk of, abuse, neglect, or exploitation. APS case managers ensure the safety of the person at risk.



After a sexual assault, an APS case manager can facilitate law enforcement investigation. The case manager acts in a consultative role with other agencies such as Golden Gate Regional Center to ensure that the victim's needs are met, such as safe appropriate housing.

Issued: July 13, 2016



COUNTY OF SAN MATEO  
**OFFICE OF THE SHERIFF**

CARLOS G. BOLANOS  
SHERIFF

TRISHA L. SANCHEZ  
UNDERSHERIFF

TOM GALLAGHER  
ASSISTANT SHERIFF

400 COUNTY CENTER    ◻    REDWOOD CITY    ◻    CALIFORNIA 94063-1662    ◻    TELEPHONE (650) 599-1664    ◻    [www.smcsheriff.com](http://www.smcsheriff.com)

ADDRESS ALL COMMUNICATIONS TO THE SHERIFF

August 1, 2016

Honorable Joseph C. Scott  
Judge of the Superior Court  
Hall of Justice and Records  
400 County Center, 8<sup>th</sup> Floor  
Redwood City, CA 94063

**RE: Civil Grand Jury Report: "Rape Kit Processing In San Mateo County"**

Dear Judge Scott,

The San Mateo County Sheriff's Office would like to thank the 2015-2016 San Mateo County Civil Grand Jury for their report titled "Rape Kit Processing in San Mateo County". Further, the Sheriff's Office would like to acknowledge the obvious time and thoroughness put into this report. As a follow-up to the Grand Jury's findings and recommendations, the Sheriff's Office is providing you with our response regarding rape kit processing in San Mateo County.

**Finding #1**

The testing of rape kits in a timely manner is vital to law enforcement as well as to victims.

**The respondent agrees with the finding.**

**Finding #2**

AB 1517 (the Sexual Assault Victims' DNA Bill of Rights) recommends that forensic laboratories process all rape kits within 120 days of receipt.

**The respondent agrees with the finding.**

### **Finding #3**

As of June 2016, there is no backlog of new rape kits in San Mateo County. The procedures employed by local law enforcement, the Keller Center, and the San Mateo County Sheriff's Office Forensic Laboratory result in the timely processing of rape kits, according to the timeframes recommended by AB 1517.

**The respondent agrees with the finding.**

### **Finding #4**

The procedures and timeframes in AB 1517 are recommendations and not mandates; the State of California can only encourage counties to adopt the guidelines because the State does not provide any funding.

**The respondent agrees with the finding.**

### **Finding #5**

The Sheriff's Office Forensic Laboratory does not currently report comprehensive statistics on rape kit processing to the public; however, the Lab keeps records on rape kit testing and analysis that could be compiled and released.

**The respondent agrees with the finding.**

### **Recommendation #1**

The Sheriff's Office Forensic Laboratory should follow the recommendation of AB 1517-the Sexual Assault Victim's DNA Bill of Rights as their standard procedure and should test and analyze rape kits and enter qualified data into CODIS within 120 days of receipt.

**The Sheriff's Office Forensic Laboratory will continue to honor this recommendation and that of AB 1517 by entering qualified DNA profiles into the CODIS Database within 120 days of receipt, as the Sheriff's Office Forensic Laboratory has done since AB 1517 came into effect on January 1, 2016.**

### **Recommendation #2**

The Sheriff's Office Forensic Laboratory should annually produce a publicly available report concerning its processing of rape kits that includes, but is not limited to: the number of rape kits received from the Keller Center, the law enforcement agency associated with each kit, the number of kits tested and analyzed by the Lab, the number of DNA profiles uploaded to CODIS, the number of rape kits not tested at law enforcement request, and the reasons for not testing. Statistics should also include the number of days from login at the Lab to completion of processing.

**The Sheriff's Office Forensic Laboratory does maintain most of the above mentioned data for internal case tracking purposes and will annually publish a report to the County Manager's Office of San Mateo County by January 15th of each year, detailing the following:**

- **The number of sexual assault kits received from the Keller Center**
- **The number of sexual assault kits analyzed by the Forensic Laboratory**
- **The number of DNA profiles uploaded to the CODIS database**
- **The number of sexual assault kits not tested per law enforcement agency request**
- **The average number of days to complete the analysis**

**This report will not publish the law enforcement agency from which the sexual assault kit is associated or the reason why a processing request was canceled. The reason that this information will not be part of the report is due to the confidential nature of this casework and the fact that until the statute of limitations has expired on these cases, the case is considered open and analysis may be re-initiated at a future date.**

The Sheriff's Office appreciates the efforts of the Civil Grand Jury and has cooperated fully with all requests.

Sincerely,



Carlos G. Bolanos  
Sheriff

cc: Board of Supervisors  
County Manager