



# Memorandum

**TO:** PUBLIC SAFETY, FINANCE AND  
STRATEGIC SUPPORT COMMITTEE

**FROM:** Anthony Mata

**SUBJECT: SEXUAL ASSAULT FORENSIC  
EXAM (SAFE) COORDINATION  
REPORT**

**DATE:** May 11, 2022

Approved

Date

5/12/2022

## **RECOMMENDATION**

Accept the report on the coordination of Sexual Assault Forensic Exam procedures with the County of Santa Clara on the process for applying for State reimbursement and reporting procedures for Non-Investigative Reports (NIRs).

## **BACKGROUND**

The Santa Clara County Sexual Assault Protocol was developed by the Santa Clara County Sexual Assault Response Team (SART) Committee in 2016. The SART Committee is a community-based team that coordinates the response to victims of sexual assault. The SART Committee may be comprised of Sexual Assault Nurse Examiners (SANE's), hospital personnel, sexual assault victim advocates, law enforcement, prosecutors, judges, and any other professionals with a specific interest in assisting victims of sexual assault. The SART Committee developed the County Protocol "to establish a common understanding and framework for the provision of services to survivors of sexual violence, enable greater coordination and collaboration between community partners, and respond to issues and trends with respect to sexual assault in the county."

A sexual assault survivor has the option to have a Sexual Assault Forensic Exam (SAFE) without filing a police report. This is referred to as a Non-Investigative Report (NIR). The Santa Clara County Sexual Assault Protocol offers guidance on NIR procedures. The SART Committee formed a NIR Sub-committee at the San José Police Department's ("the Department," hereafter) recommendation, which began meeting in October of 2020, to address SAFE protocol issues regarding compliance with the law in testing of NIRs. The NIR sub-committee meetings took place bi-weekly for over a year and concluded in January 2022.

During that period, the Department's Sexual Assault Investigations Unit (SAIU) conducted audits on NIR cases dating back to 2016. The audits revealed gaps in the NIR workflow, based on SAFE protocols, that were concerning. These issues were voiced during NIR sub-committee

meetings with the District Attorney's Office and directly with Valley Medical Center's SAFE Office. While some of these gaps were addressed, others have yet to be resolved.

## **ANALYSIS**

### **Non-Investigative Reporting (NIR) Audit Findings**

Between the calendar year (CY) 4th Quarter (October-December) of 2020 and the CY 1<sup>st</sup> Quarter (January-March) of 2021, SAIU conducted an audit of NIRs dating back to January 1, 2016.

On April 13, 2021, SAIU presented an analysis of the NIR SAFE Kit Audit that was conducted by querying the Department's Records Management System (RMS) and conducting a physical hand check of NIR SAFE kits stored at the police property warehouse. As of January 1, 2016, the total number of NIR kits received is fifty-nine (59). Of the fifty-nine (59) NIRs, no documentation was provided to the Department on twenty-two (22) of those cases. Three (3) of the survivors where no documentation was provided were juveniles. As a result of this analysis, Findings and Recommendations were submitted to the Valley Medical Center's SAFE Office to help close gaps and provide the best service to survivors while remaining survivor-centered.

Below is a summary of the findings of the internal audit. The remainder of this report will discuss these findings and the Department's recommendations on how to address them.

- 1. The SAFE teams did not always provide the mandatory report (the 920 form, in particular) or the Survivor's name when the officer collected the SAFE kit. In some cases, the mandatory report or related reports were not timely received by the Department.*
- 2. In regard to children aged 12-17, our audit revealed that the Department was not immediately notified and afforded access to all children who received NIRs. This is contrary to what is required by the Santa Clara County Child Abuse and Sexual Assault protocols.*
- 3. The NIR SAFE kits were inconsistent with NIR labeling and the identification of the Survivor's name. Some kits were labeled unknown or anonymous for the Survivor's name.*
- 4. Some of the NIR SAFE kits were not provided to the Department in a timely manner. Several kits were not collected for weeks or months after the exam had taken place.*

This report also provides an update on the California Governor's Office of Emergency Services (Cal OES) process for reimbursing SAFE exams, as discussed at the November 5, 2021, Joint Meeting between the City of San José's Public Safety, Finance, and Strategic Support Committee and the County of Santa Clara's Children, Seniors and Families Committee.

### **Comply with Mandatory Reporting Laws**

California law establishes reporting requirements for health practitioners when treating suspicious injuries or administering a sexual assault exam. A summary of these requirements and associated Cal OES reporting forms is provided below.

- **Mandated Suspicious Injury Report (920 Form):** Penal Code Section 11160 requires that if any health practitioner, within the scope of their employment, provides medical services for a wound or physical injury inflicted as a result of assaultive or abusive conduct, or by means of a firearm, shall make a telephone report immediately or as soon as possible. They shall also prepare and submit a written report within 2 working days of receiving the information to a local law enforcement agency. This report must accompany a report of sexual assault in NIR scenarios. The Cal OES 2-920 form is the means of submitting the written report. The form requires medical personnel provide the following information:
  1. Name of Patient (Last, First, Middle)
  2. Birth Date
  3. Gender (male or female)
  4. SAFE Telephone Number
  5. Patient Address (Number and Street/Apt – **No P.O. Box**)
  6. Patient Speaks English (yes or no)
  7. Date and Time of injury
  8. Location/Address Where Injury Occurred, if Available.
  9. Patient Description of the Incident. Include any identifying information about the person the patient alleges caused the injury and the names of any persons who may know about the incident.
  10. Name of Suspect, if identified by the Patient
  11. Relationship to Patient
  12. Suspicious Injury Description. Include a brief description of the physical findings, lab tests completed or pending, and other pertinent information.

Refer to Attachment A for a copy of the Cal OES 920 report.

- **Acute Adult/Adolescent Sexual Assault Exam Report (923 and 924 Forms):** Penal Code section 13823.5(c) requires that every health care practitioner who conducts a medical examination of a sexual assault or a child sexual abuse victim for evidence of sexual assault or sexual abuse use a standard form to record findings. The CAL OES 2-923 form is used for this purpose. In the case of NIRs, the consent page from the CAL OES 2-924 form is also used.

The table below summarizes the count of reports received with each NIR kit. Some NIR kits included multiple types of reports.

COUNT OF TYPE OF REPORTS	
TYPE OF REPORT	COUNT
No Report	22
920	27
923	4
920 923 924 page	1
923 and 924 page	4
924 page	1
<b>Grand Total</b>	<b>59</b>

As shown above, 920 reports were not received in 22 of 59 cases. The Department believes it is paramount that SAFE teams provide law enforcement with 920s that are entirely filled out, especially in cases involving children, as law enforcement is obligated to investigate sexual assaults of minors. The Department needs the basic information contained in the 920 form to conduct these investigations.

The Department recommends the required report or the survivor's name be provided when the officer collects the SAFE kit to ensure timely delivery of reports. The Department also recommends that all information in all Cal OES forms be correctly filled out with no missing data, and historical data missing from prior forms should be provided (inclusive of Name, Date of Birth, Crime, etc.)

### **Provide Immediate Notification and Access for Children Aged 12-17**

Section 11166(a) of the California Penal Code provides that when a mandated reporter knows or reasonably suspects that a child has been the victim of child abuse or neglect, they shall make an initial report by telephone to the specified law enforcement agency immediately or as soon as practicably possible. The entire text of this section is included below.

*Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in the mandated reporter's professional capacity or within the scope of the mandated reporter's employment, has knowledge of or observes a child whom the mandated reporter knows, or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written follow up report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.*

As shown in the below table, 8 NIR kits were collected from juvenile survivors. However, the Department was not provided immediate access to these juvenile survivors as required by the Penal Code. It should be noted that 10 of the NIRs in the Department's possession have not been identified as juveniles or adults.

<b>COUNT OF ADULT vs. JUV SURVIVORS</b>	
<b>SURVIVOR</b>	<b>COUNT</b>
Adult	41
Juvenile	8
Unknown	10
<b>TOTAL</b>	<b>59</b>

The Department's position regarding juvenile survivors of sexual assault is that the survivors should receive a medical evidentiary examination without requiring them to cooperate with law enforcement. At the same time, the Department maintains the duty to keep survivors and future survivors safe from perpetrators. Statistically, most sexual assaults committed against juveniles occur in the home of the juvenile survivor. The vast majority of the perpetrators of those assaults are familial and/or known to the parents of the juvenile survivors. Without police being notified of suspected abuse and having immediate access to juvenile survivors, there is no way to determine whether there is a sound safety plan in place to prevent a perpetrator from reoffending. There is also no way to determine if other minors may be in danger of being victimized.

In the case of children aged 12-17, law enforcement should be notified immediately, before the commencement of an evidentiary examination to facilitate the collection of evidence and witness statements and identification of crime scenes. This will help ensure the safety of the survivor and any other potential minors in danger and keep the department in compliance with the Santa Clara County Child Abuse Protocol.

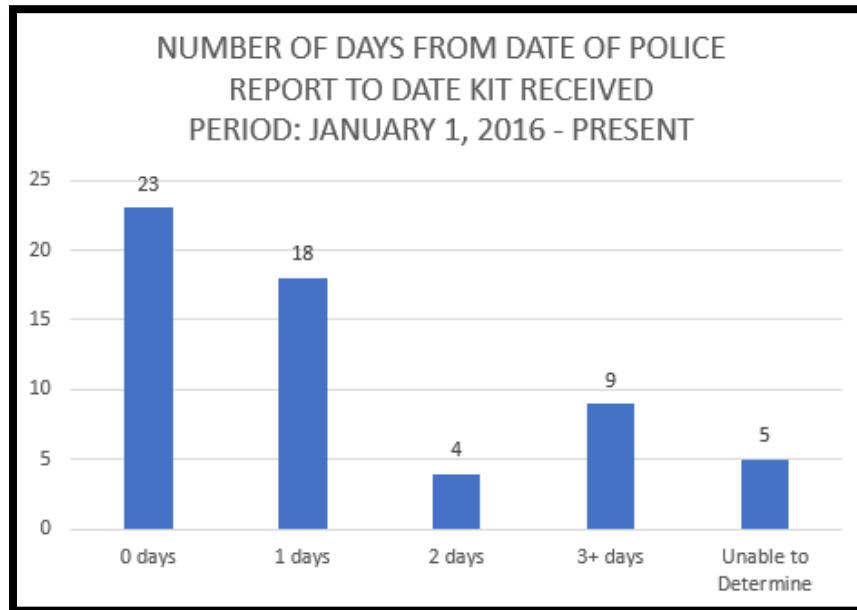
### **Standardize Kit Labeling of NIR and Survivor Name**

Inaccurate labeling of SAFE kits has created confusion during submission to the crime lab for analysis. It can also create a potential chain of custody issue in court if a survivor wishes to convert their NIR into a standard report, which ultimately gets investigated and potentially prosecuted. SAFE kits should be marked with "NIR" to ensure the kits are treated as NIRs. With the survivor's consent, the survivor's name should also be written on the SAFE kit to maintain the integrity of the chain of evidence. If a survivor does not consent to have their name placed on the SAFE kit, steps should be taken by the SAFE team to ensure the case number on the SAFE kit and the case number recorded by the police department are consistent.

### **Immediately Surrender SAFE Kit to Police**

Many of the NIR SAFE kits were received several days and even months after the SAFE kits were collected. Four kits were received 100 days after the report was made. The Department is under the impression that there are no refrigerators/freezers at Valley Medical Center or most sites where SAFE kits are collected. DNA evidence can deteriorate, and Department policy is to

freeze SAFE kits in our possession to ensure the preservation of evidence. Although the law (PC 680) does not explicitly specify the amount of time the medical team had to get the SAFE kits to law enforcement, the spirit of the law and local policy is that SAFE kits should be provided to law enforcement immediately. The Department recommends that the NIR SAFE kits be provided to the Department the same day that the SAFE was provided.



### **Cal OES Reimbursement for SAFE Exams**

Pursuant to Penal Code § 13823.95, law enforcement may seek reimbursement from Cal OES to offset the cost of conducting medical evidentiary examinations for victims of sexual assault. At the November 5, 2021, Joint Meeting between the City of San Jose Public Safety, Finance and Strategic Support Committee and the County of Santa Clara Children, Seniors and Families Committee, questions arose as to the process and timeline for seeking Cal OES reimbursement. An audit by the Department determined that 43.5% of invoices for SAFE exams were received over 60 days after the exam was performed. This delay proved challenging as it is the Department's practice not to submit reimbursement requests for invoices that have not yet been received.

Effective February 2022, Cal OES modified its reimbursement process to allow law enforcement agencies to submit for reimbursement within one year of the medical evidentiary examination. This should allow sufficient time for the County to invoice the Department and for the Department seek reimbursement from Cal OES. The Department is continuing to work with the County to ensure invoicing occurs in a timely manner.

### **Coordination with the County of Santa Clara**

SAIU personnel met with the SAFE Nurse Manager to close gaps related to NIRs issues. Although progress was made, not all gaps have been closed. The following efforts have been undertaken by SAIU to resolve NIR issues:

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1. SAIU personnel met with the SART Committee and discussed issues.
2. SAIU conducted an internal audit of NIR cases.
3. SAIU asked the SART Committee to create an NIR sub-committee.
4. SAIU met and briefed VMC SAFE Nurse Manager.
5. SAIU consulted with Santa Clara County District Attorney's Office for clarification on laws related to sexual assault and received guidance.
6. SAIU provided all relevant data to VMC SAFE Nurse Manager.
7. Engaged the chain of command within the Police Department.

Furthermore, SAIU members and the Supervising Deputy District Attorney of the sexual assault team worked to convince the SART Committee to test NIR's in this county. Previously, the county was not testing NIR SAFE kits. The non-testing of NIR SAFE kits is contrary to law, which mandates testing of all SAFE kits, including NIRs. This is another example of SAIU's commitment to bettering local policy relating to sexual assault investigations.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

/s/

ANTHONY MATA  
Chief of Police

For questions regarding the Sexual Assault Investigations Unit, please contact Lieutenant Ken Tran at (408) 277-4102.

### **Attachment**

Attachment A: Cal OES 2-920 Form

## Attachment A: Cal OES 2-920 Form

### SUSPICIOUS INJURY REPORT

STATE OF CALIFORNIA

California Office of Emergency Services

### Cal OES 2-920

Confidential Document

Penal Code Section 11160 requires that if any health practitioner, within their scope of their employment, provides medical services for a wound or physical injury inflicted as a result of assaultive or abusive conduct, or by means of a firearm, shall make a telephone report immediately or as soon as possible. They shall also prepare and submit a written report within 2 working days of receiving the information to a local law enforcement agency. This is the official form (Cal OES 2-920) for submitting the written report.

This form is used by law enforcement only and is confidential in accordance with Section 11163.2 of the Penal Code. In no case shall the person identified as a suspect be allowed access to the injured person's whereabouts.

Part A: PATIENT WITH SUSPICIOUS INJURY			
1. Name of Patient (Last, First, Middle)	2. Birth Date	3. Gender <input type="checkbox"/> M <input type="checkbox"/> F	4. SAFE Telephone Number
5. Patient Address (Number and Street / Apt – No P.O. Box)		City	State Zip
6. Patient Speaks English <input type="checkbox"/> Yes <input type="checkbox"/> No If No, identify language spoken:		7. Date and Time of Injury Date: Time: <input type="checkbox"/> am <input type="checkbox"/> pm <input type="checkbox"/> unknown	
8. Location / Address Where Injury Occurred, if Available. Check here if unknown: <input type="checkbox"/>			
9. Patient description of the incident. Include any identifying information about the person the patient alleges caused the injury and the names of any persons who may know about the incident.			<input type="checkbox"/> Additional Pages Attached
10. Name of Suspect, if Identified by the Patient		11. Relationship to Patient. <input type="checkbox"/> No Relationship	
12. Suspicious Injury Description. Include a brief description of physical findings, lab tests completed or pending, and other pertinent information. <input type="checkbox"/> Additional Pages			
Part B: REQUIRED – AGENCIES RECEIVING PHONE AND WRITTEN REPORTS			
13. Law Enforcement Agency Notified By Phone (Mandated by PC 11160)		14. Date and Time Reported Date: Time: am pm	
15. Name of Person Receiving Phone Report (First and Last)	16. Title	17. Phone Number	
18. Law Enforcement Agency Receiving Written Report (Mandated by PC 11160)		19. Agency Incident Number	
Part C: PERSON FILING REPORT			
20. Name of Health Practitioner (First and Last)		Title	Telephone
21. Employer's Name		Phone Number	
22. Employer's Address (Number and Street)		City	State Zip
23. HEALTH PRACTITIONER'S SIGNATURE:		26. Date Signed:	

Cal OES 2-920 (2001)

Reset Form