

**Public Safety, Finance, and
Strategic Support Committee**

**SEXUAL ASSAULT FORENSIC EXAM
COORDINATION REPORT**

Date: May 19, 2022

Item: (d) 2

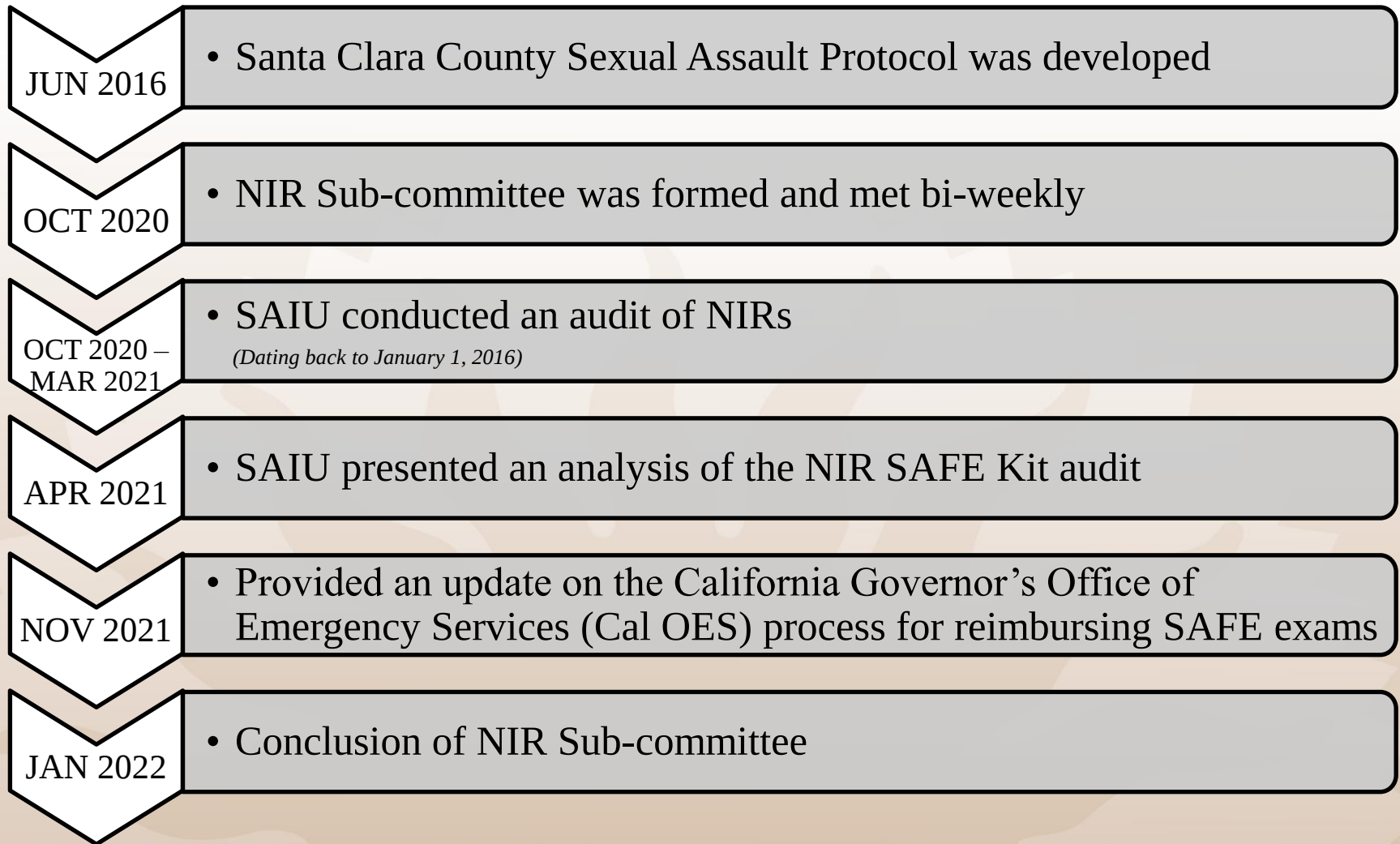


Agenda

- Background
- Understanding the SAFE Exam
- Non-Investigative Reporting (NIR) Audit Findings
- Recommendations
- Mandatory Reporting Laws
- Notification & Access for Children Aged 12-17
- Kit Labeling of NIR & Survivor Name
- Surrender of SAFE Kit to PD
- Cal OES Reimbursement
- Coordination with Santa Clara County

BACKGROUND

Timeline



SART vs. SAFE

- **Sexual Assault Response Team (SART)**

- Community-based team established by the County in 2016 that coordinates the response to survivors of sexual assault.
- 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.

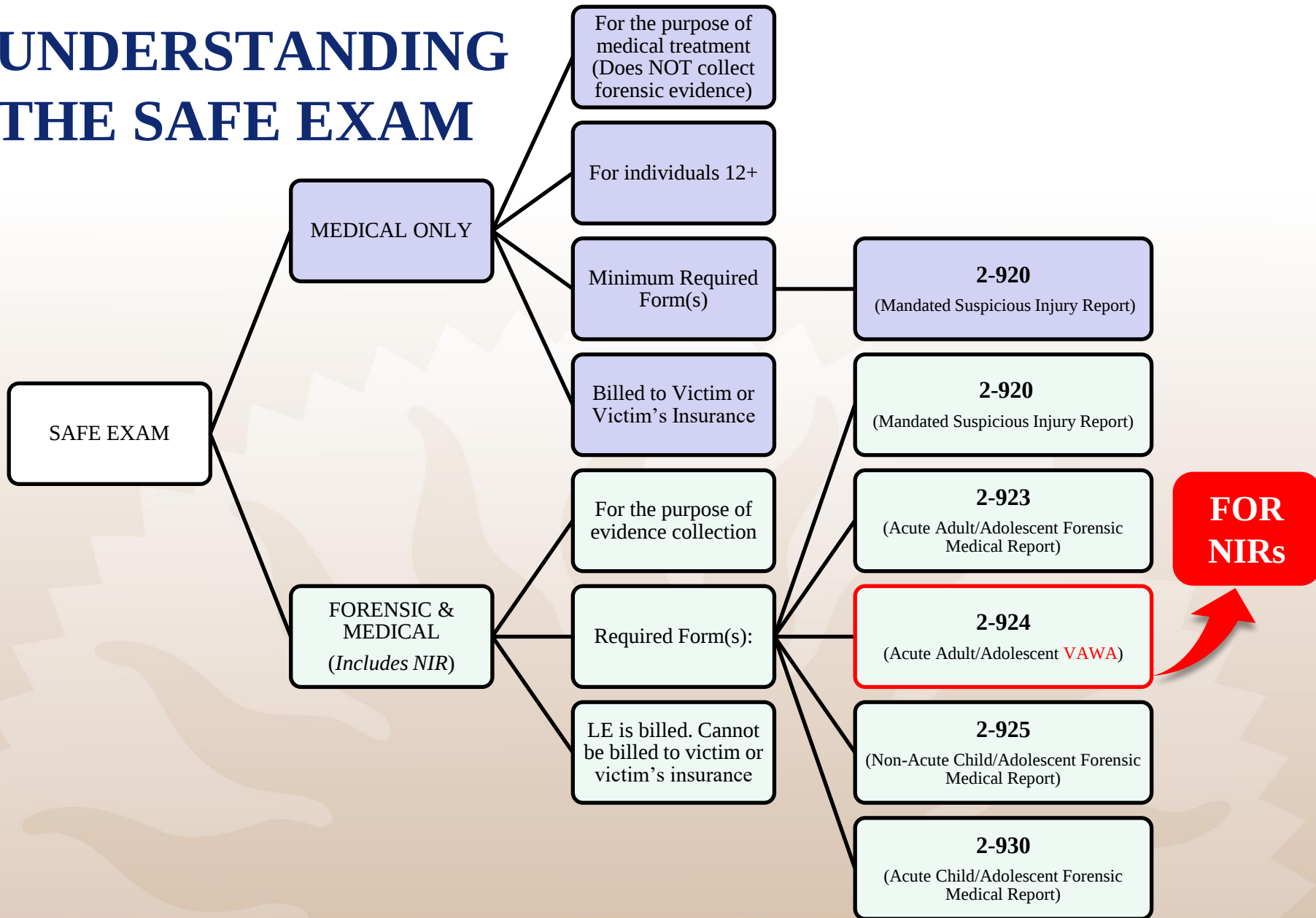
- **Sexual Assault Forensic Exam (SAFE)**

- A SAFE can provide medical care as well as collect evidence that may be helpful to the prosecution of a case.
- A sexual assault survivor has the option to have a SAFE Exam without filing a police report (*VAWA and California SB 534*). This is referred to as a **Non-Investigative Report (NIR)** exam in Santa Clara County.

County Protocol

- 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” (*Santa Clara County Sexual Assault Protocol*, p. 3).

UNDERSTANDING THE SAFE EXAM



ANALYSIS

Non-Investigative Reporting (NIR) Audit

Summary of Findings

1. The SAFE office did not always provide the mandatory report (920 form) 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. For children aged 12-17, the Department was not immediately notified and afforded access to all children who received NIRs.
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.

Mandatory Reporting Laws

Summary of requirements & associated Cal OES Reporting Forms

- **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.
- **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.

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 ☐ M ☐ F	4. SAFE Telephone Number
5. Patient Address (Number and Street / Apt – No P.O. Box)		City	State Zip
6. Patient Speaks English ☐ Yes ☐ No If No, identify language spoken: _____		7. Date and Time of Injury Date: _____ Time: ☐ am ☐ pm ☐ unknown	
8. Location / Address Where Injury Occurred, if Available. Check here if unknown: ☐			
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. ☐ Additional Pages Attached			
10. Name of Suspect, if Identified by the Patient		11. Relationship to Patient. ☐ No Relationship	
12. Suspicious Injury Description. Include a brief description of physical findings, lab tests completed or pending, and other pertinent information. ☐ 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

The 2-920 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.

**FORENSIC MEDICAL REPORT: ACUTE (<120 HOURS)
ADULT/ADOLESCENT SEXUAL ASSAULT EXAMINATION**

STATE OF CALIFORNIA

Governor's Office of Emergency Services

Cal OES 2-923

Confidential Document

9 PAGES

A. GENERAL INFORMATION (print or type)

1. Name of patient		Patient ID number	
2. Address		City	County State Telephone (C) (W)
3. Age	DOB	Gender M F	Ethnicity Arrival date Arrival time Discharge date Discharge time

B. REPORTING AND AUTHORIZATION

1. Telephone report made to law enforcement agency

Name of Officer	Agency	ID Number	Telephone	Name	Date	Time
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2. Responding Officer

Agency	ID Number	Telephone
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3. I request a forensic medical examination for suspected sexual assault at public expense.

TELEPHONE AUTHORIZATION

Agency:	Law Enforcement Officer	ID Number	Agency
Authorizing party:			
ID number:			
Date/Time:	Telephone	Date	Time Case Number

C. PATIENT INFORMATION

I understand that hospitals and health care professionals are required by Penal Code sections 11160-11161 to report to law enforcement authorities cases in which medical care is sought when injuries have been inflicted upon any person in violation of any state penal law. The report must state the name of the injured person, current whereabouts, and the type and extent of injuries.

D. PATIENT CONSENT

Minors: Family Code Section 6927 permits minors (12 to 17 years of age) to consent to medical examination, treatment, and evidence collection for sexual assault without parental consent. See instructions for parental notification requirements for minors.

- I understand that a forensic medical examination for evidence of sexual assault at public expense can, with my consent, be conducted by a health care professional to discover and preserve evidence of the assault. If conducted, the report of the examination and any evidence obtained will be released to law enforcement authorities. I understand that the examination may include the collection of reference specimens at the time of the examination or at a later date. I understand that I may withdraw consent at any time for any portion of the examination.
- I understand that collection of evidence may include photographing injuries and that these photographs may include the genital area.
- I hereby consent to a forensic medical examination for evidence of sexual assault.
- I understand that data without patient identity may be collected from this report for health and forensic purposes and may be provided to health authorities and other qualified persons with a valid educational or scientific interest for demographic or epidemiological studies.

Signature _____ ☐ Patient ☐ Parent ☐ Guardian

DISTRIBUTION OF CAL OES 2-923

☐ Original—Law Enforcement ☐ Copy within Evidence Kit—Crime Lab ☐ Copy—Child Protective Services (if patient is a minor) ☐ Copy—Medical Facility Records

Cal OES 2-923 (2018)

1

**FORENSIC MEDICAL REPORT: ABBREVIATED
ADULT/ADOLESCENT SEXUAL ASSAULT EXAMINATION**

STATE OF CALIFORNIA

California Office of Emergency Services

Cal OES 2-924

Confidential Document

A. GENERAL INFORMATION (print or type)

1. Name of Medical or Examination Facility		Patient Identification	
2. Name of Patient	Patient ID Number	Date	Time

B. MANDATORY REPORTING RESPONSIBILITY

1. Jurisdiction (☐ City ☐ County ☐ Other) Patient refused to disclose ☐ or unable to disclose location of assault ☐

2. Telephone report made to law enforcement agency ☐ Yes ☐ No ☐ N/A

Name of Officer	Agency	ID Number	Telephone	Reported by: Name	Date	Time
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3. Responding Officer

Agency	ID Number	Telephone
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4. Acknowledgement of Mandatory Reporting Law for Healthcare Professionals by Patient

I understand that Penal Code Sections 11160-11161 requires healthcare professionals to make both a telephone and written report to a law enforcement agency if they provide medical services for a physical condition to a patient whom he or she knows or reasonably suspects is suffering from any wound or other physical injury where the injury is a result of assaultive or abusive conduct. Sexual assault statutes are listed in this mandate and they include, but are not limited to: rape, attempted rape, assault to commit rape, oral copulation, sodomy, and sexual battery. Sexual battery is defined as touching the intimate part of another person against the person's will. Touching is defined as physical contact with another person, whether accomplished directly through the clothing or physical contact with the skin of another person against a person's will. Submit the Cal OES 2-920 Mandatory Reporting form to comply with the written report requirement. Use the Mandatory Report Case Number (also called Agency Incident Number) given by the law enforcement agency as identifying information for the Cal OES 2-920, the Cal OES 2-924, and the evidence kit. NOT the patient's name. Consult your local District Attorney's office if you have questions about this statute. Both the Cal OES 2-920 and 2-924 can be downloaded from www.cdmtc.org or www.oes.ca.gov. Also enter this identifying number on the patient discharge instructions for the patient.

Mandatory Report Case Number (also called Agency Incident Number) obtained from the law enforcement agency: _____

Alternate Case Number (per local protocol) if incident not consistent with mandatory reporting law (see instructions): _____

C. INFORMED PATIENT CONSENT FOR ABBREVIATED ADULT/ADOLESCENT SEXUAL ASSAULT EXAMINATION

1. In accordance with the Violence Against Women Act of 2005, 42 U.S.C. § 3796gg-4(d), states and territories may not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam." Abbreviated Forensic Medical Exams provide individuals who have been reportedly sexually assaulted access to a Sexual Assault Forensic Medical Exam (SAFE) without engaging with law enforcement.
2. By delaying an interview and not engaging with law enforcement at this time, the following may occur:
- An Abbreviated Sexual Assault Forensic Medical Exam collecting only perishable evidence will be performed.
 - Evidence that would normally be collected by law enforcement will be permanently lost.
 - Suspects and witnesses will not be interviewed, they may not be identifiable or located, or willing to cooperate at a later time.
 - It may be more difficult, if at all possible, for a prosecutor to file charges against a suspect.
 - I may or may not be eligible for California Victim Compensation Funds to pay for out-of-pocket expenses relating to this crime, including counseling, out-of-pocket medical expenses for medical evaluation and treatment, moving expenses and lost wages by not cooperating with law enforcement per State law.
3. If I decide instead to engage with law enforcement at this time, the benefits will include:
- Law enforcement will have an opportunity to collect evidence from the crime scene(s), interview suspect(s) and witnesses in a timely fashion, and a complete Sexual Assault Forensic Examination will be performed.
4. I do not want to be interviewed at this time by law enforcement and request an Abbreviated Sexual Assault Forensic Medical Exam.
5. I understand that I will not be billed for this exam per Violence Against Women Act (VAWA) of 2005, 42 U.S.C. § 3796gg-4(d)
6. After a Sexual Assault Forensic Medical Exam is performed, law enforcement will transport the evidence collected to storage, and law enforcement will store this evidence for 2 years.
- All evidence collected during the Abbreviated Sexual Assault Forensic Medical Exam may be destroyed by law enforcement agencies after 2 years and a 60 day notice will be given to me pursuant to the Sexual Assault Victim Bill of Rights. Law enforcement will need, however, a current address on file. If requested in writing, I will be notified before the evidence kit is destroyed.
7. I understand that medication is available to decrease the risk of pregnancy and/or sexually transmitted diseases that may occur as a result of the sexual assault. The SAFE can provide you with a referral for this follow up medical care, if needed.
8. Material from the exam, including photographs, may be used without identifiers for education and scientific purpose.

I have read and understand all of the above and consent to an Abbreviated Sexual Assault Forensic Medical Exam.

Patient's Name (please print) _____ Signature _____ Date _____

Cal OES 2-924 (2013) Page 1 of 6

Count of Reports Received with Each NIR Kit

- 920 reports were not received in 22 of 59 cases (*As of March 31, 2021*).
- Incomplete forms
 - Two (2) were not Sexual Assault related
 - Three (3) were not appropriate jurisdiction
 - Twenty-Four (24) were missing location information, therefore jurisdiction could not be determined
 - One (1) marked location as “Home” and no information for the residence was provided

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
Grand Total	59
<i>*As of March 31, 2021</i>	

Notification & 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.
- 8 NIR kits were collected from juvenile survivors. The Department was not provided immediate access to the juvenile survivors, as required by the Penal Code.

****Note:** 10 of the NIRs in the Department's possession have not been identified as juveniles or adults.

**COUNT OF ADULT vs. JUV
SURVIVORS**

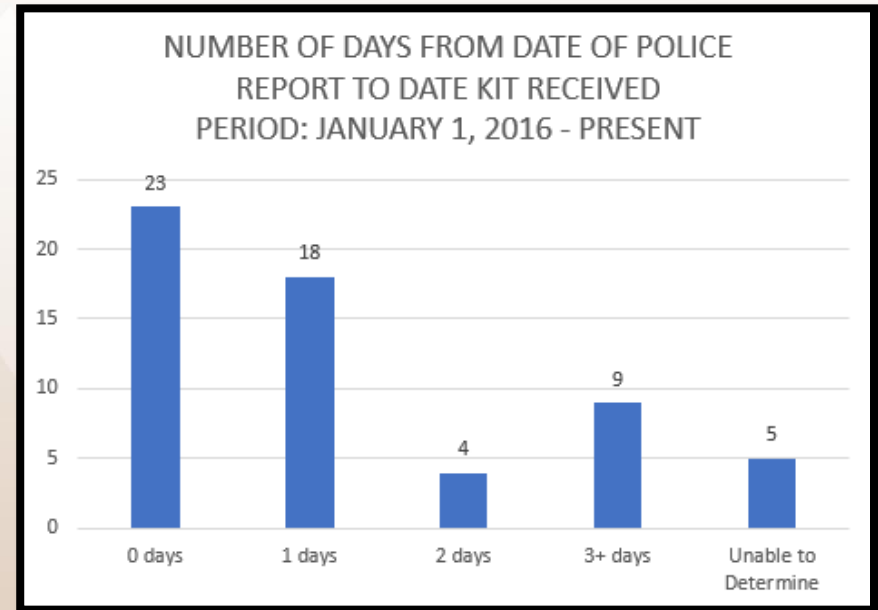
SURVIVOR	COUNT
Adult	41
Juvenile	8
Unknown	10
TOTAL	59

Kit Labeling of NIR and Survivor Name

- Inaccurate labeling of SAFE kits has created confusion during submission to the crime lab for analysis.
- 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.

Surrendering SAFE Kit to PD

- 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 SAFEs are collected.
- PC 680 does not explicitly specify the amount of time the medical team had to get the SAFEs to law enforcement, but the spirit of the law and local policy is that SAFEs should be provided to law enforcement immediately.



Cal OES Reimbursement

- 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.
- 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:
 1. SAIU 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
- June/July 2022 – City Manager's Office and Police Department are meeting with County and District Attorney's Office to close all gaps.

RECOMMENDATIONS

Recommendations

1. The required report or the survivor's name should be provided to the officer collecting the SAFE kit to ensure timely delivery of reports and 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.)
2. 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 the identification of crime scenes.
3. SAFE kits should be marked with "NIR." With consent, the survivor's name should be written on the SAFE kit to maintain the integrity of the chain of evidence. If a survivor does not consent, 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.
4. NIR SAFE kits should be provided to the Department the same day the SAFE was provided.

Questions?

