




TOWN OF FAIRFAX

STAFF REPORT

June 6, 2018

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager 
Christopher Morin, Chief of Police

SUBJECT: Approve response to Grand Jury Report: *Sexual Assault in Marin – Evidence Collection, Processing and Backlog*

RECOMMENDATION

Approve the attached response to the Marin County Civil Grand Jury Report: *Sexual Assault in Marin – Evidence Collection, Processing and Backlog*

DISCUSSION

The Town is required to respond in writing to the Recommendations contained in the Marin County Civil Grand Jury Report, pursuant to Penal Code § 933.05.

The 2017-2018 Marin County Civil Grand Jury issued a report entitled, *Sexual Assault in Marin- Evidence Collection, Processing and Backlog*, dated May 2, 2018. Recent news reports have emphasized the importance of DNA analysis after a sexual assault. A backlog of untested “rape kits” is frequently mentioned. Several new laws deal with various aspects of sexual assault investigation and reporting. In light of the news coverage and new legal realities, the Marin County Civil Grand Jury decided to investigate how sexual assaults are handled in the county.

The Grand Jury’s investigation found discrepancies in the way various Marin law enforcement agencies handled “rape kits” and their testing as well as varying policies throughout the county.

The Grand Jury is requesting a response from the Fairfax Town Council and Fairfax Police Chief to four out of six of their recommendations: R3, R4, R5 and R6. All four of these recommendations were in place prior to the Grand Jury report. No procedural changes are needed. The responses are attached.

FISCAL IMPACT

None

ATTACHMENTS

- A. Town of Fairfax Response to Marin County Civil Grand Jury Report
- B. Marin County Civil Grand Jury Report: *Sexual Assault in Marin – Evidence Collection, Processing and Backlog*

RESPONSE TO GRAND JURY REPORT

Report Title: **Sexual Assault in Marin: Evidence Collection, Processing and Backlog**

Report Date: **April 25, 2018**

Response Date: **July 25, 2018**

Agency Name: **Town of Fairfax**

Agenda Date: **June 6, 2018**

Response by: **Garrett Toy**

Title: **Town Manager**

RECOMMENDATIONS R3, R4, R5, and R6

- Recommendations numbered R3, R4, R5, R6 have been implemented. *(See attached summary.)*
- Recommendations numbered n/a have not yet been implemented, but will be implemented in the future.
- Recommendation numbered n/a requires further analysis.
- Recommendations numbered n/a will not be implemented because it is not warranted or are not reasonable.

Date: _____

Signed: _____
Garrett Toy, Town Manager

Number of pages attached: 1

ATTACHMENT A

Town of Fairfax Responses: Summary of Implemented Actions
Marin County Civil Grand Jury Report:
Sexual Assault in Marin: Evidence Collection, Processing and Backlog

Recommendation 3. The Fairfax Police Department does not have any rape kits in evidence that have not been submitted to DOJ.

Recommendation 4. Not applicable as there are no untested kits.

Recommendations 5 & 6. The Fairfax Police Department already has a clearly defined policy, Policy 602, "Sexual Assault Investigations." The Fairfax Police Department Policy Manual is available on the Fairfax Police website.

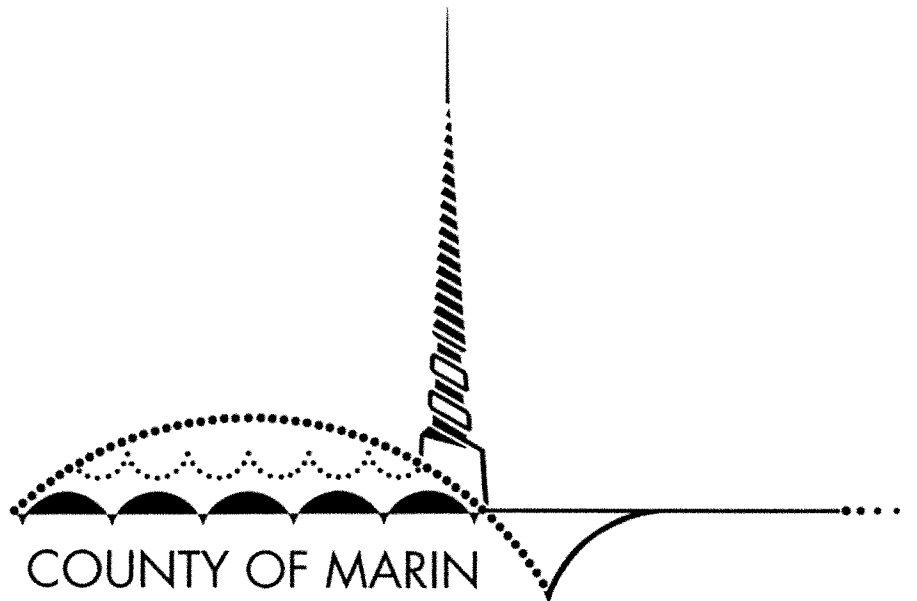
2017–2018 MARIN COUNTY CIVIL GRAND JURY

Sexual Assault in Marin

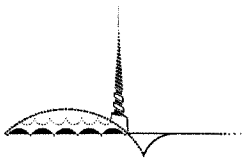
Evidence Collection, Processing and Backlog

Report Date: April 25, 2018

Public Release Date: May 2, 2018



ATTACHMENT B



Sexual Assault in Marin: Evidence Collection, Processing and Backlog

SUMMARY

Recent news reports have emphasized the importance of DNA analysis after a sexual assault. A backlog of untested "rape kits" is frequently mentioned. Several new laws deal with various aspects of sexual assault investigation and reporting. In light of news coverage and new legal realities, the Marin County Civil Grand Jury decided to investigate how sexual assaults are handled in our county.

The Grand Jury learned that Marin County has taken a positive direction in its handling of sexual assaults and support of victims. The Grand Jury also discovered areas that need improvement.

The number of rapes (per 1,000 population) in the County for 2011-2016 is lower than all other counties in the Bay Area. The majority of rapes in Marin are perpetrated by known assailants.

Marin County's Sexual Assault Response Team (SART) Task Force, including victim advocates, specially trained Sexual Assault Nurse Examiners (SANE), law enforcement agencies and the district attorney's office, coordinates and implements services to victims of sexual assault.

Marin County contracts with the Napa Solano SANE SART organization and exams take place at Kaiser Permanente Vallejo Medical Center. While this location is outside the County, this program is of major value to Marin victims. The Grand Jury recommends maintaining and enhancing this relationship.

To address funding variations resulting from the low number of rapes per capita and the large geography serviced, the District Attorney should consider using an alternative funding structure in collaboration with Napa Solano SANE SART.

Since 2011, the backlog of sexual assault kits in the California Department of Justice Richmond Crime Laboratory has been eliminated by changes in procedures and the advent of a new testing protocol. A small number of kits dated prior to 2011 remain untested in some Marin police agencies' storage. The Grand Jury recommends that each agency determine the number of rape kits in their evidence lockers. Any kits that have not been DNA tested should be sent to the crime lab for processing, regardless of age, statute of limitations or perceived prosecutorial value.

The procedure for notifying victims of the testing status of sexual assault evidence kits varies among law enforcement agencies. Each agency should have a clear, publicly available policy for updating victims on the status of their rape kit processing and results.

Policies regarding disposal of old kits differ among law enforcement agencies. Each agency should have a clearly defined policy regarding retention of kits.

BACKGROUND

DNA evidence collected in association with criminal activity has been frequently in the news, from the O.J. Simpson case, to reports of innocent men freed after long years of incarceration by the work of the Innocence Project, and to published articles concerning a backlog of evidence kits in testing laboratories and police storage lockers. DNA is especially important in reported sexual assaults; it is a powerful tool in solving and preventing future crimes. DNA evidence can detect serial offenders and connect suspects to other crimes. It can confirm the identity of a known suspect or point to an unknown assailant. It can also exonerate those wrongfully accused or convicted of sexual assault.¹

“To accomplish these things, however, rape kits must be tested.”²

It has been reported that hundreds of thousands of untested rape kits sit on shelves and in refrigerators in police and crime lab storage facilities throughout the country in what has been called the “rape kit backlog.”³ USA Today found more than 70,000 untested rape kits based on records from more than 1,000 police departments around the country.⁴ Each untested kit is a lost opportunity to bring some measure of healing and justice to a survivor of sexual violence.

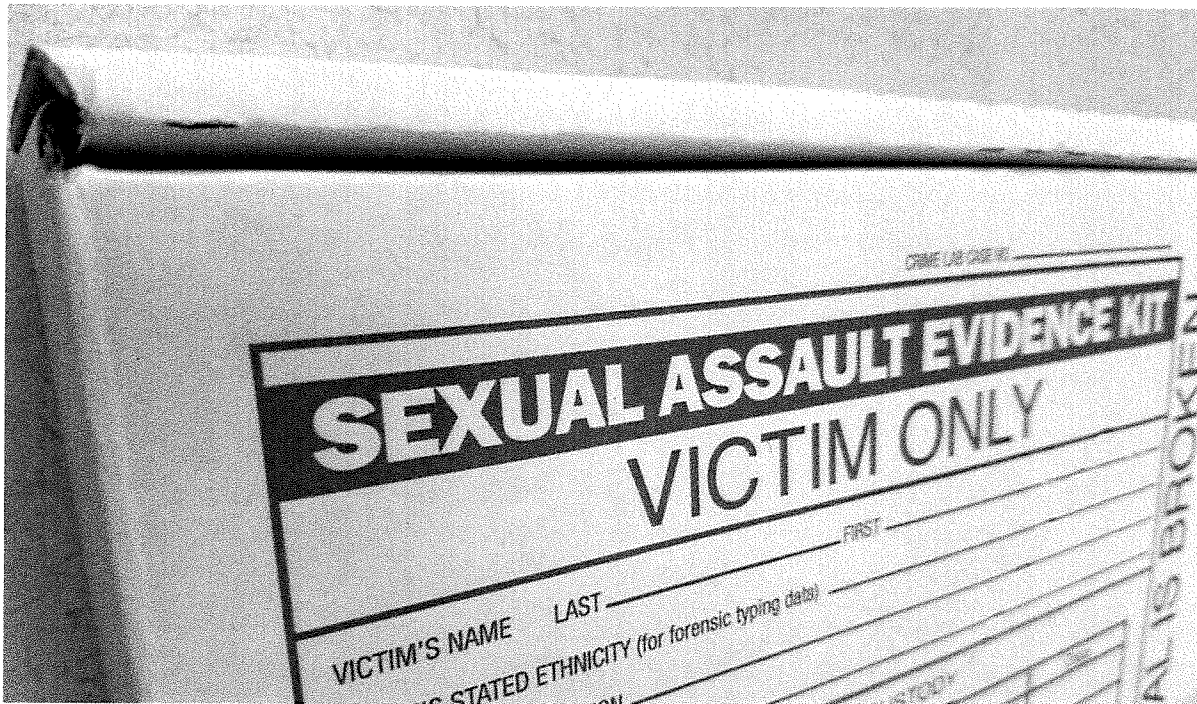
The rape kit backlog reflects two separate but related problems. The first problem happens when a rape kit is booked into evidence, but DNA analysis is not requested by the detective and/or prosecutor. The kit may stay in a police evidence room for years. This is often called the “untested” or “unsubmitted” rape kit backlog. The second problem happens in crime laboratory facilities when rape kits submitted for testing are not processed.

¹ “Advocacy.” *Joyful Heart Foundation*.

² “What is the Rape Kit Backlog.” *End the Backlog/Joyful Heart Foundation*.

³ *Ibid.*

⁴ Reilly, Steve. “Tens of thousands of rape kits go untested across USA.” *USA Today*. 16 Jul. 2018.



Why some rape kits might not be tested:

Based on online literature review, interviews, and examination of evidence logs, the Grand Jury found reasons why a rape kit might not be tested.

- The perpetrator is a known assailant.
- Statute of limitations has been exceeded.
- It is determined that the kit has no evidentiary or prosecutable value.
- No crime was committed.
- The suspect confessed.
- The case was dropped.
- The victim died.
- The perpetrator died.
- The complaint was withdrawn.
- There are insufficient funds to have the kit tested.

Likewise, reasons for testing ALL kits were identified:

- Analysis of a kit may help identify serial rapists.
- Analysis of a kit may help link offenders to other crimes.
- Analysis of a kit helps provide closure to victims. Analysis may provide the victim with the answers and validation they deserve and prevent further victimization.⁵
- A closed case may be reopened.
- Prosecution is enhanced by DNA evidence, even with a known offender.

⁵"Why Test Rape Kits After the Statute of Limitations Has Expired?" *National Center for Victims of Crime.*

Testing of Kits — Known Assailants

END THE BACKLOG, a program of the Joyful Heart Foundation, provides insightful reasons why kits from known assailants should be tested.

Acquaintance rapists may also be serial offenders, and they may have also committed crimes against people they don't know. Testing every rape kit connected to a reported crime ensures that links between crimes will be made, regardless of the relationship between the victim and the perpetrator.⁶

The Grand Jury heard from multiple sources in law enforcement and the District Attorney's office that "stranger rapes" are rare in Marin. In prosecuting Marin rape cases, the issue is most often one of consent.

Testing of Kits — Links to Other Crimes

Eight years ago, a Wayne County, Michigan prosecutor made the processing of the 11,341 untested rape kits in the Detroit area her top priority. About 90% have been tested and more than 800 serial rapists were identified.⁷

Closer to home, Alameda County discovered more than 1,900 unprocessed kits, all of which have now been analyzed. When the DNA was compared to the national database, investigators were able to link known perpetrators to unsolved crimes and were able to link rapists to multiple sexual assault crimes.⁸ In Berkeley, a 2008 rape kit sat on the shelf without being analyzed. This let a suspected Bay Area serial rapist evade detection for years; he is now being held without bail in Alameda County on multiple charges that include rape, attempted sexual assault and kidnapping, and is facing charges that he murdered a woman in 2015.⁹

"What more proof do we need of the absolute necessity to test every rape kit?" asked state Sen. Nancy Skinner, D-Berkeley. "Leaving any kit on the shelf in a police department gives serial rapists a free pass."¹⁰

⁶ "Why the Backlog Exists." *End the Backlog/Joyful Heart Foundation*.

⁷ "Detroit Kit Tests Indicate Hundreds of Serial Rapists." *NPR/Weekend Edition Saturday*. 13 Jan. 2018.

⁸ "At Issue: Rape Kit Testing." O'Malley, Nancy and Caen, Melissa. *CBS Bay Area. YouTube*. 2 Jul. 2017.

⁹ Gutierrez, Melody. "Bay Area leaders outraged at Berkeley police lapse on rape kit." *San Francisco Chronicle*. 15 Mar. 2018.

¹⁰ Ibid.

Testing of Kits — Statute of Limitations Exceeded

The National Center for Victims of Crimes provides this victim-centric approach to the issue of testing Sexual Assault Kits (SAKs) where the statute of limitations has been exceeded.

With a national backlog of untested SAKs, many jurisdictions possess kits from crimes where the statute of limitations has run out. With limited resources, one might ask: should we test these expired kits? The answer is yes— because victims deserve it. We have learned from talking to victims of sexual assault that the idea of justice varies for each individual. In the mind of many victims, even if conviction of the perpetrator is no longer possible, they still want an opportunity to be validated, to be heard, or even to be informed.¹¹

With this national picture in mind, the Marin County Civil Grand Jury set out to look at issues surrounding sexual assault in Marin, including rape statistics, SART examinations, facility considerations, and untested rape kits.

APPROACH

The Grand Jury has done exhaustive online research.

The Jury interviewed the following:

- Law enforcement personnel from city and county agencies
- Individuals from the District Attorney's office
- Leaders of Sexual Assault Response Teams
- Trained Sexual Assault Nurse Examiners
- State prison officials

The Jury examined evidence logs and rape kit inventory from law enforcement property divisions.

The Grand Jury focused on the processes from initial report of an assault, including where rape kits are collected, where the kits are processed, how chain of custody is preserved, how and where the kits are stored, and ultimately, what is the current testing status for any collected rape kits.

¹¹"Why Test Rape Kits After the Statute of Limitations Has Expired?" *National Center for Victims of Crime.*

DISCUSSION

Sexual violence rates are difficult to measure. Sexual assaults tend to be under-reported and, for those that are reported, there is no single source of data that provides a complete picture. The data source used by the Grand Jury in this report is from the California Department of Justice.¹²

The data table below is indexed by population, which provides a better understanding of the magnitude of the problem when compared with other Bay Area counties. With changes in California statutes of rape and sexual assault, including changing the actual definition of rape, data mining from older databases can be confusing. The data source for the tables below is the California Department of Justice “Openjustice” project, using the crime rate for “rape”.¹³

Rape in Bay Area Counties

	2016 Population	Average Rapes/Yr	Rapes/1000 population
Alameda County	1,553,960	479	0.308
Contra Costa County	1,078,257	211	0.195
Lake County	64,076	33	0.515
Marin County	251,845	46	0.182
Mendocino County	87,628	41	0.468
Napa County	142,166	45	0.317
San Francisco County	827,420	243	0.293
San Mateo County	738,681	178	0.241
Santa Clara County	1,920,000	471	0.245
Santa Cruz County	274,673	96	0.350
Solano County	420,335	142	0.337
Sonoma County	490,596	188	0.383

The average number of rapes (per 1,000 population) in Marin County for 2011-2016 is lower than all other counties in the Bay Area.^{14,15}

¹² “Openjustice.” *Office of the Attorney General. State of California.*

¹³ “Openjustice/Search Crime and Clearance Statistics.” *Office of the Attorney General. State of California.*

¹⁴ “Openjustice/Search Crime Statistics.” *Office of the Attorney General. State of California.*

¹⁵ “United States Census.” *US Census Bureau/US Department of Commerce.*

6-Year Marin Rape Statistics by Agency

	2011	2012	2013	2014	2015	2016	Grand Total
Marin County	48	30	48	40	57	52	275
Belvedere	0	0	0	0	0	0	0
Central Marin			5	6	8	4	23
Fairfax	1	3	3	1	6	3	17
Marin Co. Sheriff's Department	8	3	7	5	5	4	32
Marin Community College	0	0	0	0	2	0	2
Mill Valley	2	1	0	0	0	1	4
Novato	10	5	5	7	9	9	45
Ross	0	0	0	0	0	1	1
San Anselmo	1	0					1
San Rafael	20	14	26	20	27	28	135
Sausalito	1	0	2	1	0	0	4
Tiburon	0	1	0	0	0	2	3
Twin Cities	5	3					8
Grand Total	48	30	48	40	57	52	275

Twin Cities and San Anselmo Police Departments merged to become the Central Marin Police Authority in 2013

Of the reported rapes for this time period, 77% were under the law enforcement jurisdictions of San Rafael, Novato, and the Sheriff's Office (unincorporated Marin).

Year-by-year information for San Quentin State Prison is not readily available, but sexual assaults in the prison are relatively rare because of the Prison Rape Elimination Act (PREA)¹⁶ of 2005 and its implementation by the California Department of Corrections and Rehabilitation.¹⁷

Sexual Assault in Marin — A Brief Overview

“With the crime of sexual assault, the victim’s body is a part of the crime scene.”¹⁸

This stark statement from “End the Backlog” should be a reminder of how personal and traumatic sexual assault is and should encourage everyone to do everything possible to support victims.

What happens when someone reports a sexual assault? The initial report is usually made to the local police or a sheriff’s deputy by phone or in person, or to a healthcare provider in an emergency room. In Marin County, and throughout California, a team goes into action to support the victim and gather evidence to prosecute a possible crime.

If offender DNA evidence may be present, the victim can choose to have a forensic examination conducted by a Sexual Assault Nurse Examiner (SANE), a member of the SART team. A law enforcement officer will offer to drive the victim to the designated hospital. The team assembles

¹⁶ “Prison Rape Elimination Act/Overview.” *California Department of Corrections and Rehabilitation*.

¹⁷ “Prison Rape Elimination Policy.” *California Department of Corrections and Rehabilitation Operation Manual*, Article 44, pp. 470-478. 1 Jul. 2015.

¹⁸ “What Is the Rape Kit Backlog.” *End the Backlog/Joyful Heart Foundation*.

in a dedicated space within the hospital for interviews and a forensic examination, known as a “SART exam”.

The law enforcement officer, while not present for the exam itself, interviews the victim. A victim advocate is there to provide support. Evidence is gathered and preserved in a sexual assault evidence kit, frequently referred to as a “rape kit”. While the kit remains in the custody of the responsible law enforcement agency, key DNA samples are sent directly to the California Department of Justice Laboratory in Richmond to be analyzed.

The response team intervention in sexual assault cases is for the purposes of:¹⁹

- Protecting the victim from further assault
- Minimizing the effects of the assault on the victim and encouraging the healing process
- Arresting and prosecuting the offender
- Providing for the needs of the victim and their family through counseling and advocacy
- Support and accompaniment
- A sensitive, yet comprehensive, medical exam
- Medical follow-up

Marin County Sexual Assault Response Team

A Sexual Assault Response Team (SART) is a multidisciplinary group of professionals that work together to support a sexual assault victim. Each team includes a Sexual Assault Nurse Examiner, a trained victim-advocate, and a police officer.

Forerunners to SARTs began to develop in the 1970s. Nurses at San Luis Obispo County General Hospital created the first SART-like team in California in 1980. In 1985, the District Attorney of Santa Cruz County combined concepts from SANE programs with the model from San Luis Obispo and created California’s first official SART.²⁰

¹⁹ “Marin County SART Protocol.” Mar. 2015 (Final).

²⁰ “How Did SARTs Evolve?” *SART Toolkit: Resources for Sexual Assault Response Teams*. Mar. 2011.

SARTs are organized at the county level and each is slightly different, based on the needs of the county. Members of the Marin Sexual Assault Response Team include:

- Community Violence Solutions
- Marin County District Attorney's Office
- Marin County Law Enforcement Agencies
- Department of Health and Human Services, Public Health Division
- Marin County District Attorney's Victim-Witness Unit
- California Department of Justice, Santa Rosa and Richmond Crime Labs
- Napa Solano SANE SART
- Kaiser Permanente Vallejo Medical Center

The Marin SART Task Force members have the responsibility for developing, approving, and implementing the county's SART protocol. The mission of this task force is to coordinate and implement services to victims of sexual assault.

Sexual Assault Nurse Examiners

Sexual Assault Nurse Examiner (SANE) is a designation for registered nurses who receive extensive training in conducting exams for sexual assault victims. Programs for SANE certification include both academic and hands-on clinical training covering medical, psychological and forensic aspects of examinations.²¹

SANE programs became formalized in 1992 when 72 nurses formed the International Association of Forensic Nurses. Standards were developed over time for two certifications: SANE-A, for those supporting adults and adolescents; and SANE-P, for those performing pediatric examinations.²² Each certification requires a minimum of 40 hours of academic work and extensive clinical preparation. In California, SANE training is given by the California Clinical Forensic Medical Training Center.²³ Certification is for three years, renewable by demonstrating clinical activity as a SANE, and completion of appropriate continuing education activities or retesting.²⁴ Proficiency is maintained by a sufficient caseload.

With these high standards, the long and unpredictable hours of the forensic examinations, on-call requirements, and the additional burden of testimony in court, SART nurse positions are hard to fill. The positions are usually filled by SART nurses with other principal employment and very understanding employers.

SART nurses may be called to testify in court about the exam and their findings. Court times are unpredictable and often many hours (or rarely, days) can be spent waiting to testify.

²¹ "History and Development of SANE Programs," *Office for Victims of Crime (OVC)*.

²² "History of the Association," *International Association of Forensic Nurses*.

²³ "Trainings," *California Clinical Forensic Medical Training Center*.

²⁴ "SANE-A & SANE-P 2018 Renewal Handbook," *International Association of Forensic Nurses*.

What is a SART Exam?

A SART exam is a forensic examination given in a sensitive manner to a sexual assault victim. The examiner collects evidence that may be used in the investigation and prosecution of the sexual assault case. This medical-legal exam is conducted in a dedicated space by a sexual assault nurse examiner. Individuals who have experienced any form of sexual violence are encouraged, but not required, to have a medical-legal exam performed by a trained professional as soon as possible (i.e., within 72 hours) after the assault. The SART team will address an individual's medical and emotional needs related to the assault as well as collect evidence in accordance with established protocols.

To preserve evidence, the crime lab recommends, if possible, that the victim should avoid personal hygiene activities such as showering, washing, brushing teeth or changing clothes, and avoid eating or drinking prior to the exam.

Even if an individual is uncertain about whether to pursue criminal charges or other remedies, participating in the exam allows for the collection and preservation of evidence that might be useful should the individual decide to pursue some type of action at a later date.

Whenever it is determined that offender DNA material may still be present, sexual assault victims are offered a SART examination. Some choose to decline. Some may not meet guidelines due to the time elapsed between the assault and reporting. Some assaults may not leave DNA evidence. Thus, not all sexual assaults result in a SART exam.

SART Exams by Law Enforcement Jurisdiction²⁵

	2011	2012	2013	2014	2015	2016	Total
Central Marin Police Agency				2	1	2	5
College of Marin PD					2		2
DA				3			3
Fairfax Police Department		4	1	1	2		8
Marin County Sheriff	5	5	6	5	1	3	25
Mill Valley Police Department		2		2		1	5
Novato Police Department	1	6	4	4	10	9	34
San Anselmo PD	1						1
San Rafael Police Department	4	11	15	17	12	12	71
Sausalito Police Department			4	4			8
Tiburon Police Department		1				2	3
Twin Cities Police Department	1			1			2
USP-Muir Woods							1
(blank)		1		3	1		4
Total	12	30	30	29	29	29	172

Twin Cities and San Anselmo Police Departments merged to become the Central Marin Police Authority in 2013

In Marin, between 2011 and 2016, approximately 63% of rape victims received an exam. This equates to an average of less than 29 SART exams per year for Marin victims.

²⁵ Financial Data, *Marin District Attorney's Office and Marin County Department of Finance*.

Sexual Assault Exam Location

Marin General Hospital: Prior to 2011, SART exams were performed at Marin General Hospital, primarily by obstetrical nurses. Some of these nurses did not want to be subpoenaed, go to court and have their credentials examined.²⁶ The volume of SART exams performed at Marin General was not sufficient to sustain a robust SART program with nurses based locally. Victims typically had to wait a number of hours for SANE nurses at the hospital to be freed from regular duties. Pediatric exams were not performed at Marin General; these were performed in Oakland.

Kaiser Permanente Vallejo Medical Center: In 2005,²⁷ Kaiser Permanente Vallejo Medical Center began providing facilities and services for other counties' SART exams utilizing the Napa Solano SANE SART organization. Six years later, the Marin County SART Task Force incorporated Kaiser Vallejo and Napa Solano SANE SART into its program. By agreement, the medical center participates on the Marin County SART Task Force. Kaiser Vallejo provides a dedicated exam room and secure storage for equipment, and keeps the SART room stocked and organized. It accepts transfer of victims from Novato Community Hospital, Marin General Hospital and Kaiser Permanente San Rafael for SART exams. Kaiser Vallejo also provides a physician for consultation with a SANE nurse for victims if needed, and agrees not to bill SART victims or their insurance companies for these evidentiary exams.²⁸ Victims are likewise not charged for laboratory testing for pregnancy and STD, or for postcoital contraception if indicated.²⁹

Napa Solano SANE SART, in partnership with Kaiser Vallejo, has developed into a "center of excellence" for Marin, and for all the counties it serves.

Law enforcement personnel involved with sexual assault cases were asked for their opinions concerning Kaiser Vallejo as a SART site. The consensus was that the overall efficiencies of the facility, the dependable availability of the SART nurses and support staff, and the dedicated site within Kaiser Vallejo for exams and interviews offset any problems with drive time or other issues related to being out of the County.

A senior police official told the Jury that when his child needs advanced health care, they go to Oakland Children's Hospital. Going out of county to get the best care makes sense. He feels that principle applies to the care of sexual assault victims at Kaiser Vallejo.

The executive director of Community Violence Solutions, in an article from the Point Reyes Light, said the distance does not deter patients. "It is harder for the victims, but we haven't had anyone say they wouldn't go to Vallejo for the services yet," she said. Based on the County's contract, Marin law enforcement officers provide transportation, if needed, for victims to travel to Kaiser Vallejo.³⁰

²⁶ Valentino, Silas. "County renews contract for rape victim exams by expert team in Vallejo." *Point Reyes Light*. 3 Aug. 2018.

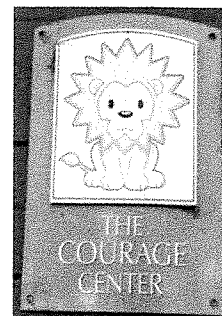
²⁷ "Sexual Assault Response Team at Kaiser Permanente Vallejo." *Kaiser Permanente News & Views*. 30 Mar. 2006. Accessed 11 Mar. 2018.

²⁸ "Marin County SART Protocol." Mar. 2015 (Final).

²⁹ "Sexual Assault Victims DNA Bill of Rights." *California Legislative Information*.

³⁰ Valentino, Silas. "County renews contract for rape victim exams by expert team in Vallejo." *Point Reyes Light*. 3 Aug. 2017.

Non-Acute Pediatric Exams, Interviews and Support: Non-acute pediatric examinations and interviews may be performed where, given the passage of time, there is no likelihood of the presence of biological evidence. These pediatric examinations are performed by Napa Solano SANE SART at the Courage Center in Napa or at the Courage Center in Fairfield at a time convenient to the victim/victim's family and only with their consent. Because these examinations are non-acute, no biological evidence is collected or preserved in a sexual assault kit. The focus on this examination is to document, if possible, the healed trauma resulting from the sexual assault.



These Courage Centers are a collaborative project of county law enforcement, child protective services and non-profit agencies devoted to child advocacy.³¹ They are safe, child-friendly places where abused children are interviewed and examined by a multidisciplinary team of specially trained professionals. Victor the Lion, the center's mascot, is named for a 5-year-old boy, himself a victim, who saved his 3-year-old sister by telling his parents he had witnessed her being abused.³²

Napa Solano SANE SART

Napa Solano SANE SART was founded in 1988 to provide physical examinations of children in cases of suspected assaults. This nonprofit organization now provides immediate and compassionate care to sexual assault victims of all ages.

Each year, they provide nearly 200 forensic examinations for Napa, Solano, Mendocino, Lake, Sonoma and Marin Counties. This high volume allows these nurse examiners to maintain a high degree of proficiency that would not be obtainable in a small program. The nurses perform examinations on victims of all ages, from birth to postmortem. "We've had [victims] as little as 2 months old," the director said, though adult cases make up the majority.³³

Napa Solano SANE SART is also a member of the Marin County SART Task Force, which coordinates and implements services to victims of sexual assault.³⁴

In 2011, Marin County entered into a contract with Napa Solano SANE SART to provide forensic examinations at Kaiser Hospital in Vallejo. The contract was renewed by the Marin County Board of Supervisors in July 2017 for an additional year. This professional services contract provides payment on a "per event" basis, with additional fees for courtroom testimony. On-call coverage is required 24 hours/7 days per week. Napa Solano SANE SART bills the County, and the County then charges the individual law enforcement jurisdictions. This contract expires in July 2018.

³¹ Dorgan, Marsha. "A safe place for secrets." *Napa Valley Register*. 4 Dec. 2008.

³² Fu, Kimberly. "Solano's child advocacy center opens in Fairfield." *The Reporter*. 22 Feb. 2016.

³³ Lutz, Henry. "On the frontlines of sexual assault in Napa: the nurses of SANE/SART." *Napa Valley Register*. 8 Jan. 2018.

³⁴ Marin County SART Protocol. Mar. 2015 (Final).

The Marin County Civil Grand Jury has reviewed this contract and the services provided and recommends renewal of a service contract with Napa Solano SANE SART.

This renewal cycle may provide an opportunity to look at other funding arrangements. Currently, the overhead of 24/7 on-call coverage is funded by the fee for the examinations. In periods of low activity, this is a strain on the contract company resources. AB-1475, passed in 2015, requires the county SART task force to evaluate “the cost-effectiveness and feasibility of a per capita funding model for local sexual assault forensic examination teams to achieve stability for this component of the SART program.”³⁵

Eliminating the Testing Lab Backlog — Change in Procedure for Processing DNA Evidence

Rapid DNA Service (RADS) is an innovative and nationally recognized procedure developed in 2011 by the California Department of Justice’s Bureau of Forensic Services to expedite the processing of DNA from sexual assault kits. The development of the RADS process was a radical departure from the traditional, slow procedures for handling sexual assault kits.

RADS departs in three principal ways from the previous processes:

- Sexual assault examiners sensitively interview the victim and then collect up to three swabs from areas most likely to contain DNA evidence. These swabs, along with a victim statement, are packaged in a RADS envelope and sent directly to the DOJ Forensic Bureau in Richmond. The rest of the sexual assault kit goes with the police officer back to the original police jurisdiction.
- Every sample received at the Forensic Bureau goes directly to DNA analysis.
- A semi-automated process is used to manage the increased number of samples to be tested in a timely manner.³⁶

RADS began as a pilot program in four counties (Marin, Napa, Solano, and Sonoma) in May of 2011.³⁷ By September of 2015, 46 of the state’s 58 counties were being served.³⁸

The goal of the RADS program is to complete DNA processing within 15 business days.

In the first year of the program the backlog of untested kits in state-run labs was eliminated. It is unknown how many untested kits remain in police evidence rooms or in non-state-run labs.³⁹

³⁵ “California Penal Code 13898.2.” *California Legislative Information*. Section Effective 1 Jan. 2016.

³⁶ Bashinski, Jan. “California Expands Rapid DNA Analysis System.” *End the Backlog/Joyful Heart Foundation*. 15 Feb. 2017.

³⁷ “Press Release.” *California Department of Justice*. 9 Apr. 2014.

³⁸ “California Attorney General’s Office Awarded \$1.6 Million Grant to Test Sexual Assault Evidence Kits.” *California Department of Justice/Office of the Attorney General*. 11 Sep. 2015.

³⁹ “California Attorney General’s Office to Receive National Recognition for Innovative Sexual Assault Kit Testing.” *California Department of Justice/Office of the Attorney General*. 8 Apr. 2014.

Untested Rape Kits

“California doesn’t know how many rape kits are on the shelves,” said Assemblyman David Chiu, D-San Francisco.⁴⁰

The legislature has so far failed in its attempts to require California’s 500-plus law enforcement agencies to count and test the rape kits in their possession due to opposition from groups that want the state to pay the resulting costs. Under proposed bill AB 3118, all law enforcement agencies that store sexual assault evidence kits would be required to count their kits and send the data to the Department of Justice by July 1, 2019. The Department of Justice would then report the information, including the number of untested kits, to the Legislature by July 1, 2020.⁴¹

Prior to the implementation of the RADS program, in which key DNA evidence samples are automatically sent to the crime lab by the SART nurse, it was up to the discretion of the law enforcement investigators to determine if kits were to be tested.

The Grand Jury examined evidence logs and rape kit inventory data of police agencies. Consistent with the procedure change with the implementation of RADS, the Jury did not find untested kits that were acquired after 2011. The Jury did, however, find kits in inventory for examinations prior to 2011 that were marked as “untested.”

Statute of Limitations

State law now allows “the prosecution of rape, sodomy, lewd or lascivious acts, continuous sexual abuse of a child, oral copulation, and sexual penetration, that are committed under certain circumstances, as specified, to be commenced at any time.”⁴² In other words, for these offenses newly committed, there is no longer a statute of limitations. The new law applies to crimes committed after January 1, 2017.

Policies for Maintaining Evidence

New legislation prohibits a law enforcement agency from destroying or disposing of rape kit evidence or other crime scene evidence from an unsolved sexual assault case before at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, before the victim’s 40th birthday.⁴³

Potential DNA evidence is kept in a refrigerator. The increased storage requirements, as well as the change in statute of limitations, may tax the already cramped evidence lockers, and law enforcement agencies may need to plan for increased space requirements.

The Grand Jury found variations between law enforcement agencies in Marin regarding policies for retaining rape kits.

⁴⁰ Gutierrez, Melody and Veklerov, Kimberly. “Efforts to clear California’s rape kit testing backlog fall short.” *SF Chronicle*. 17 Mar. 2018.

⁴¹ Ibid.

⁴² Kennedy, Merrit. “California Ends Statute of Limitations on Rape Cases.” *The Two-Way: Breaking News/NPR*. 28 Sep. 2016.

⁴³ “AB-1312 Sexual Assault Victims: Rights.” *California Legislative Information*. 12 Oct. 2017.

Victim Notification — Status of Evidence Kits

In 2016, California enacted a law that requires the California Department of Justice (DOJ) to establish a process for victims to request information about the location and status of their rape kits by July 2018.⁴⁴

The “California Sexual Assault Victim’s DNA Bill of Rights”⁴⁵ includes:

- 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.
- The right to be informed whether or not the DNA profile of the assailant was entered into the Department of Justice databank.
- The right to be informed of whether or not there is a match between the DNA profile of the assailant developed.
- 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.
- It is the intent of the Legislature that a law enforcement agency responsible for providing information concerning the sexual assault investigation do so in a timely manner upon request of the victim or the victim's designee.⁴⁶

The Grand Jury found variation among law enforcement agencies in Marin County as to how victims are updated on the status of their sexual assault evidence kits.

The San Francisco Police Department created a Sexual Assault Victims' DNA Bill of Rights card, which is issued to sexual assault victims and/or the victim’s designee by the initial investigating patrol officer.⁴⁷ This card may be used as a model for Marin law enforcement agencies.

⁴⁴ “[AB-2499 Sexual Assault Evidence Kits](#),” *California Legislative Information*. 30 Sep. 2016.

⁴⁵ “[Sexual Assault Victims DNA Bill of Rights](#),” *California Legislative Information*. 30 Sep. 2014.

⁴⁶ Ibid.

⁴⁷ Appendix E.

FINDINGS

- F1. The average number of reported rapes (per 1,000 population) in Marin County for 2011-2016 is lower than all other counties in the Bay Area.
- F2. The low numbers of these assaults is equated with low numbers of SART exams (less than 29 per year average), which are insufficient to support a local program.
- F3. Having an in-county SART exam facility would not reduce the impact to the victims or the county agencies.
- F4. SANE nurse proficiency is maintained and enhanced by sufficient experience and caseload.
- F5. Identifying, training and retaining qualified SANE nurses in the North Bay represent challenges to the program.
- F6. Kaiser Permanente Vallejo Medical Center is a central location with good access for the counties it serves. It is an efficient operation where approximately 200 examinations per year are performed.
- F7. Marin County's contract with Napa Solano SANE SART expires on July 2, 2018 and a renewal of the contract offers an opportunity to optimize the support to Marin and the SANE SART program.
- F8. The geography and small number of rapes relative to the size of the counties that Napa Solano SANE SART serves creates challenges to resourcing and funding the program.
- F9. Funding based on actual examinations performed results in inconsistent revenue for an operation that must pay SANE nurses to be available 24 hours a day all year.
- F10. The Grand Jury finds no evidence of a testing backlog after the new RADS process was implemented in 2011.
- F11. The Grand Jury found unprocessed rape kits for years prior to 2011.
- F12. Some kits obtained prior to 2011 were not analyzed due to perceived non-prosecutory value.
- F13. The exact number of unprocessed rape kits before 2011 remains unknown due to prior database procedures that did not identify the status of DNA testing of rape kits in evidence logs.
- F14. The evidence databases in some agencies are incomplete.
- F15. DNA testing of unprocessed rape kits nationwide, including other Bay Area counties, has led to the discovery of serial rapists and links to other crimes.
- F16. Policies for retention of rape kits vary among agencies.
- F17. The process for victims to learn the status of the results of their rape kit analysis is dependent on procedures of each department and varies throughout the County.

RECOMMENDATIONS

- R1. The County's contract with the Napa Solano SANE SART should be renewed.
- R2. The County should investigate alternative financing in collaboration with Napa Solano SANE SART to address funding variations resulting from the number of rapes per capita and large geography serviced, as directed in California Penal Code Section 13898.2 (c).
- R3. Each law enforcement agency should complete an inventory of rape kits in their evidence lockers, and identify kits that have not been submitted to the California Department of Justice Crime Laboratory for DNA analysis.
- R4. Kits that have not been DNA tested should be sent to the California Department of Justice Crime Laboratory for processing, regardless of statute of limitations or prosecutorial value.
- R5. Law enforcement agencies should have a clearly defined policy regarding retention of kits.
- R6. Each law enforcement agency should have a clear, publicly available policy for keeping victims updated on the status of their rape kit processing and results.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following governing bodies:

- Central Marin Police Authority (R3, R4, R5, R6)
- City of Belvedere (R3, R4, R5, R6)
- City of Mill Valley (R3, R4, R5, R6)
- City of Novato (R3, R4, R5, R6)
- City of San Rafael (R3, R4, R5, R6)
- City of Sausalito (R3, R4, R5, R6)
- County of Marin (R1, R2, R3, R4, R5, R6)
- Town of Fairfax (R3, R4, R5, R6)
- Town of Ross (R3, R4, R5, R6)
- Town of Tiburon (R3, R4, R5, R6)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933 (c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

From the following individuals:

- Marin County District Attorney (R1, R2)
- Marin County Sheriff (R3, R4, R5, R6)

The following individuals are invited to respond:

- Chief of Belvedere Police Department (R3, R4, R5, R6)
- Chief of Central Marin Police Authority (R3, R4, R5, R6)
- Chief of Fairfax Police Department (R3, R4, R5, R6)
- Chief of Mill Valley Police Department (R3, R4, R5, R6)
- Chief of Novato Police Department (R3, R4, R5, R6)
- Chief of Ross Police Department (R3, R4, R5, R6)
- Chief of San Rafael Police Department (R3, R4, R5, R6)
- Chief of Sausalito Police Department (R3, R4, R5, R6)
- Chief of Tiburon Police Department (R3, R4, R5, R6)

Note: At the time this report was prepared information was available at the websites listed.
--

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury <u>not</u> contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.
--

APPENDIX A: Pertinent Legislation

AB-3118 (proposed) would require all responsible agencies to report how many untested rape kits they have to the Department of Justice by July 1, 2019. The Department of Justice would report the total numbers to the Legislature by July 1, 2020.

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB3118

SB-1449 (proposed) would require all new rape kits to be sent for testing and would provide funds to cover the costs.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1449

AB-41 (2017) mandates the tracking of rape kits collected after January 2018. If a kit is not tested, the reason for not testing must be given. Information about tested and untested kits must be sent to the California Department of Justice, which would submit an annual report to the legislature. The bill allows victims to track the progress of their kits through the SAFE-T database.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB41

AB-1312 (2017) establishes a sexual assault victims' Bill of Rights. Effective January 1, 2018.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1312

AB-2499 (2016) requires the Justice Department to establish a policy for victims of sexual assault to learn information about the location and status of their sexual assault evidence kits.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2499

AB-1475 (2015) authorizes counties to establish interagency sexual assault response teams. For counties that do establish teams, the bill encourages evaluation of effectiveness and feasibility of different funding models.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1475

AB-1517 (2014) establishes timelines for law enforcement agencies to submit DNA to crime labs (20 days) and for the lab to process DNA evidence and upload the results into CODIS (120 days).

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1517

APPENDIX B: DNA Databases

CODIS

Managed by the FBI, the Combined DNA Index System, or CODIS, blends forensic science and computer technology into a tool for linking violent crimes. It enables federal, state, and local forensic laboratories to exchange and compare DNA profiles electronically, thereby linking serial violent crimes to each other and to known offenders.

CODIS generates investigative leads in cases where biological evidence is recovered from the crime scene. Matches made among profiles in the Forensic Index can link crime scenes together, possibly identifying serial offenders. Based upon a match, police from multiple jurisdictions can coordinate their respective investigations and share the leads they developed independently. Matches made between the Forensic and Offender Indexes provide investigators with the identity of suspected perpetrators. Since names and other personally identifiable information are not stored at the National DNA Index System (NDIS), qualified DNA analysts in the laboratories sharing matching profiles contact each other to confirm the candidate match.⁴⁸

As of January 1, 2009, adults arrested in California for any felony offense are subject to DNA collection.⁴⁹

SAFE-T, CHOP

Two secure databases operated by the California Department of Justice: the CODIS Hit Outcome Project (CHOP), which enables agencies to share confidential information about the outcomes of DNA matches; and the Sexual Assault Forensic Evidence Tracking (SAFE-T) database, which will enable the state to track the collection and processing of sexual assault evidence kits.

Both CHOP and SAFE-T are secure, web-based databases provided to local law enforcement agencies free of charge. The California Department of Justice, which manages the state's DNA Data Bank Program, created CHOP in 2009. SAFE-T was created in 2015 in part as a response to recommendations from a report by the State Auditor. When evidence taken from a sexual assault kit is analyzed and matched to a sample in CODIS, the SAFE-T profile is automatically linked to a database entry in CHOP.

In California, law enforcement collects DNA samples from all felony offenders and arrestees, which are submitted into the CODIS database. When a DNA sample is taken from a crime scene involving an unidentified suspect, the database is checked for possible matches.⁵⁰

⁴⁸ "Combined DNA Index System (CODIS)," *FBI.gov/US Department of Justice*.

⁴⁹ "BFS DNA Frequently Asked Questions," *California Department of Justice/Office of the Attorney General*.

⁵⁰ "Attorney General Kamala Harris Announces Legislation to Promote Statewide Tracking of DNA Evidence," *California Department of Justice Office of the Attorney General*, 25 Feb. 2016.

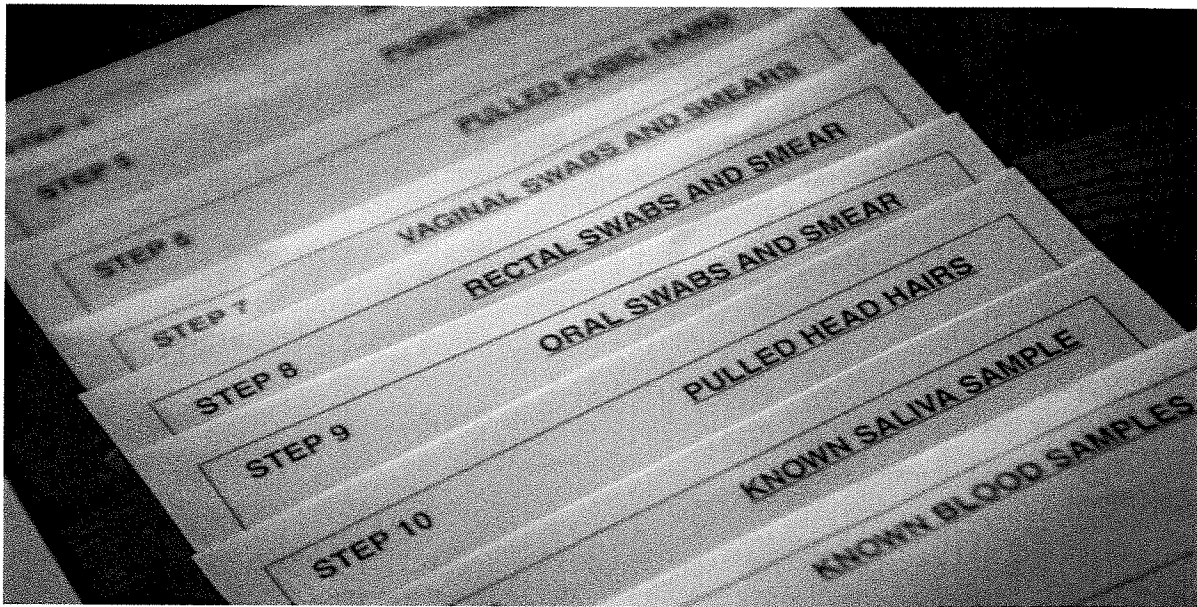
APPENDIX C: DNA

Almost everyone has heard of DNA and its use in the field of criminal justice. Although the details of DNA analysis are beyond the scope of this report, the basic concepts are accessible to all.

DNA stands for deoxyribonucleic acid. It is the primary means of transferring genetic information from one generation to another with half of an individual's DNA coming from one parent and half from the other. DNA contains a long string of diverse sequences of four “letters” that scientists refer to as A, T, C, and G. This is shorthand scientists use to refer to the molecules that comprise DNA. A human has about three billion of these letters in each cell and the order of these letters form a code that directs everything that must happen for life to occur. The differences between one individual and another are determined by the differences in the sequence of the letters in their DNA.

There are areas of every person’s DNA that are unusually variable, easily analyzed, and unique to that person. A DNA sample from an individual will contain the accumulated differences in these areas over many generations. They are known as Variable Number Tandem Repeats or VNTRs. When DNA is broken down and analyzed, the number and size of these areas of variability can be measured and represented numerically. This is known as a DNA profile. Typical DNA analyses look at between 17 and 20 of these variable areas, so the chances of a match to all these areas (unless they are from identical twins) are very, very small—theoretically on the order of one in a thousand billion or more. Although complexities in the practical application of DNA profiling reduce that specificity considerably, it is still good enough to identify individuals with a high degree of certainty.

APPENDIX D: What is a Rape Kit?



The term “rape kit” is an informal name for the sexual assault evidence kits that are used for collecting biological samples as evidence. The kits may also be named “Sexual Assault Kits”, or “SAKs”. This evidence collection system typically consists of:

- Sterile swabs that are labeled for use on the various areas of the body where biological evidence could be found;
- Sterile containers for larger samples and liquids (such as urine or blood);
- Boxes and bags for clothing that may contain evidence;
- Tools for evidence collection: comb, nail scrapers, glass slides, sterile sheets for collecting debris, blood sample tubes, and materials for labeling.

The crimes for which sexual assault kits are used could range from sexual battery to homicide, not just rape *per se*.

There are different kits used for the victim and the suspect, if the suspect is in custody. Biological samples often yield DNA, which, when processed into a DNA profile, can be used to help identify suspects, if unknown, by comparing the sample with a database of known DNA samples. If a suspect is known, the comparison of the suspect’s DNA profile with the profiles in the database can detect the suspect’s possible involvement with other crimes.

These kits are frequently stored in evidence room refrigerators.

APPENDIX E: Sexual Assault Victim's DNA Bill of Rights



SEXUAL ASSAULT VICTIM'S DNA BILL OF RIGHTS PENAL CODE 680

DNA and forensic identification analysis is a powerful law enforcement tool for identifying and prosecuting sexual assault offenders.

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

The Department of Justice's Cal-DNA databank and 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.

3. The crime lab should process the sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence.
4. Upon the request of a sexual assault victim the investigating agency may inform the victim of the status of the DNA testing of the evidence. The investigating agency may respond to the victim's request with either an oral or written communication, or by electronic mail, if available.

SFPD FORM 540 (Rev. 04/2017)
side one

SEXUAL ASSAULT VICTIM'S DNA RIGHTS

- 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.
- The right to be informed whether or not the DNA profile of the assailant was entered into the Department of Justice Data Bank.
- The right to be informed whether or not there is a match between the DNA profile of the assailant developed.
- 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.
- It is the intent of the Legislature that a law enforcement agency responsible for providing information concerning the sexual assault investigation do so in a timely manner upon request of the victim or the victim's designee.

OFFICER/INSPECTOR

NAME _____ STAR _____

INCIDENT# _____

For further information regarding the Sexual Assault Victim's DNA Bill of Rights, please contact the San Francisco Police Department (SFPD), Sexual Assault Unit at (415) 553-9225.

SFPD FORM 540 (Rev. 04/2017)
side two

"SFPD FORM 540." San Francisco Police Department.