

Sexual Assault Investigations

601.1 PURPOSE AND SCOPE

State **MODIFIED**

The purpose of this policy is to establish guidelines for the investigation of sexual assaults. These guidelines will address some of the unique aspects of such cases and the effects that these crimes have on the victims.

Mandatory notifications requirements are addressed in the Child Abuse and Adult Abuse policies.

601.1.1 DEFINITIONS

Best Practice **MODIFIED**

Definitions related to this policy include:

Sexual assault - Any crime or attempted crime of a sexual nature, to include, but not limited to, offenses defined in Penal Code § 243.4, Penal Code § 261 et seq., and Penal Code § 285 et seq.

Sexual Assault Response Team (SART) - A multidisciplinary team generally comprised of advocates, law enforcement officers; forensic medical examiners, including sexual assault forensic examiners (SAFEs) or sexual assault nurse examiners (SANEs) if possible; forensic laboratory personnel; and prosecutors. The team is designed to coordinate a broad response to sexual assault victims.

601.2 INVESTIGATION CONSIDERATIONS

Agency Content

601.2.1 INVESTIGATION AND REPORTING

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In all reported or suspected cases of sexual assault, a report shall be written and assigned for follow-up investigation. This includes incidents in which the allegations appear unfounded or unsubstantiated.

601.2.2 VICTIM INTERVIEWS

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The primary considerations in sexual assault investigations, which begin with the initial call to the Communications Center, shall be the health and safety of the victim, the preservation of evidence, and preliminary interviews to determine if a crime has been committed and to attempt to identify the suspect.

If appropriate, a member of SART may be included in the initial victim interviews. An in-depth follow-up interview shall not be conducted until after the medical and forensic examinations are completed and the personal needs of the victim have been met (e.g., change of clothes, bathing). Whenever possible, the follow-up interview shall be conducted by a qualified investigator.

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Victims are often reluctant or embarrassed to discuss details. Recanting or changing one or more aspects of a prior statement is not necessarily an indication of false reporting or that the case is unfounded. If the responding officer has reason to believe the incident may be without merit, he/she shall document the evidence and inconsistencies. Due to physical and emotional trauma, and the myths and stereotypes associated with sexual assault, inconsistencies in the victim's report are not uncommon. No opinions of whether the case is unfounded shall be included in the report.

Interviews shall be recorded for incidents involving any sexual assault allegation, physical abuse, all felony investigations, circumstances surrounding deaths, and any recantation by a patient, except in cases where the recording of the interview would make a patient anxious, uncomfortable, or result in their refusal to participate in the interview. In these circumstances, the refusal to be recorded or interviewed shall be recorded/ In cases where officers are unable to record based on the exceptions listed, officers shall document, in the report, the reasoning for not making the recording.

Victims shall not be asked or required to take a polygraph examination (42 USC § 3796gg-8; Pen. Code § 637.4).

601.2.3 VICTIM RIGHTS

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Victims shall be apprised of applicable victim's rights provisions, as required by law.

Whenever there is an alleged sexual assault the assigned officer shall accomplish the following:

- (a) Immediately provide the victim with the "Victims of Domestic Violence" card containing the names and locations of rape victim counseling centers within the county and their 24-hour counseling service telephone numbers (Pen. Code § 264.2(a)).
- (b) Advise the victim of the right to have a victim advocate and a support person present at any interview by law enforcement as provided in (Pen. Code § 679.04).
- (c) If the victim is transported to a hospital for any medical evidentiary or physical examination, the officer shall immediately cause the local rape victim counseling center to be notified (Pen. Code § 264.2(b)(1)).
 1. Prior to any such examination the assigned officer shall ensure that the victim has been properly informed of his/her right to have a sexual assault victim counselor and at least one other support person present (Pen. Code § 264.2(b)(2)).
 2. A support person may be excluded from the examination by the officer or the medical provider if his/her presence would be detrimental to the purpose of the examination (Pen. Code § 264.2(b)(4)).

601.2.4 VICTIM CONFIDENTIALITY

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Officers investigating or receiving a report of an alleged sex offense shall inform the victim, or the victim's parent or guardian if the victim is a minor, that his/her name will become a matter

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of public record unless the victim requests that his/her name not be made public. The reporting officer shall document in his/her report that the victim was properly informed and shall include any related response made by the victim, or if a minor, any response made by the victim's parent or guardian (Pen. Code § 293(a); Pen. Code § 293(b)).

- (a) Except as authorized by law, DSH employees shall not publicly disclose the name or address of any victim of a sex crime who has exercised his/her right to confidentiality (Pen. Code § 293(c); Pen. Code § 293(d)).

601.2.5 OFFICER RESPONSIBILITY

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Whenever there is an alleged violation of Penal Code §§ 243(e), 261, 261.5, 262, 273.5, 286, 288a or 289, the assigned officer shall accomplish the following:

- (a) Immediately provide the victim with the "Victims of Domestic Violence" card containing the names and locations of rape victim counseling centers within the county and their 24-hour counseling service telephone numbers (Pen. Code § 264.2(a)).
- (b) If the victim is transported to a hospital for any medical evidentiary or physical examination, the officer shall immediately cause the local rape victim counseling center to be notified (Pen. Code § 264.2(b)(1)).
 1. Prior to any such examination the assigned officer shall ensure that the victim has been properly informed of his/her right to have a sexual assault victim counselor and at least one other support person present (Pen. Code § 264.2(b)(2)).
 2. A support person may be excluded from the examination by the officer or the medical provider if his/her presence would be detrimental to the purpose of the examination (Pen. Code § 264.2(b)(4)).

601.3 COLLECTION AND TESTING OF BIOLOGICAL EVIDENCE

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Whenever possible, a SART member shall be involved in the collection of forensic evidence from the victim (Welf.& Inst. Code § 4427.7).

When the facts of the case indicate that collection of biological evidence is warranted, it shall be collected regardless of how much time has elapsed since the reported assault.

If a drug-facilitated sexual assault is suspected, it is critical to the investigation that a urine sample from the victim be collected by a medical professional.

Subject to available resources and other law enforcement considerations which may affect the ability to process and analyze rape kits, other sexual assault victim evidence and other crime scene evidence, any member of the Office of Protective Services (OPS) assigned to investigate a sexual

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assault offense shall take every reasonable step to ensure that DNA testing of such evidence is performed in a timely manner and within the time periods prescribed by Penal Code § 803(g).

In order to maximize the effectiveness of such testing and identify the perpetrator of any sexual assault, the assigned officer shall further ensure that the results of any such test have been timely entered into and checked against both the Department of Justice Cal-DNA database and the Combined DNA Index System (CODIS).

If, for any reason, DNA evidence in a sexual assault case in which the identity of the perpetrator is in issue and is not going to be analyzed within 18 months of the crime, the assigned officer shall notify the victim of such fact in writing no less than 60 days prior to the expiration of the 18 month period (Penal Code § 680(d)).

601.4 DESTRUCTION OF EVIDENCE

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Any destruction of evidence related to a sexual assault shall occur only after victim notification is made as required pursuant to Penal Code § 680 and only in compliance with the Property and Evidence Policy.

601.5 DISPOSITION OF CASES

Best Practice MODIFIED

If the assigned investigator has reason to believe the case is without merit, the case may be classified as unfounded only upon review and approval of the Investigations supervisor.

Classification of a sexual assault case as unfounded requires the Investigations supervisor to determine that the facts have significant irregularities with reported information and that the incident could not have happened as it was reported. When a victim has recanted his/her original statement, there must be corroborating evidence that the allegations were false or baseless (i.e., no crime occurred) before the case should be determined as unfounded.

601.6 CASE REVIEW

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The Hospital Police Chief shall ensure case dispositions are reviewed on a periodic basis, at least annually, using an identified group that is independent of the investigation process. The reviews shall include an analysis of:

- Case dispositions.
- Decisions to collect biological evidence.
- Submissions of biological evidence for lab testing.

The SART and/or victim advocates shall be considered for involvement in this audit. Summary reports on these reviews shall be forwarded through the chain of command to the Hospital Police Chief.