

CALIFORNIA EMERGENCY MANAGEMENT AGENCY

INFORMATIONAL BULLETIN: SEXUAL ASSAULT

FREQUENTLY ASKED QUESTIONS (FAQs)

NEW CALIFORNIA LAW TO IMPLEMENT FEDERAL VIOLENCE AGAINST WOMEN ACT (VAWA) REQUIREMENTS:

- Victims of sexual assault who request a sexual assault forensic medical examination shall be provided one, and the cost of the examination cannot be charged directly or indirectly to the victim.
- No victim of sexual assault shall be required to participate or agree to participate with the local law enforcement agency or the criminal justice system, either prior to the examination, or at any other time.
- Cost of the sexual assault forensic medical examination shall be the responsibility of the law enforcement agency in the jurisdiction where the alleged crime occurred.
- Healthcare facilities and/or examination teams cannot charge more than \$300 for the examination in which the victim is not willing to participate with a local law enforcement agency.
- Law enforcement agencies can submit a reimbursement claim to the California Emergency Management Agency for the \$300 charge.

THIS INFORMATIONAL BULLETIN CONTAINS INFORMATION ABOUT:

- **IMPLEMENTATION OF THE NEW CALIFORNIA LAW**
- **IMPLEMENTATION OF FEDERALLY MANDATED SEXUAL ASSAULT FORENSIC MEDICAL EXAMINATION**
- **NEW CAL EMA 2-924 ABBREVIATED SEXUAL ASSAULT FORENSIC MEDICAL EXAM FORM FOR SPECIFIED CIRCUMSTANCES**
- **EXISTING CAL EMA 2-923 SEXUAL ASSAULT FORENSIC MEDICAL EXAM FORM CONTINUES**

- 1. What does the new California law do and why did we need it?**
SB 534 (Corbett) was needed to bring California into compliance with Federal law. It amends Penal Code Sections 13823.7, 13823.13 and 13823.95.
- 2. When does the new California law implementing the Federal VAWA requirements go into effect?**
January 1, 2012 and it sunsets, which means it ends December 31, 2013, unless the California Legislature takes further action.
- 3. What is VAWA?**

Federal Violence Against Women Act (VAWA). First passed in 1994, this Federal act has been reauthorized twice, the last time in 2005. The Sexual Assault Forensic Exam requirement first appeared in the 2005 reauthorization and is mandated for every state.

4. What does VAWA Require?

VAWA 2005 creates two new federal rights for individuals self-identifying as victims of sexual assault:

- The right to a Sexual Assault Forensic Medical Examination at no cost to the victim/patient;
- Provision of a Sexual Assault Forensic Medical Examination without any requirement or obligation to cooperate with law enforcement or to participate in criminal justice proceedings.

5. What is a Sexual Assault Forensic Medical Examination?

In California, the elements of a sexual assault forensic medical exam are defined in Penal Code Section 13823.7. Refer to the California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims at www.calema.ca.gov or www.ccfmtc.org.

6. Is a sexual assault forensic medical examination the same as a medical examination and treatment for injuries?

No. Medical examination, diagnostic testing, and treatment for injuries are not part of a sexual assault forensic medical examination. See #11 of this Bulletin for further information about medical treatment.

7. What is the rationale for the Federal VAWA law and policy?

From a criminal justice standpoint, it is believed that more victims will report sexual assault crimes, after they have time to think about it. From a healthcare standpoint, it is believed that more victims will seek medical care after a sexual assault.

Recognized barriers to reporting and seeking medical care after a sexual assault include, but are not limited to, the following:

- Psychological trauma (acute post traumatic stress disorder) causes overwhelming fear, anxiety, and confusion. This common reaction makes it difficult to think and make decisions immediately, and in the weeks following a sexual assault. Acute post traumatic stress disorder is diagnosed if symptoms last less than 3 months and chronic post traumatic stress disorder is diagnosed, if symptoms last 3 months or more.
- Sexual assaults often involve, but are not limited to: threats of injury or death, threats to children or family members' lives, fear of retaliation for reporting the sexual assault, fears about friends' and family members' reactions, and feeling a complete loss of control over one's life while facing the possibility of death.
- Given these fears, not all victim/survivors of sexual assault crimes are immediately prepared to make the decision about whether they want to participate with law enforcement.
- Federal VAWA policy gives sexual assault victims/survivors time to think about how they want to proceed.

8. Will California's mandatory reporting law for healthcare providers (PC 11160) be affected by this change?

No. Healthcare providers are still required to make an immediate telephone report to a law enforcement agency and submit a written report to a law enforcement agency if a person presents to the medical provider as a victim of assaultive conduct, including sexual assault. If the patient discloses a sexual assault, and the health care provider knows or reasonable suspects the patient is a victim of a sexual assault crime based on the totality of circumstances, including the statements of the patient, and the medical treatment is provided based on that belief or reasonable suspicion, the medical provider must make a mandatory report to law enforcement. The duty on the part of the medical provider to report to law enforcement exists even if no physical injury or trauma is detected during the physical and/or forensic examination.

Use the California Emergency Management (Cal EMA) Form 2-920 for submission of the written report within 2 working days. The actual text of PC 11160 is provided on the last page of this bulletin. The Cal EMA 2-920 form can be found on these websites: www.calema.ca.gov or www.ccfmtc.org.

9. What approach and exam methods should be used to distinguish between forensic exams for victims/survivors immediately engaged with law enforcement; and for victims unsure about participation with law enforcement now, or in the future, given that some forensic evidence is perishable and time sensitive?

- **What evidence is collected if the victim agrees to a forensic medical exam but is undecided about future participation with law enforcement?**

A new sexual assault forensic medical examination form, the Cal EMA 2-924, has been developed for this purpose, and defines what perishable evidence needs to be documented, collected, preserved, and packaged in the sexual assault evidence kit used by the local law enforcement jurisdiction.

- **What evidence is collected if a victim agrees to a sexual assault forensic medical exam with immediate engagement with law enforcement?**

The standard Cal EMA 2-923 forensic medical examination form, collection and preservation of evidence procedures.

- **Options for law enforcement agencies**

Local law enforcement agencies do have the option of requesting the local SAFE (Sexual Assault Forensic Examination) Team or medical facility to use the Cal EMA 2-923 regardless of whether the victim chooses to participate with them, or not; and, to pay the local negotiated rates for these examinations.

10. Who will pay for these examinations?

- For the new Cal EMA 2-924 sexual assault forensic medical examination, the law enforcement agency having jurisdiction over the criminal sexual assault pays for these exams. Pursuant to the new state law, health care professionals and medical facilities cannot charge more than \$300 for these exams [PC Section 13823.95(d)]. The law enforcement agency can be reimbursed by submitting a claim to the California Emergency Management Agency for a maximum of \$300 per exam. See Item # 25 for information about submitting claims.
- For the standard, Cal EMA 2-923 sexual assault forensic medical examination, in which victims do choose to immediately engage with law enforcement, the law enforcement agency having jurisdiction over the criminal sexual assault will pay the local negotiated rates for these exams.

11. What if the victim/patient/survivor has injuries requiring evaluation and treatment? Who pays for medical examination and treatment?

- Payment for medical examination, diagnosis and treatment of injuries is the same for all crime victims. SB 534 does not change anything regarding payment for medical examination and treatment.
- For patients with health insurance or, Medi-Cal or Medicare eligible, the practice in California is to bill insurance.
- For patients with no health insurance, an important option is the California Victim Compensation Program. However, with regard to this program, determination of eligibility differs on whether or not the victim/survivor is engaging or “cooperating” with law enforcement or not. Government Code Section 13956(b) (1) and California Code of Regulations, Title 2, Section 649.59 defines “cooperation” as a victim/survivor who reasonably cooperates with any law enforcement agency in the investigation of the qualifying crime, the apprehension of the perpetrator, and/or the prosecution of the perpetrator. If the victim/survivor knowingly and deliberately fails to “cooperate” with law enforcement to investigate, apprehend or prosecute, she or he shall not be eligible for assistance from Victims Compensation and Government Claims Board. However, the law recognizes that there may be mitigating factors that negate the requirement that the victim/survivor “cooperate” with law enforcement as defined above.
- For insured patients having deductibles and co-payments, the California Victim Compensation Program pays the difference after receiving the insurance company’s statement that is routinely issued to the patient showing the amount paid for the charges billed and the balance required to be paid by the patient. The California Victim Compensation program is the “payor of last resort”. These payments are contingent on victim cooperation as described in the preceding paragraph.

- Information about the California Victim Compensation and Government Claims Board can be found at www.vcgcb.ca.gov or use a search engine with the words California Victim Compensation Program.

12. What age victim/patient/survivor does this pertain to?

Age 12 and older. In California, individuals 12 years old and above have the right to consent (or decline consent) to a forensic sexual assault examination (Family Code Section 6927 and 6928). Consent given by a minor is not subject to disaffirmance because of minority (Family Code Section 6921).

13. Who takes possession of the sexual assault evidence kits for the Cal EMA 2-924 examinations, how long will the evidence kit be stored, and where will the kit be stored, if the victim/survivor is not participating with law enforcement?

- Law enforcement must take possession of the sexual assault evidence kits using the same timeframes currently used locally for both the Cal EMA 2-924 forensic medical exam and the Cal EMA 2-923 forensic medical exam. **See Penal code section 680 et seq., the Sexual Assault Victims Bill of Rights.**
- The law enforcement agency in the jurisdiction where the crime occurred has the responsibility for transporting and storing the evidence generated from the forensic sexual assault examination performed using either the Cal EMA 2-924 or Cal EMA 2-923 sexual assault forensic medical examinations. **See Penal Code Section 680 et seq., the Sexual Assault Victims Bill of Rights.**
- New state policy, given the VAWA requirements, is to store evidence kits from the Cal EMA 2-924 examination consistent with current state law pertaining to the storage of Cal EMA 2-923 sexual assault evidence kits (two years). See Items #17 and #18 regarding victim notification about evidence kit destruction.
- In very few California jurisdictions, the medical facility stores evidence kits for victims uncertain about whether to participate with law enforcement. This is permissible as long as chain of custody procedures are followed rigorously. This is a local decision that must be discussed with the District Attorney's Office and the Crime Laboratory serving the jurisdiction.
- It is important to note that Penal Code 1417.9 only deals with convicted defendants and retention of DNA for habeas corpus proceedings, in case there is ever a question about the guilt of the defendant post conviction. Penal Code Section 1417.9 is not relevant to collection of sexual assault victim evidence kits.

14. If the victim is not willing to cooperate with law enforcement and is not willing to disclose the location of the sexual assault; or cannot identify the location where the assault occurred, who takes responsibility?

It is not anticipated that there will be large numbers of these cases.

The evidence kit should be stored in the jurisdiction where the forensic medical examination took place.

Numerous examples have been given about possible problems developing with this approach ranging from handling out of county cases, all exams in some jurisdictions being performed in other counties, what happens if there are large volumes of the Cal EMA 2-924 cases, billing for out of county cases, etc. It is recommended that discussions occur at the regional meetings of police chiefs and sheriffs to discuss problems both unique and common to jurisdictions.

15. How will these evidence kits be identified so they are not mixed up with other evidence kits that have victim name identification on them?

PC 11160 requires that healthcare providers make a mandatory telephone and submit a written report when a person presents to a healthcare provider as a victim of assaultive conduct, including sexual assault.

Use the law enforcement case number given to the healthcare provider making the mandated PC 11160 telephone report as the identifying number for the:

- Suspicious Injury Report Form Cal EMA 2-920;
- Sexual assault evidence kit; and
- Sexual assault forensic medical examination form.

Suspicious Injury Report Form 2-920 was developed by the California Emergency Management Agency (Cal EMA) to serve as the written report form. It is required to be completed in compliance with PC 11160. This form is located at www.calema.ca.gov and www.ccfmtc.org (the California Clinical Forensic Medical Training Center).

16. How will the victim know that the sexual assault evidence kit is going to be destroyed?

- California Penal Code Section 680 is known as the “Sexual Assault Victims DNA Bill of Rights.” Sections 680(a)(2) and (3) state that “(2) Victims of sexual assault have a strong interest in the investigation and prosecution of their cases; and (3) Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.
- Section 680 (e) states that “If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case prior to the expiration of the statute of limitations as set forth in Section 803, a victim of a violation of Section

261, 261.5, 262, 286, 288a, or 289 shall be given written notification by the law enforcement agency of that intention. (f) Written notification under subdivision (d) or (e) shall be made at least 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence from an unsolved sexual assault case where the election not to analyze the DNA or the destruction or disposal occurs prior to the expiration of the statute of limitations specified in subdivision (i) of Section 803.

- It is good practice for the victim/survivor/designee to request such notification, *in writing*, to the law enforcement agency in possession of the forensic sexual assault examination kit.
- It is recommended practice for the Sexual Assault Forensic Examination (SAFE) Team to provide this information as part of the patient discharge instructions; and for the local rape crisis advocate to explain this information to the victim/survivor.
- It is well known, however, that victims do not readily absorb this type of information during a time of crisis, or the immediate aftermath. Local SART (Sexual Assault Response Teams) may want to give this matter further consideration and develop additional procedures.
- NOTE: A SART is composed of multi-disciplinary representatives of public and private agencies such as law enforcement agencies, rape crisis centers, the District Attorneys Office, SAFE Teams and medical facilities where exams are performed, and the crime laboratory. Refer to the California SART manual for further information which can be obtained from www.ccfmtc.org.

17. What happens to the evidence kit for the Cal EMA 2-924 exam if the victim has not requested activation of the case?

The evidence kit can be destroyed.

18. Procedures for Activation of a Case by the Victim

The victim/survivor may call the local law enforcement agency directly, contact the local rape crisis center for assistance, or call the SAFE Team for guidance. Develop local procedures that recognize this possibility for the SART Protocol.

19. What forensic medical exam form will the SAFE Teams use for the forensic medical examination in which victims/patients/survivors are unsure about participation with law enforcement?

- The Cal EMA 2-924, the Abbreviated Forensic Medical Sexual Assault Examination has been developed for this purpose.
- NOTE: Local law enforcement agencies always have the option of authorizing the use of the Cal EMA 2-923 instead, and pay locally negotiated contract rates for these exams.

20. Where are copies of the Cal EMA 2-924 and Cal EMA 2-923 located, and will training be provided?
Go to the www.ccfmtc.org or www.calema.ca.gov websites for copies of these forms, instructions and protocol. The California Clinical Forensic Medical Training Center (CCFMTC) will be providing training on the use of this form. See website for information about webinars and training programs.

21. How are copies of the completed Cal EMA 2-924 to be distributed?

One copy stays with the SAFE Team examiner; one copy goes into the evidence kit; and a hard copy or an electronic version of the form will be given to the law enforcement agency having jurisdiction for the case.

22. Procedures for Evidence Packaging, Labeling, Management, Transport, Storage and Chain of Custody of Sexual Assault Evidence Kits.

Follow local procedures currently used for standard forensic medical sexual assault exams.

23. Are there any California programs that have been handling non-reporting victims of sexual assault using similar procedures?

There are a few programs that have followed these procedures for many years. Contact the California Clinical Forensic Medical Training Center at www.ccfmtc.org for further information.

24. Where can the law enforcement agencies submit claims for the \$300 exam reimbursement?

Submit the claims to the California Emergency Management Agency (Cal EMA) at this address:

Attention:
Roseann St. Clair
California Emergency Management Agency
3650 Schriever Avenue
Mather, CA 95655
roseann.stclair@calema.ca.gov

- Use the attached form using your agency letterhead. Reimbursement will usually be provided in 45-60 days.
- Cal EMA is responsible for tracking the numbers of claims submitted and the jurisdictions submitting claims for data tracking purposes.

25. Do all professional organizations and agencies know about this change?

Yes. The California Emergency Management Agency convened the VAWA Compliance Task Force to consider how to implement the Federal requirements.

The members of this Task Force include leadership from: California Coalition Against Sexual Assault (CALCASA), California Clinical Forensic Medical Training Center (CCFMTC), California District Attorneys Association (CDA), California Police Chiefs Association (Cal Chiefs), California State Sheriffs Association (Cal Sheriffs), California Department of Justice Bureau of Forensic Services, together with leadership from the Alameda County District Attorney.

This Informational Bulletin is being widely distributed throughout California to all disciplines. Please feel free to forward this information to your colleagues and post it on your websites.

26. Implementation concerns and problems

Please direct your concerns and problems to your respective associations who will represent them to the California Emergency Management Agency's VAWA Compliance Task Force.

Rape Crisis Centers: California Coalition Against Sexual Assault www.calcasa.org

Sheriff's Departments: California State Sheriffs Association www.calsheriffs.org

Police Departments: California Police Chiefs Association www.californiapolicechiefs.org

District Attorneys: California District Attorneys Association www.cdaa.org

SAFE Teams/Hospitals: California Clinical Forensic Medical Training Center www.ccfmtc.org

California Penal Code 11160 states,

11160. (a) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, ***provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects*** is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the ***result of assaultive or abusive conduct***.

(b) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department ***shall make a report*** regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A ***report by telephone*** shall be made immediately or as soon as practically possible.

(2) A ***written report shall be prepared on the standard form*** developed in compliance with paragraph (4) of this subdivision, and Section **11160.2**, and adopted by the California Emergency Management Agency, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency ***within two working days of receiving the information regarding the person***.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, ***"assaultive or abusive conduct" shall include*** any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) ***Assault with intent to commit mayhem, rape, sodomy, or oral copulation***, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

(8) Battery, in violation of Section 242.

(9) ***Sexual battery***, in violation of Section 243.4.

(10) ***Incest***, in violation of Section 285.

(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.

(12) Assault with a stun gun or taser, in violation of Section 244.5.

- (13) **Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury**, in violation of Section 245.
- (14) **Rape**, in violation of Section 261.
- (15) **Spousal rape**, in violation of Section 262.
- (16) **Procuring any female to have sex with another man**, in violation of Section 266, 266a, 266b, or 266c.
- (17) Child abuse or endangerment, in violation of Section 273a or 273d.
- (18) **Abuse of spouse or cohabitant**, in violation of Section 273.5.
- (19) **Sodomy**, in violation of Section 286.
- (20) Lewd and lascivious acts with a child, in violation of Section 288.
- (21) **Oral copulation**, in violation of Section 288a.
- (22) **Sexual penetration**, in violation of Section 289.
- (23) Elder abuse, in violation of Section 368.
- (24) **An attempt** to commit any crime specified in paragraphs (1) to (23), inclusive.

**INVOICE FOR CAL EMA 2-924 EXAM REIMBURSEMENT
SUBMIT ON AGENCY LETTERHEAD**

MAXIMUM REIMBURSEMENT = \$300 PER EXAM

NAME OF LAW ENFORCEMENT AGENCY: _____

ADDRESS OF AGENCY:

ADDRESS	CITY	STATE	ZIP CODE
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ADDRESS TO MAIL REIMBURSEMENT CHECK:

ADDRESS	CITY	STATE	ZIP CODE
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EXAM CASE NUMBER: _____

NAME OF AGENCY CONTACT PERSON: _____

PHONE NUMBER OF AGENCY CONTACT PERSON: _____

TOTAL AMOUNT REQUESTED: # _____ EXAMS X (\$300.00 PER EXAM) = \$ _____

MAIL OR EMAIL TO:
Roseann St. Clair
California Emergency Management Agency
3650 Schriever Avenue
Mather, CA 95655
roseann.stclair@calema.ca.gov

Please maintain records of these cases to determine how many activate law enforcement investigation.