

## Marin Oversight Panel Reports Untested Rape Kits

### Panel calls for inventory of stored DNA evidence

*By Richard Halstead, Marin Independent Journal*

Monday, May 7, 2018



An unknown number of rape kits assembled prior to 2011 remain untested in some Marin police agencies' evidence lockers, according to a Marin County Civil Grand Jury report.

Rape kits include biological evidence — saliva, blood, semen, urine, skin cells and hair gathered from the victim's body — that can be used for DNA analysis.

The grand jury says the number of untested kits is “small,” but supplies no estimate of how many, according to the report, which was released last week.

“The exact number of unprocessed rape kits before 2011 remains unknown,” the jury states in its findings, “due to prior database procedures that did not identify the status of DNA testing of rape kits in evidence logs.”

The grand jury recommends that each law enforcement agency complete an inventory of rape kits in their evidence lockers.

“Kits that have been DNA tested should be sent to the California Department of Justice Crime Laboratory for processing, regardless of statute of limitations or prosecutorial value,” the grand jury writes.

The grand jury adds, “Law enforcement agencies should have a clearly defined policy regarding retention of kits.”

The grand jury notes that in 2011 the state Department of Justice's Bureau of Forensic Services developed a new procedure, called Rapid DNA Service (RADS), for expediting the processing of DNA from rape kits. Sexual assault examiners now collect up to three swabs from areas on the victim's body most likely to contain DNA evidence.

These swabs, together with a victim statement, are sent directly to the Department of Justice's Forensic Bureau in Richmond. Every sample received at the Forensic Bureau goes directly to DNA analysis.

Physical evidence is gathered from Marin rape victims at Kaiser Permanente Vallejo Medical Center in Vallejo. Marin County contracts with Napa Solano Sexual Assault Nurse Examiners (SANE) and Sexual Assault Response Team (SART) to oversee the exams. Victims are driven to the hospital by law enforcement officers if they wish.

The grand jury states the number of sexual assaults in Marin “are insufficient to support a local program.”

“Having an in-county SART exam facility would not reduce the impact to the victims or the county agencies,” the grand jury writes. “SANE nurse proficiency is maintained and enhanced by sufficient experience and caseload.”

The grand jury reports that the number of rapes per 1,000 population in Marin County during 2011-16 was lower than all other counties in the Bay Area, and that the majority of rapes in Marin during that time were perpetrated by known assailants. There were a total of 275 rapes reported throughout Marin from 2011 to 2016.

The grand jury does recommend, however, that the Marin County district attorney work with Napa Solano SANE and SART to find a new funding arrangement.

“Currently, the overhead of 24/7 on-call coverage is funded by the fee for the examinations,” the grand jury states. “In periods of low activity, this is a strain on the contract company resources.”

Ron Brown, the grand jury’s foreman, said he couldn’t recall which Marin agencies have rape kits that haven’t been submitted for testing.

#### **Official comments**

Marin County Sheriff Robert Doyle said he decided several months ago to submit any kits his department had stored in its evidence lockers to the state for testing. He estimated there may have been as many as a dozen.

“They weren’t tested for a variety of reasons,” Doyle said. “In some cases the victims recanted their story. Others were not cases that could be prosecuted.”

Doyle said the sheriff’s department’s policy now is to send in all kits regardless of the circumstances.

San Rafael police Chief Diana Bishop said all of San Rafael’s pre-2011 rape kits have been sent to the lab. According to the grand jury’s report, San Rafael had 135 rapes reported from 2011 to 2016, more than any other Marin County jurisdiction. The grand jury also reported that during that time 71 SART exams of San Rafael victims were conducted.

Novato was the Marin jurisdiction with the second-most rapes, 45, between 2011 and 2016. The grand jury reported that 34 of the Novato victims received SART exams over that period.

Novato police Chief Adam McGill said he couldn’t comment on whether his department has any pre-2011 kits that have not been submitted to the state. McGill said he is preparing a response to the grand jury report to be submitted to the Novato City Council and couldn’t comment until that process has been completed.

#### **Case variables**

The grand jury states in its report that there are a variety of reasons that kits have not been submitted to the state in the past. These include cases in which the perpetrator was a known assailant, the statute of limitations had been exceeded, no crime was committed, the suspect confessed, the case was dropped, the complaint was withdrawn, or there were insufficient funds to have the kit tested.

In July 2015, USA Today and journalists from more than 75 Gannett newspapers reported they found at least 70,000 untested rape kits nationwide following an open-records campaign covering 1,000-plus police agencies.

The grand jury states that there are a variety of reasons for testing all rape kits. These include: analysis of the kit may help identify serial rapists; analysis may link offenders to other crimes; a closed case may be reopened; prosecution is enhanced by DNA evidence; and analysis of the kit helps provide closure to victims.

District Attorney Edward Berberian said he was pleased by the grand jury’s recommendation that Marin County renew its contract with Napa Solano SANE and SART, which is due to expire in July 2018.

“The report basically confirms everything I’ve been saying,” Berberian said.

Regarding the funding issue for Napa Solano SANE and SART, Berberian said, “We’re open to discussion on any issue dealing with the process. Let’s open another conversation and see where that leads.”

Berberian said the contract is renegotiated on an annual basis.