

Sexual Assault Investigations Unit

Unit Guidelines

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Schedule

SAIU Detectives and Sergeants will keep regular work hours and keep regular workdays. An individual’s days off will either be Saturday, Sunday and Monday, or Friday, Saturday and Sunday. The regular business hours of the unit will be considered to be 8:00 a.m. to 5:00 p.m., and each individual’s regular hours should include this period. *No member’s normal workday will be scheduled to begin before 0600 hours.* Each supervisor will establish work schedules for each member of the supervisor’s team, in consultation with the affected members. Permanent or long-term exceptions to the days off and hours noted above require the approval of the Unit Commander. Supervisors may approve a temporary change for suitable reasons.

Any change to the above referenced work schedule will be with the approval of the Unit Commander. Seniority in the unit and / or rank will be the determining factor in choosing their days off. Unit personnel will strive to flex their weekly work schedules to minimize overtime. Unless otherwise approved by a supervisor, a regular daily work schedule shall be observed. *If an investigator varies from the assigned schedule, the individual’s supervisor, or an alternate supervisor, shall be advised.* If an investigator will be more than 15 minutes late for their

assigned schedule, they are directed to notify a sergeant. If an investigator calls in sick or needs to use emergency time off of any variety, the investigator's supervisor, or an alternate supervisor will be advised.

Officer Wellness / Physical Fitness

Mid-day, before shift and end of shift workouts are acceptable, providing the workout is in addition to the investigator's 10-hour day and any time spent for lunch. If an investigator is assigned to a 10 ½ hour shift, the lunch hour shall be restricted to a half-hour. The use of facilities which are on other-than-city premises for exercise, such as a private gym, or a running course which does not begin and end at PAB, will be done during a time other than the scheduled workday.

Time-Off Requests

T.O. requests shall be channeled through the member's supervisor or team leader and posted on the SAIU Unit calendar. This calendar should also include all planned vacation, training and sick leave, etc.

Unit members taking sick leave or who expect to be late to work will notify a supervisor in advance of the start of the affected shift.

Unless prior arrangements with a supervisor have been made, all officers are expected to complete their 10 ½ -hour shift before leaving the office.

Minimum staffing for the SAIU will be two sergeants and four officers for Mondays-Fridays. Any exception to this rule (i.e. holidays etc.) must be cleared by the Unit Commander.

Status Board

Unit members leaving the office will note on the status board their estimated time of return. A supervisor's concurrence is required for:

- Absences from the office longer than three hours.
- Absences involving the member first arriving at PAB for the day later than his or her scheduled start time.
- Leaving the office for the day before the end of the scheduled workday.

Leaving the City

Whenever a member plans to conduct any police function outside San Jose city limits, he or she will notify a supervisor in advance. Supervisors will evaluate the planned activity and ensure that it is appropriately planned, proper resources are available, and notifications are made, when appropriate. The Unit Commander will be notified when officers need to leave the city limits.

Leaving the County

Whenever a member plans to leave Santa Clara County while on-duty or in a city vehicle (other than traveling to or from home when “on-call”), he or she will notify a supervisor in advance. The supervisor will ensure the activity is appropriate and will inform the Unit Commander. In the absence of the Unit Commander, the supervisor will inform a Bureau of Investigations Captain.

Overtime

Any pre-planned overtime to be worked must be approved by a supervisor. In the event an Investigator’s accumulated comp time exceeds 480 hours, the Unit Commander will be notified, and a reduction plan should be formulated. Regardless, all Unit members will abide by the current Memorandum of Agreement and comply with all overtime reduction as specified in MOA, Section 13.6.5.

All paid overtime will be in accordance with that maximum authorized City agreement. To maximize the Unit’s funding, members should only apply the overtime to SAIU related functions. To this end, a Unit member working city-funded pay jobs must obtain the 5-digit prime number that identifies the overtime fund from which the funds will be derived and include the number on the applicable time sheet.

Team Assignments

Team assignments and days off will be made at the discretion of the Unit Commander. The Unit Commander may elect to have officers bid for team assignments and days off to accommodate personnel changes. Officers coming into SAIU will fill vacant positions under the current team structure, maintaining the requirement of one (1) Spanish-speaking officer per team (if available). A shuffle or re-bid will be conducted at the discretion of the Unit Commander.

Unit Meetings

Unit meetings are an essential vehicle for the exchange of vital criminal intelligence and administrative information among unit members. Unit meetings will be conducted as needed. It is the supervisor’s responsibility to ensure investigators attend. Unit members must be prepared to discuss current cases.

If an investigator absolutely cannot attend a meeting, his/her supervisor must be apprised. Individual schedules must be arranged to accommodate unit meetings. Supervisors must advise any absent team member of the content of any missed meeting.

Telephones

Everyone in the unit has the responsibility of answering incoming telephone calls. Any employee or supervisor in the unit who realizes a ringing phone is not being immediately answered should take it upon him or herself to answer the call and minimize the time the caller is

waiting for an answer.

In order to clarify the role of the officer-of-the-day, In general, answering incoming telephone calls is a responsibility of the non-sworn members of the unit. The progression of responsibility for this function is expected to be:

- First: The Office Specialist (OS)
- Second: The Police Data Specialist (PDS)
- Third: The Crime and Intelligence Analyst (CIA)
- Fourth: The Officer of the Day (OD)
- Fifth: Any other member in the unit

In the absence of the front-counter OS and PDS, there should be one individual responsible for the telephones. Therefore, when alone at the front counter, the OS or PDS relief from this function should ask the CIA to handle incoming calls. Should the CIA need relief, that person should ask the OD to answer the phones. Should the OD need relief, that officer should ask another member of the unit to assume the responsibility.

Officer of the Day Duties

Officer-of-the-day (OD) assignments will be recorded on a calendar at the beginning of each month. Assignments will be made in rank seniority order, one month at a time. Any unfilled assignments will be made in reverse-rank seniority order. Any officer serving two scheduled OD days in a month will be exempt from serving a second scheduled OD assignment in the following month.

No officer will be required to complete an OD assignment on a regularly scheduled day off. In the event the remaining available OD day(s) fall on an officer's regularly scheduled days off, the following guidelines will be adhered to:

- The officer will ask the members of the unit if anyone will trade their OD day for the remaining available OD day(s).
- The officer will determine who will be working the remaining available OD day(s) and attempt to trade those officers, specifically.
- If, after having exhausted all possibilities of trading for a work day, the officer still only has remaining available OD day(s) falling on their regularly scheduled days off. That officer will be exempt from an OD day that month.
- The assignments will continue in rank seniority order. Any unfilled assignments will be made in reverse-rank seniority order.

The assignments will be Monday-Friday, from 0800-1700 hrs. Unit members shall adhere to the calendar schedule unless exigent circumstances prevent that. If the officer cannot complete any portion of the OD assignment, that individual is responsible for finding a replacement, notifying the clerical staff, and updating the scheduling calendar and status board. If the officer cannot complete the assignment and does not find a substitute, the officer's supervisor shall be notified. The supervisor, or an alternate sergeant if the primary supervisor is absent, shall find a substitute

from the absent officer's team. If no team member can be found, a volunteer shall be designated. If no volunteer is located, a supervisor will assign one and the Unit Commander will be notified. A volunteer for an entire day will be exempt from an OD assignment day the following month, and the absent officer will be responsible for one extra OD day the following month. Clerical Staff will track and update the OD calendar. The OD shall also act as a back up for on-call personnel during business hours, if the on-call personnel are unable to respond to a freshly-reported event. The OD should schedule his/her day so as to remain in the office, and will find a substitute before leaving the office.

The OD is responsible for providing guidance and documenting sexual assault events when contacted by patrol. This information will be documented on the OD log sheet and emailed to the unit sergeants and Commander at the end of the day.

The OD will also be available to open and supervise the use of the Children's Interview Center (CIC) in the absence of the CIC coordinator.

On Tuesdays and Thursdays, the OD will conduct a mail run to and from the District Attorney's Office.

On-Call Procedures

Flow Chart - See appendices

One supervisor and one officer will always be "on-call." Assignments will be made in rank seniority order, six months at a time. Any unfilled assignments will be made in reverse-rank seniority order. Any officer serving two scheduled on-call assignments in a six-month period will be exempt from serving a second scheduled on-call assignment in the following six-month period. Scheduled on-call periods begin and end on Tuesday mornings at 0800 hours. Inquiries and notifications regarding current field events will be directed to the on-call sergeant.

As a general guideline, BFO officers should first advise the officer-of-the-day (during business hours), the on-call supervisor, or the Night Detectives (after-hours) of:

- Anytime guidance is necessary for investigation of a sexual assault
- Anytime a suspect is arrested for a felony sexual assault
- Anytime a SART is needed

In addition, notifications should be made in the following circumstances which may warrant an on-call response:

- Any felony suspect in custody that wants to talk to a detective about their case.
- Any case where the victim is not safe to remain at home, or the suspect has ongoing access to victims or *potential* victims.
- Any case where the suspect poses an ongoing threat to the public.
- Stranger cases in which the victim was attacked or assaulted and is willing to

- participate in the investigation.
- Cases involving community notables or media-sensitive cases.
- When the crime scene is known and critical evidence is needed requiring a search warrant.
- When the identity of the suspect is known, a search or arrest warrant is necessary for the apprehension of the suspect (e.g. Steagald or Ramey), and exigency requires the warrant be obtained as soon as practical.

The on-call supervisor may deem any case necessary for an on-call response based upon the totality of the circumstances.

BFO personnel are responsible for conducting preliminary investigations, which may include the following:

- Victim interviews
- Witness interviews
- Canvass
- Location and collection of evidence
- Documentation of the event and booking of evidence, including SART kits

On-Call Purpose

The successful prosecution of people who commit sex crimes in San Jose is the reason our unit exists. Our investigators have skills and resources patrol officers may not, and those skills and resources are meant to be used to gather evidence which might be lost if appropriate steps are not immediately taken. It is not possible to clearly define in advance every possible case which will call for an investigator's response and which will not. Supervisors should balance the severity of the offense with the risk of losing evidence when deciding whether to respond. Common sense is expected to rule, and errors should be on the side of an immediate response.

Investigators should expect patrol officers to see to their responsibilities, and are expected, themselves, to see to the responsibilities of an SAIU investigator. Supervisors should bear in mind that declining to respond when patrol supervisors believe an investigator's response is called for can be a source of resentment between the Bureaus. A decision not to respond in such a case must be based on solid logic and carefully explained to the patrol supervisor.

The on-call supervisor is considered the secondary on-call resource, and will respond in the event more than one investigator is called for by the circumstances of a specific case.

Occasionally, cases arise that require more investigative resources than those of the on-call supervisor and officer. In those events, additional members may be asked to respond in to assist in the investigation. These circumstances should be seen as the exception, not the rule, as the on-call supervisor is the secondary resource for an additional investigator.

The on-call supervisor will notify the Unit Commander in the event a call-back is initiated.

The on-call officer will have the use of a unit vehicle for the duration of the on-call status. The on-call officer will ensure an SAIU evidence kit is maintained in the vehicle.

The on-call investigators will not use any intoxicating substance that will affect their ability to immediately respond for duty while on-call, and will not use intoxicants while operating a city vehicle.

The on-call investigators will carry a cellular phone at all times, and will update their contact information with communications as needed. The goal for a response is to respond in to the Department as soon as practical. If the response time will be excessive, the on-call supervisor must be notified, who in turn will respond and commence the investigation.

If an investigator should need to ask a fellow SAIU investigator to take a portion of their on-call time, it is the responsibility of the original on-call investigator to ensure that both their Supervisor and Communications are updated with the specifics of the change.

If an emergency arises which affects the assigned on-call supervisor's or officer's ability to carry out the on-call responsibility, the Unit Commander will be informed, and a replacement investigator will be assigned.

On-call supervisors and officers will be compensated in accordance with the current Department Memorandum of Agreement (MOA).

An on-call investigator has the responsibility to be aware of unsolved serial cases and other notable cases so that the investigator can make informed decisions when fielding calls that can potentially solve such cases. Information resources include unit analysts, watch bulletins, general crimes team's supervisors, and unit meetings.

Sergeants are will document their actions for calls requiring direction, advice or call-back response in a *Major Case Update* document. The purpose for documenting these actions is for future reference by the Unit Commander or other members of the Department. The sergeant will email the documentation to the Unit Commander and ALL the other supervisors in SAIU.

The Unit Commander should be notified immediately when the following cases come to the attention of any member of the unit:

- Cases involving members of the San Jose Police Department or members of an employee's immediate family.
- Cases involving federal, state, or local law enforcement officers in any capacity.
- Cases likely to generate media attention, or ones that involve community notables.
- Any case involving a crime scene which calls for processing by the Crime Scene Unit (major serial cases etc.).
- Cases needing immediate follow-up the following morning if the on-call investigators leave for home and on-duty personnel resume the investigation.

Main Lobby Reports

As of June 2018, main lobby officers are required to conduct sexual assault victim interviews in a private area. Such areas include the victim/witness rooms, the family room or the SAIU interview rooms. If possible, a second officer should be present during the interview. If a second officer from the main lobby is not available, the main lobby will request assistance from SAIU OD. The OD detective should immediately notify a SAIU Sgt. and render assist if available.

On-call investigators will conduct immediate follow-up when appropriate in the case of a “walk-in” to the main lobby during business hours. The investigator will consider the value of investigative steps such as attempting a “pre-text” telephone call to the suspect or conducting an immediate interview – MDI or otherwise – of the victim. Responsibility for the initial police report remains with the main lobby officer involved in the case.

SART Authorization

The permission of the on-call supervisor is required for department members outside SAIU to authorize a SART examination. Recognizing that facts are often unclear early in an investigation, and victims are often affected by injury, emotionally upset, or intoxicated, it is best to approve a SART examination in a questionable case than to decline the procedure. [REDACTED]

[REDACTED] They are for the purpose of gathering physical evidence when there are other circumstances indicating such an assault.

The cost of SART examinations is billed to the law enforcement agency with responsibility for the investigation. When a courtesy report is taken by The San Jose Police Department by a victim alleging an assault in another jurisdiction, the affected law enforcement agency should be consulted for approval of the SART examination. The name and rank of the authorizing officer / supervisor of the SART from the agency of jurisdiction will be documented within the GO. The bill for that SART examination will be forwarded to that department.

Supervisors approving SART examinations must remain abreast of current laws pertaining to victim’s rights to examinations and restrictions on the ability to deny SART examinations. (i.e. Violence Against Women Act, Jane Doe Law)

On-Call Investigators and Assigned Cases

Once assigned, responsibility for the complete investigation of a case belongs to, and stays with the investigator first assigned, regardless of whether or not that case was reviewed by the receiving detective. Recognizing a personal and professional responsibility to one’s work is required in this assignment and is fundamental to one’s competence.

The on-call investigator is not responsible for cases, which have already been assigned to another investigator. This assigned detective should have had ample time to commence the investigation

(at least 3 business days to review the case and contact the victim). In the event of a significant after-hours development in an assigned case, that case's investigator is responsible for addressing the situation. When that new information comes to the attention of the on-call supervisor, that supervisor will make every effort to contact the assigned investigator. As every member of this unit is subject to being called back to work when necessary, whether "on-call" or not, the assigned investigator will respond to carry out immediately necessary follow-up at that time.

In the event the assigned investigator is unable or otherwise unavailable to respond, the "on-call" investigator will be assigned the work. The on-call investigator will complete whatever follow-up the situation dictates. Once that necessary follow-up is complete, or the assigned investigator becomes available, responsibility for the case returns to the assigned investigator.

Welfare Check for Additional Victims

It may become necessary to determine if the suspect in a child molest has victimized other children to which they have access. To confirm if a welfare check is necessary, a supervisor from SAIU will weigh the totality of the circumstances including, but not limited to, the following indicators:

- Why did the molest occur (i.e. is the suspect in a relationship with the victim, or is it a crime of opportunity)?
- Are there multiple victims?
- Is there any evidence (e.g. a positive SART exam, soiled clothing, etc.)?
- Were there any witnesses to the event or corroboration of the victim's statement (fresh complaint witnesses)?
- Was the victim's statement so acute, vivid, specific, or heinous as to warrant concern for the other children?

In the event there are no indicators necessitating an immediate welfare check of the children to which the suspect has access, the integrity of the investigation will outweigh the welfare check for up to 72 hours (consistent with *Immediate Response* by DFCS) unless the investigation dictates delayed response. During that time period, there is an opportunity to gather additional evidence in the case, such as a pretext phone call, prior to determining the safety and well-being of the children to which the suspect has access.

Welfare Check / Patrol Procedures

However, the presence of the above indicators, in combination with totality of the circumstances, may require a welfare check despite the potential threat to the integrity of the investigation. In that event, the determination is typically made through one of two avenues:

1. A patrol-conducted welfare check at the home
2. A detective- or patrol-conducted welfare check at school

In order to maintain the integrity of the investigation the following guidelines are developed for the patrol welfare check:

- The patrol supervisor for the district in which the welfare check will take place shall be contacted by a supervisor from the Sexual Assault Investigations Unit.
- The patrol supervisor will be provided with the objective of the welfare check and guidelines on how to proceed:
 - Patrol officers will make contact at the target location using a ruse (e.g. allegations of a bruise received from the victim's school).
 - Patrol officers will not interview the potential victims regarding any sexual assault; rather they will provide the victims with an opportunity to disclose sexual assault using general questions regarding their welfare and safety (e.g. "Has anyone hurt you? Are you afraid of anyone? Do you feel safe at home?").
 - Patrol officers will record and document the contact with the potential victim.
 - Any disclosure by a potential victim will likely warrant an on-call response from the Sexual Assault Investigations Unit.
 - The patrol supervisor will contact the supervisor from SAIU and provide them with an update via phone.

Case Management

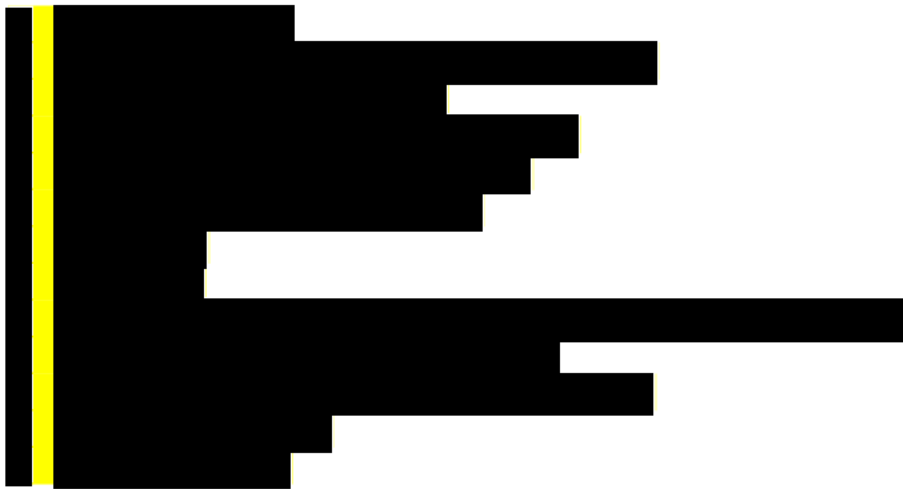
When a General Offence (GO) report is sent to SAIU by the Case Management Unit, it is reviewed by a SAIU sergeant within that specific detail, i.e. Bullpen, 290, ICAC or HT. The SAIU sergeant will make every effort to identify patterns and string cases so they will be assigned to the same detective. Regularly unit meetings, group emails will be used to aid in the identification of serial or stranger cases. A notation will also be added to the monthly case assignment log.

In the event individual cases have been assigned to different detectives and it is later determined that the cases are part of a string, a SAIU sergeant shall re-assign the related cases to the primary (first in time) detective handling the case and make the appropriate status changes in Versadex. That same sergeant will advise other affected SAIU sergeants e Case Coordinator shall

When a case is assigned, the assigning SAIU sergeant shall be responsible for entering it into Versadex. It will then be forwarded to the assigned Investigator. The detective should acknowledge receipt of the case by utilizing the electronic notes of the associated case. Detectives should try to maintain a caseload of no more than 30 active cases.

The Case Coordinator when reviewing cases in Versadex will maintain an ongoing monthly spreadsheet in the G drive, "Case Assignment Logs". This spreadsheet will provide a quick reference as to the assigned detective, offense type and potential string data. This program is used to equally manage case assignments between detectives. These case logs will be maintained by the Unit's Office Specialist (OS).





When a case is closed, the assigned detective will submit it through Versadex in the SAIU Handle. The case will be reviewed by the appropriate supervisor and accepted or rejected and returned to the detective for further investigation.

Detectives will be responsible for managing their case load in Versadex. It is crucial that detectives check their assigned cases daily in order to ascertain if new cases have been received.

A 120-day due date will be assigned to all cases in Versadex. Cases older than 120 days should be updated with notes as to why the case is still open. The sergeant will then update and extend the Dairy date to the appropriate amount of time not exceeding 30 days. After 30 days the case should be evaluated again to make every effort to conclude investigations in a timely manner.

Detectives will regularly enter case notes into the Versadex system for each of their cases. This may be done within the case notes or a supplemental report. This status should include a list of completed and pending investigative steps, phone calls, or interviews. This is important for all SAIU Unit personnel should a question or development arise in the lead detective's absence.

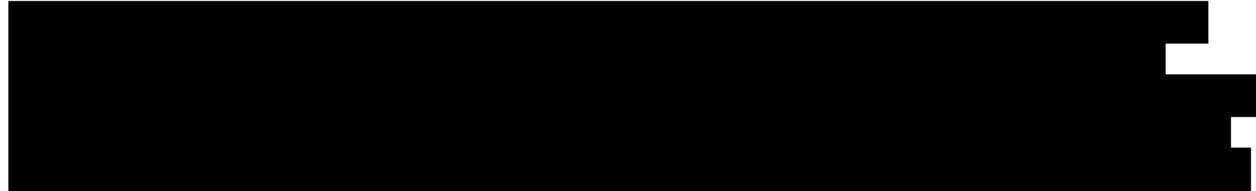
Detectives should consider maintaining a personal log of assigned cases and their dispositions, for ease of reference on old cases and for furnishing of accurate statistics when needed.

Pending Lab Results Dispositions

Cases that are been closed that have DNA evidence attached, may at some future date receive notice of a DNA match. These cases need to be reopened and reexamined. The status the DNA match should be determined (i.e. suspect match or consenting partner match). If circumstances warrant further criminal investigation / apprehension, the case will be assigned to an SAIU detective for follow-up. The case will be closed in the same manner as other Versadex cases at its conclusion.

- Note: Sergeants must be aware that these reopened cases will not ask for an additional supervisor approval upon re-closure. This is a Versadex system glitch. Cases that have been previously approved and closed by a supervisor, do not require a second supervisor approval in the Versadex system. The detective's respective sergeant is responsible to verify that this case was handled properly and closed out accordingly.

Investigation Guidelines



Upon completion of the case, detectives will ensure that all investigative steps taken are documented in the follow-up section of the assigned GO and attached to the case. This includes cases that are closed and not filed with the district attorney. Case information is critical in the event that further information is developed in the future and the case needs to be reopened by another detective. Case notes should be brief but include enough detail to be easily comprehensible. Telephone numbers needed for follow-up should be logged into the case note section.

Major Case Investigation

Review Case

Detectives will clear up any discrepancies they find with the original report. Detectives may need to contact the on-scene patrol officers and review Body Worn Camera Statements. Detectives will determine the status of all evidence in the case and ensure it is properly accounted for and booked into evidence

The detective should highlight important facts for ease of reference. The detective should find the following important facts in the report:

- Can the victim identify suspect?
- Who has the victim disclosed being a victim to? (Fresh Complaint Witness)
- Is the victim aware of other victims or witnesses?
- Are they cooperative and willing to pursue this case?
- Do you need to photograph their injuries?
- Do they require a SART?
- Asses the language needs of victim
- Identify suspect vehicle or description (if applicable)
- Weapon(s) or objects used

- Witnesses (Fresh complaint or eye witnesses) whether/not they can ID perpetrator
- Collect physical evidence: electronic, social media, photographs, surveillance cameras from bars, hotels or residences, crime scene, bedding or clothing

Contacting and Updating Victims

An investigator receiving a new case for investigation is directed to telephone or otherwise contact the victim as soon as possible after reviewing the case and in no case *more than 3 working days after assigned the case*. The single characteristic mentioned by victims happy with the work of the investigator assigned their case is that they were kept informed. The characteristic most often mentioned by victims unhappy with their treatment was the lack of communication. A victim who hears from the assigned investigator right away will almost certainly more satisfied with the department's service, be more cooperative with the investigator, and less likely to take the counsel of those who might encourage her or him to "not prosecute."

This initial contact is to be done even if the investigator knows he or she will not be able to proceed with the case for some period of time. Victims of crimes deserve this small consideration.

Detectives will arrange a follow-up interview with victim(s). The follow-up interviews are best done in person and should be conducted in the SAIU Interview Rooms (or CIC if appropriate) and recorded. If this is impossible, the detective should conduct the interview(s) by telephone as soon as possible. Obtaining statements from victims via phone or other means should be the exception, not the standard.

SAIU Detectives will use a victim-centered approach in all interactions with sexual assault victims to ensure that they are treated with compassion and respect and to encourage victims' continued involvement and cooperation with the investigation.

Informing victims who have recently suffered severe trauma of a daunting investigation processes should not create an atmosphere that can dissuade the victim in assisting with the investigation. Detectives are expected to deploy a trauma-informed approach using empathy, compassion and effective interviewing techniques to build a connection and rapport with the victim.

If there is no telephone number for the victim, the detective should send a letter to the victim. The OS has a "Victim Letter" form in English, Spanish and Vietnamese. This letter introduces you as the assigned case detective, lists the case number and the Unit's address and phone number. It asks the victim to contact the detective as soon as possible. This letter should be scanned and saved in Versadex as an attachment.

After the initial follow-up interview(s), the detective should maintain contact with the victim(s), to keep them apprised of the status of the case. Remembering that victims appreciate courtesy and sensitivity, the detective should express concern and genuine interest in solving the case. If

needed, the detective may refer the victim(s) to the Victim/Witness Assistance Program, a mental health care agency or rape counselor/advocate to help cope with the trauma of the assault.

The detective should leave his/her business card with the victim(s) so that the Investigator may be personally contacted in the future by the victim(s).

SART

Detectives will ensure that SART results are scanned and saved as an attachment in Versadex.

Canvass

Detectives are encouraged to re-canvass the original crime scene for additional witnesses, evidence and/or video cameras. Occasionally field officers fail to locate and collect pertinent evidence.

Video Evidence

Detectives should view all video evidence and ensure it has been properly collected and submitted into DCS, Digital Crime Scene. If additional video evidence has been identified and needs to be collected, detectives will request the Video Technician, PICS Cars or Community Service Officers to recover this evidence. *All video evidence shall be uploaded into the DCS System.* This permits detectives the ease of future use and reference. It alleviates numerous requests by the DA's Office for copies of video for upcoming trial cases.

Physical Evidence

Detectives will review all physical evidence collected in cases. All pertinent physical evidence will be taken to Crime Lab without delay to process for any trace evidence.

Latent Prints

Detectives will obtain any latent fingerprints cards submitted into evidence. These cards will be taken to Central Identification Unit for analysis and comparisons.

Police Sketch Artist

Detectives should consider using one of the Police Sketch Artists for a rendering of Suspect in a case. This is especially useful with good Victims/Witnesses where no video evidence was collected. The artist is able to develop details in description of the perpetrator that may not be present in the victim(s)' interview. After the sketch is completed, the detective should have it published in a Watch Bulletin TRAK flyer, other special bulletins, the media, etc.

TRAK Flyer

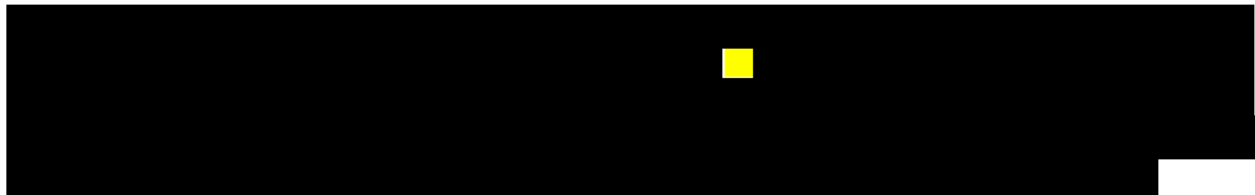
Detectives will create and distribute TRAK flyers for field officers and Allied Agencies through APB.Net. Detectives should put entries into the Watch Bulletin TRAK flyer as soon as possible, so that information about the crime can be shared with patrol units and other allied agencies. The entry should include a photograph or Police Artist sketch, and concise information necessary to alert field units. The Watch Bulletin coordinator is located in the SAIU Unit (277-4144). Always include SAIU Disclaimer on All TRAK flyers “*This information is for Law Enforcement Purposes Only*”.

Detectives and/or SAIU sergeants are encouraged to attend Patrol briefings to discuss cases, answer questions and distribute TRAK flyers.

Media for Assistance / Press Release

Occasionally it is beneficial to seek the use of the media. The SJPD Public Information Officer (277-5339 or 277-5273; fax: 277-3775) can be of assistance in working with newspapers, radio and television. The detective may consider publicity through TV shows like “America’s Most Wanted,” “Unsolved Mysteries,” etc. The detective should consider publishing information about the crime in SJ Mercury’s “Crime Stoppers.”

Also consider Fugitive Watch and Crime Stoppers. Rewards can be offered for anonymous tips, through Crime Stoppers.



- All Press Releases shall be approved by the Unit Commander prior to release
- A detective may be requested to draft a press release regarding his/her assigned case(s). A supervisor may provide technical assistance and direction
- In the absence of the Unit Commander, a Unit supervisor may review and approve the press release. The supervisor will check with the SJPD Media Relations Officer and a BOI Captain prior to issuance of the release
- A copy of any press release should be distributed to the following persons:
 - SAIU Unit Commander
 - BOI Deputy Chief
 - BOI Captains
 - SJPD Media Relations Officer
 - SAIU sergeants, SAIU OS, SAIU PDS, & SAIU CIA
 - Case file

[REDACTED]

[REDACTED]

Photographic Line Ups

Photographic Line Ups will be presented in accordance with Duty Manual Section 4603 (Photographic Identifications) or within current case law with the approval of the District Attorney's Office. Photographic Line Ups should be conducted in the SAIU Unit Interview rooms and recorded.

[REDACTED]

[REDACTED]

Vehicle Evidence

Vehicles should be processed for evidence, to include physical evidence, DNA, and latent fingerprints. Every effort will be made to have vehicles processed in the field. Vehicles towed to the warehouse will be processed as soon as possible, not to exceed 30 days. All vehicles taken to a tow yard will be processed without undue delay and will be released immediately. All detectives are responsible to know the disposition of vehicles on cases they are working.

[REDACTED]

[REDACTED]

Sharing of Information at BFO Briefings

Detectives should attend BFO briefings for patrol and Special Operations to share available information. Patrol units may often be the best resource in identifying suspects.

Recognition of Exemplary Work

Detectives should report exceptional field work to the appropriate supervisor. The Unit has a form letter, which may be used to provide positive feedback. Deficiencies or problems in performance should also be addressed through the appropriate supervisor.

In cases worthy of commendation, the detective should contact the appropriate supervisor to initiate a notice of good police work to be routed through the proper chain of command. An action such as this promotes good relationships among Unit personnel and motivates further good work.

[REDACTED]

[REDACTED]

Search Warrants

Members of this unit are expected to quickly develop the knowledge and skills necessary to prepare the documents required to seek a search warrant. Generally, in routine cases, investigators should prepare draft affidavits and warrant forms, and have a unit supervisor review those documents before approaching the District Attorney's Office for approval.

Unit members should not take this guideline to mean they may not seek direction from or consult with a Deputy District Attorney while considering whether a search warrant is practical in a particular case.

Planned Enforcement Operations

A member planning an enforcement operation, which includes attempts by SAIU Investigators to arrest individuals, take children into protective custody against the will of a lawful custodian, or conduct a search of a premise, will discuss the situation in advance with a unit supervisor. A unit supervisor will actively participate in the planning of such an operation and be present at the scene during the operation.

Planned operations will be documented on an SAIU Operations Plan and approved by a supervisor. Approved plans will be forwarded to the Unit Commander. Involved investigators will properly brief all officers who will be present during the enforcement operation.

This guideline applies to operations undertaken by members of this unit. Efforts to make arrests by members of patrol or Special Operations teams, where SAIU members are not directly involved, is left to the planning and direction of those team's chains of command.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Minimum Investigative Standards

Detectives will review case and clear up any discrepancies they find with the report.

Detectives will contact Victim within 3 working days. If there is no telephone number for the victim, the detective should send a letter to the victim

Detectives will review all video evidence in the case and ensure all video evidence was collected

Detectives will review all physical evidence and ensure all pertinent physical evidence is taken to the crime lab for analysis within one week of receiving case. Any latent prints should be taken to Central Identification Unit for comparison or analysis as soon as practical.

Detectives will create a TRAK flyer if appropriate. TRAK flyers will be distributed to BFO and other agencies through APB.Net. Always include SAIU Disclaimer on all TRAK flyers "This information is for Law Enforcement Purposes Only". Cases largely dependent upon results of a TRAK Flyer response will be closed within a reasonable amount of time.

Cases pending lab results will be closed in Versadex using the code "P". This closes the case pending the results of the crime lab. At which time, the case can be reopened, and the investigation will continue.

In order to show due diligence with regards to contacting victims, detectives should (at a minimum) complete and document:

- Three (3) recorded phone contacts;
- One (1) ATL at the victim's last known address (canvas as necessary to determine whereabouts & contact info for victim)
- One (1) Victim Contact letter allowing the victim at a minimum at least 7 business days to contact the detective regarding the case.

Child Interviews

The Children's Interview Center (CIC) is the appropriate location to interview victims under the age of eighteen. To the extent possible; all children should be interviewed at the Child Interview Center as opposed to the SAIU interview rooms. Interviews of children at the Children's Interview Center are scheduled and tracked by the Center's Coordinator. On occasion, in an unusual circumstance, investigators may interview the children at an alternate site after first clearing it through their supervisor.

Use of Family Room – PAB Rm 313

The Family Room located on the third floor of PAB will be used as a waiting room for family members or witnesses who are associated to an SAIU investigation. The room should be supervised by Department personnel when in use. The room is to be kept locked when not in use and the key will be hung on the wall across from the front desk in SAIU. SAIU assumes exclusive control of this room and any other unit requesting the use of this room must have clearance by a supervisor from SAIU.

[REDACTED]

[REDACTED]

[REDACTED]

Interviewing and Booking Arrestees

Unit members should not regard patrol officers as available to book prisoners as a convenience.

Members should try to avoid calling for patrol officers to transport and book prisoners to the extent that is practical. However, officer safety is the primary consideration on this topic. In general:

- During business hours, prisoners who are arrested by SAIU members, or
- who are arrested by patrol officers acting on an attempt-to-locate request by an investigator should be transported and booked by a pair of SAIU investigators. However, SAIU members will not transport an arrested person who is aggressive, has a history of violence, and is intoxicated or emotionally unstable either alone or in an unmarked BOI car. Such individuals should be transported to the jail in a caged police car by a logged-on uniformed police officer.
- A prisoner arrested by a BFO officer as a result of a call-for-service or in an on-view event should generally be regarded as that officer's prisoner, who should book the prisoner after an interview by investigators. Members do have the discretion of relieving a patrol officer of this responsibility under suitable circumstances, with the following exception:

Investigators working after hours will not interview or otherwise keep custody of a prisoner in SAIU without at least one other officer continually present in the unit. An arresting patrol officer is not to be allowed to leave the unit under such circumstances without being relieved by another officer. An investigator encountering a demand by a patrol officer or supervisor that the officer returns to service under such a circumstance will immediately contact a unit supervisor or the Unit Commander, regardless of the hour.


Serial or High Profile Cases

When a series of predator or otherwise high-profile cases is identified, a team of investigators and at least one supervisor will be assigned that series. All of the related cases will be assigned or reassigned to that team.

Within twenty-four hours of assignment, the lead investigator will consult with the unit's supervisors and the Unit Commander. The lead investigator and supervisor shall be prepared to present a review of the investigation to that point. The case assessment/review group will continue to meet on a daily basis at the discretion of the Unit Commander.

If a serial or high profile case is to be reassigned to SAIU from another unit, the investigative team and the Unit Commander will meet with the investigative team from the unit forwarding the case. The purpose of this meeting is to review, in detail, what has been done in the case and what efforts are in progress. Detailed reports of the forwarding unit's work are expected with the case file at the time the case is turned over.






Report Writing

Effective crime reporting is one of the most important duties required of a Department member. To be effective, specific information is required when reporting various offenses. Such reports are used to inform Department members, criminal justice personnel, and other authorized persons of the existence of circumstances, conditions and facts that impact on their respective duties and responsibilities. Therefore, members of the Department will adhere to established procedures in the SJPD Duty Manual when initiating any reports pertaining to criminal acts. (SJPD Duty Manual R1300-R1805)

Investigators will complete reports in sufficiently thorough detail to document each investigative step, interview, and collection of any item of evidence. Reporting sections of the General Offense (G.O.) report will be completed identifying individuals who come to be associated with a case. All original reports be documented using the Versadex system.



That “Date of Report” will be the date the investigator finishes the report and regards it a part of the case file. Once in this final form – and in particular after such report has been duplicated and distributed for any purpose, that report will not be altered.

Closing Cases

Completed cases are submitted to the investigator’s supervisor. Finished case folders will be neatly organized, if carried over from the previous paper system, and the various reports will be attached in an orderly fashion with metal fasteners to the file folder. All cases from July 1, 2012, will be written and maintained in the Versadex system.

Method of Operation (M.O.) information should be highlighted in the investigator’s report. Supervisors are expected to scrutinize each case to identify deficiencies or highlights that should be corrected or used for training purposes.

Investigators will accurately complete a form 3C at the time a case is closed, if carried over from the original paper reports, or the “Clearance Block” if in the Versadex system. This form and the disposition selected by the investigator are used to update various law enforcement databases. This also serves to officially close a case RMS identifies as assigned to a specific investigator. Comments should be brief and should not include information which is not a part of the case’s formal reports.

Evidence

- Evidence obtained during an investigation shall be booked into Central Supply as soon as practicable.
- Property to be evaluated by the Homicide Crime Scene Unit for the collection of specific types of physical evidence may, with the approval of a CSU supervisor or a SAIU supervisor, be temporarily booked into the CSU Technical Evidence Room. When the CSU has completed its collection and evaluation, the detective will be notified. The detective will collect and re-book the evidence into the SJPD Property Room.
- Evidence brought into the Unit for evaluation and/or photographing will remain under the direct control of the case detective. At no time will evidence be left unsecured in the Unit, in desks or vehicles.

When computers or computer media are submitted to the Child Exploits Detail/Internet Crimes Against Children (CED/ICAC) computer forensic examiners for analysis, the investigator will comply with the procedures directed by the examiners regarding the marking and transportation of the evidence.

Equipment

Vehicles

- Vehicles will be shared by detectives who will be responsible to keep the vehicle clean and maintained in good condition.
- Vehicles that have been identified as “high-mileage” vehicles will not be taken out of town or used for “on-call” unless approved by the Unit Commander.

The unit’s fleet manager will assign cars to the various teams. The need for the department to demonstrate a relatively even accumulation of mileage in the fleet will be the principal factor the fleet manager will observe. Team sergeants will keep keys available at their workstation, with a system for identifying which member has keys for a specific car. The borrower will then leave a name-tag or business card on the respective key holder. Inspection of the vehicles before using them is the responsibility of the driver. Any damage that has not been reported must be reported immediately.

Members of the unit will, when not actually out of the office with a car, ensure the key for a car they have used is returned to the place the team sergeant has designated.

- When a vehicle assigned to the SAIU Unit is loaned to another unit, it must be approved by a supervisor. While the vehicle is out on loan, a note indicating the unit and the officer’s name and badge number shall be hung on the keys’ hook.

Cell Phones

- Cellular phones are assigned to the Lieutenant and Sergeants.

Special Equipment

- Hand pack radios are made available to Unit members. They will not be loaned out without the approval of a supervisor.
- Tactical equipment – vest carriers will be made available to Unit members. They will not be loaned out without the approval of a supervisor.

Field Equipment

- It will be the responsibility of each Unit member not covered by the Exempt Officer MOU will maintain a complete uniform and all equipment. This equipment will be available to the member in the event the department should go on a tactical alert status. Each supervisor will ensure that members have the proper equipment in serviceable condition and will inspect this equipment periodically. This equipment as listed in the Duty Manual will include riot baton, helmet, face shield, gas mask and protective body armor.

Report John Program

The Report John Program (RJP) was created to reduce human trafficking and prostitution in high impact areas by targeting sex buyer activity. The RJP creates a deterrent affect for potential sex buyers, as well as educates potential sex buyers of the dangers associated with this illicit activity. The Program entails the reporting of sex buying activity tips to law enforcement via WWW.SJPD.ORG; the tip can include identifying information on the buyer or the buyer's vehicle.

The Human Trafficking (HT) Unit will provide oversight for the RJP. The HT Unit will evaluate reported information received to determine if further investigation is warranted or if a Public Safety Announcement (PSA-HT-001) should be mailed to the registered owner of the vehicle involved in potential sex buying activity.

The goal of the program is to:

- Increase communication with community members through the Report John Program via SJPD's website pertaining to sex buying, prostitution and human trafficking.
- Identify sex buyers and provide education and deterrence through PSA-HT-001 awareness letters.

▪ [REDACTED]

In order to achieve our goals, the HT Unit will:

- Accept community tip information from the Report John Program via SJPD.ORG.
- Evaluate Report John data to determine if the driver of the vehicle reported was engaged in illicit commercial sex buying activity.
- If appropriate, mail a Public Safety Announcement (PSA-HT-001) to notify the registered owner that their vehicle was reported in a high traffic area for prostitution and associated crimes.

▪ [REDACTED]

- Continue to collaborate with the community and NGOs to increase education and public awareness of the dangers associated with prostitution.

The HT Unit will receive citizen tips from SJPD.ORG reporting sex buying activities. The Report John Program collects the following information:

- The date and time of the tip.
- A photo of the vehicle or activity observed.
- The vehicle license plate number.
- The state of the vehicle license plate.
- The date and time when the activity was observed.
- The city the activity was observed in.
- The address or location of the activity.
- A narrative section describing the activity seen.
- The description of the driver.
- The make, model and color of the vehicle.
- Any additional notes.

The Report John Program will send all submitted tips to the HT Unit via email at stopslavery@sanjoseca.gov. The tips will then be reviewed and processed by the HT Unit. The entry and evaluation process will consist of the following steps:

- Enter tip into database.
- Check database for prior matching entries.
- Run vehicle license plate in RMS.
- Review DMV Registered Owner file.
- Confirm DMV make and model matches the tip information.
- Evaluate registration address and address of tip to determine proximity.
- Evaluate activity witnessed.

- Check database for possible malicious reports and repeat license plate entries.
- Sergeant review and approval (minimum of 2 tips for the same vehicle).
- PSA mailed out to the registered owner of vehicle.
- Update the master RJP database.

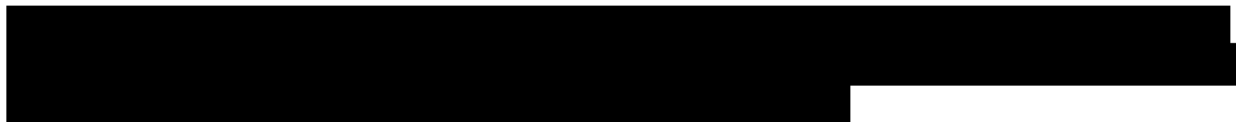
Note: Any vehicles registered to an address within a four (4) block radius of the location of occurrence will be presumed to be a resident regularly driving through the area. They will not be considered a focus of our investigation unless other factors prevail. The HT Unit will verify the vehicles descriptors and compare with the DMV Registered Owner file. If the descriptors do not match the DMV Registered Owner file, a PSA will not be mailed.

Example: The tip submitted states the vehicle is a Toyota Camry with a license plate of 1ABC234. The DMV Registered Owner file states the license plate of 1ABC234 comes back to a Ford Escape. These two vehicle descriptions are not similar; therefore no further action will be taken.

If the vehicle descriptors are a close or an exact match, the process will continue.

Example: The tip submitted states the vehicle is a Toyota Camry with a license plate of 1ABC234. The DMV Registered Owner file states the license plate of 1ABC234 comes back to a Toyota Corolla. These two vehicle descriptions are similar; therefore the evaluation process will still continue.

Tips which include images of the vehicle will be used to evaluate vehicle descriptions. All tips will be reviewed by an investigator within the HT Unit.



Once the tip information has been evaluated and the activity is consistent with sex purchasing, a PSA-HT-001 will be approved for mailing by the HT sergeant.

Citizens with comments or concerns associated to this program can contact the HT Unit. The PSA-HT-001 contains the phone number to the HT Unit. Incoming calls to the HT phone line will be answered and all voicemail messages will be responded to in a timely manner.

This will provide feedback opportunity to explain why the letter was sent to the registered owner, educate the registered owner about the dangers of prostitution and address any concerns they might have.

In the event the vehicle no longer belongs to the caller, they will be advised to contact the DMV and update the vehicle registration. [REDACTED]

[REDACTED]

[REDACTED]

PSA-HT-001 Form

DATE

NAME

ADDRESS

CITY, STATE ZIP CODE

Dear,

A vehicle registered under your name License number -----, has been observed in the area of ----- and ----- in San Jose. We want to make you aware that this area has high rates of human trafficking and prostitution activity.

The City is taking a firm stance against perpetrators of these illegal activities. Prostitution is not a victimless crime and is often associated with kidnapping, human trafficking and the sexual exploitation of children. These individuals, both children and young adults, have frequently been forced or coerced and are being prostituted, which makes them human trafficking victims. Buying sex from persons who frequently are human trafficking victims supports and encourages the illegal human sex trade in our community. These are grave concerns to the City and its residents. Human trafficking and prostitution has an impact that extends beyond the parties involved in the sexual transaction. There are numerous associated violent crimes and conduct that creates a public nuisance that negatively affect residents and neighborhoods exposed to this activity.

The San Jose Police Department is working closely with concerned residents to inform the public of this public safety concern, investigate suspicious activity, and prosecute those attempting to solicit individuals for sex. Subdivision (b) of California Penal Code Section 647 makes soliciting sex a misdemeanor punishable with jail time and fines. Subdivision (k) of Penal Code Section 647 also authorizes the discretionary punishment of suspending or restriction the driver's license for up to 6 months pursuant Vehicle Code Section 13201.5 for any solicitation violation under subdivision (b) of Penal Code Section 647 that is committed within 1,000 feet of a private residence with the use of a vehicle.

We need your help and cooperation in keeping the City safe. If you are no longer the owner of the above-referenced vehicle, we recommend that you contact the California Department of Motor Vehicles to have your name removed from the registration records for this vehicle. Finally, we ask you to exercise caution when visiting this area and to report suspicious activity by calling the San Jose Police Department at (408) 537-1999.

Thank you for your attention to this important matter.

Sincerely,

San Jose Police Department

Miscellaneous

Dress Standards

Members of the unit will comply with the standards of dress for their assignment as defined by the Unit Commander. Supervisors will see to it team members comply with these standards and present themselves as professional police officers.

On occasion, members will be assigned tasks for which business attire is inappropriate—such as the preplanned search of a premise or a scheduled interview of a victim. Victim comfort is imperative in obtaining accurate and complete statements from victims and/or fresh complaint witnesses. Casual attire has helped reduced victim fear and anxiety during this process. Supervisors may approve an officer wearing casual or work clothing appropriate for these tasks, for the duration of the activity.

Investigators assigned to the Child Exploitation Detail, Megan’s Law Detail, and the Human Trafficking Detail will dress casually, with the intention they blend in with the public at large. While dress and grooming standards might be relaxed, exaggerated dress, jewelry and hairstyles serve counter to that objective, and are not permitted.

Members who are at their workstations for other than brief periods during the unit’s business hours will be dressed appropriately for their assignment. Examples include report-writing on a day which the officer is otherwise off-duty.

Members responding to on-call events or returning to work as “call-back” to perform some work-related task after hours will dress in accordance with the standards applicable to their workday attire.

- At all times, a detective shall maintain a neat and orderly appearance
- Standard business attire for a male detective shall be a suit or sport coat and tie
- A female detective will maintain comparable standard of business attire

Denim Day

In 1992, a victim was raped by her driving instructor in Rome. The conviction was overturned in 1998 because the victim wore tight jeans. It was argued that the jeans were so tight that the only way to have gotten them off was if the victim helped his/her attacker remove the jeans, thus making the act consensual. The Italian Supreme Court stated in its decision "it is a fact of common experience that it is nearly impossible to slip off tight jeans even partly without the active collaboration of the person who is wearing them." In 2008, the Italian Supreme Court had overturned its findings, no longer allowing a "denim" defense for rape.

This initial ruling sparked widespread protest causing the Executive Director of the Los Angeles Commission on Assaults Against Women to make “Denim Day” an annual event. Since then, 20 US states officially recognize Denim Day in the month of April. Wearing jeans on this day has become an international symbol of protest against erroneous and destructive attitudes towards sexual assaults.

In honor of denim day, detectives are permitted to wear denim (casual) attire on the last day of their work week (Thursday or Friday) as long as it does not interfere with the operational needs of the Unit. While dress and grooming standards might be relaxed, exaggerated dress, jewelry and hairstyles serve counter to that objective, and are not permitted

Coffee / Water Fund

- The Unit members will contribute voluntarily to a fund for coffee/water for the Unit, which shall be maintained by the secretary. Each fund is separate.
- Each Unit member is requested to contribute \$10 per month to cover the cost of coffee/water for members and guests

Workplace Concerns

Officers in the unit will direct workplace concerns to their supervisors. Supervisors are often in the best position to resolve problems quickly and effective communication over the range of issues affecting our work is the most important characteristic of the relationship between a supervisor and subordinate.

Every member of the police department has an obligation to take note of outdated or counterproductive practices, and to bring these up with their supervisors. As professionals responsible for the day-to-day advancement of individual cases, investigators are often in the best position to notice when a long-term practice is no longer the “best” practice. Supervisors and the Unit Commander will encourage discussion on this topic.

Appendices

“Beheler”

In order to obtain a statement that will be admissible at trial to prove guilt, Miranda advisements must be given only if the person about to be questioned is in "custody." (Morris (1991) 53 Cal.3d 152, 197; Spears (1991) 228 Cal.App.3d 1, 23.) "Custody" exists for Miranda purposes when two requirements are met:

- the suspect must in fact have been formally arrested or had his freedom restrained to a degree associated with a formal arrest (Stansbury (1994) 511 U.S. 318; Beheler (1983) 463 U.S. 1121, 1125; Esqueda (1993) 17 Cal.App.4th 1450, 1481; Ochoa (1998) 19 Cal.4th 353, 401; Norris (9th Cir. 2005) 428 F.3d 907, 912); and
- the suspect must personally be aware of this lack of freedom or reasonably believe that it exists (Beheler (1983) 463 U.S. 1121, 1125; Green (1985) 40 Cal.3d 126, 133-134; Mazza (1985) 175 Cal.App.3d 836; Valdivia (1986) 180 Cal.App.3d 657; Breault (1990) 223 Cal.App.3d 125).

In the words of the United States Supreme Court, "the ultimate inquiry is simply whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." (Stansbury (1994) 511 U.S. 318, 322, quoting from Beheler (1983) 463 U.S. 1121, 1125; Joseph R. (1998) 65 Cal.App.4th 954, 960.)

Furthermore, this question must be assessed objectively, which means two things. First, custody is based on how a reasonable person in the suspect's situation would perceive his or her own circumstances. Second, in making a custody determination, officers are only expected to be aware of, and take into account, objectively apparent facts. Officers are not expected to anticipate the "frailties or idiosyncrasies of every person whom they question." (Berkemer (1984) 468 U.S. 420, 442, fn. 2.)

For example, police officers cannot be expected to be aware of a suspect's prior experience with law enforcement and speculate as to how that experience affects the suspect's own perception as to whether he is in custody. Similarly, officers cannot be expected to take into account the juvenile status of a 17-year-old suspect if the suspect's appearance does not suggest youth. (Alvarado (2004) 541 U.S. 652.)

Neither the thoughts of the suspect nor the undisclosed thoughts of the officer make any difference. "Our decisions make clear that the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." (Stansbury (1994) 511 U.S. 318, 323; Carpenter (1997) 15 Cal.4th 312, 384; Stansbury (1995) 9 Cal.4th 824, 830.)



[REDACTED]

An officer's knowledge or beliefs bear upon the question of custody only if they are conveyed, by word or deed, to the individual being questioned. "Those beliefs are relevant only to the extent they would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her 'freedom of action.'" (Stansbury (1994) 511 U.S. 318, 325.)

Whether or not the interrogation takes place *at a police station* makes a crucial difference in the determination of "custody." Miranda "custody" will exist at a police station if someone in the suspect's place, based on the objective circumstances (i.e., what's been said, who is present, what the physical set-up is, etc.) would reasonably believe that he is *not free to leave*. *In other words, if you "detain" a suspect at the police station, that person is in "custody" and should be advised per Miranda before any interrogation takes place. "Free to leave" is the key consideration at a police station.* (Beheler (1983) 463 U.S. 1121, 1125; Holloway (2004) 33 Cal.4th 96, 120-121; Aguilera (1996) 51 Cal.App.4th 1151, 1161-1166.)

On the other hand, at virtually any other location, there is no Miranda custody unless the person has been arrested or subjected to equivalent restraints on his freedom of movement. Thus, away from a police station, you may "detain" a person--which means the person is not free to leave--and yet not have to Mirandize that person, as long as the suspect has not actually been arrested or subjected to equivalent restraints. It is critical to note that Miranda custody is not synonymous with "custody" under the Fourth Amendment. "Persons temporarily detained are not 'in custody' for the purposes of Miranda." (Berkemer (1984) 468 U.S. 420, 430-433.) In short, at any location other than a police station, the key is "actual arrest or equivalent restraints" rather than the application of the "free to leave" test. (Stansbury (1994) 511 U.S. 318, 322; Beheler(1983) 463 U.S. 1121, 1125; Coutchavlis (9th Cir. 2001) 260 F.3d 1149, 1157-1158; Joseph R. (1998) 65 Cal.App.4th 954.)

