
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1312 **Hearing Date:** July 11, 2017
Author: Gonzalez Fletcher
Version: May 26, 2017
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Sexual Assault Victims: Rights*

HISTORY

Source: Rise

Prior Legislation: AB 1517 (Skinner) Chapter 874, Stats. 2014
AB 898 (Chu) Chapter 537, Stats. 2003

Support: California Catholic Conference; California Legislative Women's Caucus;
Californians for Safety and Justice; Crime Victims United of California; Joyful
Heart Foundation; Los Angeles County Professional Peace Officers Association;
National Association of Social Workers; Planned Parenthood; Congresswoman
Zoe Lofgren; Fiona Ma, Board of Equalization; a number of individuals

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to require law enforcement and medical professionals to provide victims of sexual assault with written notification of their rights and to provide additional rights to victims of sexual assault.

Existing law encourages DNA analysis of rape kits within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. (Penal Code § 680 (b)(6).)

Existing law encourages law enforcement agencies to submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Penal Code § 680 (b)(7)(A)(i).)

Existing law encourages the establishment of rapid turnaround DNA programs, where the rape kit is sent directly from the facility where it was collected to the lab for testing within five days. (Penal Code § 680 (b)(7)(A)(ii) and (E).)

Existing law encourages crime labs to do one of the following:

- Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or
- Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA. (Penal Code § 680 (b)(7)(B).)

Existing law requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out. (Penal Code §§ 680 (e) and (f), 803.)

Existing law specifies that whenever there is an alleged violation or violations of specified domestic violence or sexual assault, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card. (Penal Code § 264.2 (a).)

Existing law requires the "Victims of Domestic Violence" card to include a variety of information about services, restraining orders, and other victim's rights and remedies. (Penal Code § 3701 (c)(9)(H).)

Existing law states that law enforcement shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of specified sexual assault crimes is transported to a hospital for any medical evidentiary or physical examination. (Penal Code § 264.2 (b).)

Existing law provides that the victim has the right to have a sexual assault counselor and a support person of the victim's choosing present at any medical evidentiary or physical examination. (Penal Code § 264.2(b).)

Existing law states that a support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination. (Penal Code § 264.2 (c).)

Existing law specifies that a victim of sexual assault has the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. (Penal Code § 679.04 (a).)

Existing law states that the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. (Penal Code § 679.04 (a).)

Existing law states that prior to the initial interview by law enforcement or the district attorney regarding a crime of sexual assault, the victim shall be notified orally or in writing that the victim has the right to have victim advocates and a support person of the victim's choosing

present at the interview or contact, and that the victim has the right to have the same individuals present at any interview by the defense attorney or members of the defense team. (Penal Code § 679.04 (b).)

Existing law states that the cost of a medical evidentiary examination for a victim of a sexual assault shall be treated as a local cost and charged to the local law enforcement agency; provided, however, that the local law enforcement agency may seek reimbursement, as for the cost of conducting the medical evidentiary examination portion of a medical examination of a sexual assault victim who does not participate in the criminal justice system. (Penal Code § 13823.95 (c).)

Existing law specifies that amount that may be charged by a qualified health care professional, hospital, or other emergency medical facility to perform the medical evidentiary examination portion of a medical examination of a victim of a sexual assault shall not exceed three hundred dollars (\$300). (Penal Code § 13823.95 (d).)

Existing law states that the Office of Emergency Services shall use the discretionary funds from federal grants awarded to the agency through the federal Office of Violence Against Women, to cover the cost of the medical evidentiary examination portion of a medical examination of a sexual assault victim. (Penal Code § 13823.95 (d).)

Existing law states that any health practitioner employed in a health facility as specified, who in his or her professional capacity or within the scope of his or her employment, provides medical services to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report as specified:

- 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; (Penal Code § 11160 (a)(1).)
- 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; (Penal Code § 11160 (a)(2).)
- States that a local law enforcement agency shall be notified and a written report shall be prepared and sent 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; and (Penal Code § 11160 (b)(3).)

Existing law states that the report shall include, but shall not be limited to, the following:

- The name of the injured person, if known. (Penal Code § 11160 (b)(4)(A).)

- The injured person's whereabouts. (Penal Code § 11160 (b)(4)(B).)
- The character and extent of the person's injuries. (Penal Code § 11160 (b)(4)(C).)

Existing law provides that the identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person. (Penal Code § 11160 (b)(4)(D).)

This bill states that where there is an offense of domestic violence, as specified, or sexual assault, as specified, law enforcement shall immediately provide the victim of the crime a written card containing victims' rights and resources, as appropriate for domestic violence or sexual assault.

This bill states that prior to any initial medical evidentiary or physical examination arising out of a sexual assault, the medical provider shall provide written card containing victims' rights and resources for victims of sexual assault, as specified by this bill.

This bill specifies that the medical provider is only required to provide the specified information card to a victim if law enforcement has provided the card to the medical provider in a language understood by the victim.

This bill states that after conducting the medical evidentiary or physical examination, the medical provider shall give the victim the opportunity to shower or bathe at no cost to the victim, unless a showering or bathing facility is not available.

This bill requires that a medical provider notify the law enforcement agency having jurisdiction over the alleged violation within 24 hours of obtaining sexual assault forensic evidence, if the medical provider knows the appropriate jurisdiction. If the medical provider does not know the appropriate jurisdiction, the medical provider shall notify the local law enforcement agency.

This bill specifies that a sexual assault victim retains the right to have a victim advocate and a support person present at any interview by law enforcement authorities, district attorneys, or defense attorneys regardless of whether he or she has waived the right in a previous medical evidentiary or physical examination or in a previous interview by law enforcement authorities, district attorneys, or defense attorneys.

This bill states that prior to the initial interview by law enforcement authorities or the district attorney pertaining to a sexual assault, a victim of sexual assault the victim shall be notified in writing by the attending law enforcement authority or district attorney that he or she has the right to have victim advocates and a support person of the victim's choosing present at the interview, about any other rights of the victim pursuant to law in the card of rights described in this bill, and that the victim has the right to request to be interviewed by a law enforcement official or district attorney of the same gender or opposite gender as the victim, unless no such law enforcement official or district attorney is reasonably available.

This bill states that the presence of a victim advocate shall not defeat any existing right otherwise guaranteed by law.

This bill specifies that a victim's waiver of the right to a victim advocate is inadmissible in court, unless a court determines the waiver is at issue in the pending litigation.

This bill states that a law enforcement official shall not, for any reason, discourage a victim of an alleged sexual assault from receiving a medical evidentiary or physical examination.

This bill provides that a law enforcement agency shall not destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case before at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, before the victim's 40th birthday.

This bill specifies that if law enforcement intends to dispose of a rape kit evidence from an unsolved sexual assault case, a victim of specified sexual assault crimes must be given written notice at least 60 days prior to the disposal.

This bill specifies that upon the initial interaction with a sexual assault victim, a law enforcement officer or medical provider shall provide the victim with a card to be developed by every local law enforcement agency, in consultation with sexual assault experts that explains all of the rights of sexual assault victims in clear language that is comprehensible to a person proficient in English at the fifth grade level, in at least 12 point font, and available in all major languages of the state. This document shall include, but is not limited, to all of the following:

- A clear statement that a sexual assault victim is not required to participate in the criminal justice system or to receive a medical evidentiary or physical examination in order to retain his or her rights under law;
- Telephone or Internet Web site contact information for a nearby rape crisis center and sexual assault counselor;
- Information about the types of law enforcement protection available to the sexual assault victim, including a temporary protection order, and the process to obtain that protection;
- Instructions for requesting the results of the analysis of the victim's sexual assault forensic evidence;
- Information about state and federal compensation funds for medical and other costs associated with the sexual assault and information on any municipal, state, or federal right to restitution for sexual assault victims if a criminal trial occurs;
- A statement that the victim has the right to have a sexual assault counselor and at least one other support person of the victim's choosing present at any initial medical evidentiary examination, physical examination, or investigative interview arising out of a sexual assault, and that a sexual assault counselor can be contacted immediately 24 hours a day;
- Information about the rate of potential evidence degradation;

- A statement that if sexual assault forensic evidence will be tested, it should be transported to the crime laboratory and analyzed within specified time limits, unless the victim requests in writing for the crime laboratory to defer analysis of the sexual assault forensic evidence; and
- A statement that the law enforcement agency or crime laboratory will retain the sexual assault forensic evidence for at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, at least until the victim's 40th birthday.

This bill requires law enforcement agencies to provide sufficient copies of the information card to each provider in its jurisdiction of medical evidentiary or physical examinations arising out of sexual assaults.

This bill requires a law enforcement official to, upon written request by a sexual assault victim, furnish a free copy of the initial crime report related to the sexual assault, regardless of whether the report has been closed by the law enforcement agency, to the victim.

This bill specifies that law enforcement may redact personal, identifying information in the copy furnished to the victim.

This bill states that a prosecutor shall, upon written request by a sexual assault victim, provide the convicted defendant's information, as allowed pursuant to section 290.046, to the victim, if the defendant is required to register as a sex offender.

This bill specifies that post-coital contraception shall be provided upon request of the victim at no cost to the victim.

COMMENTS

1. Need for This Bill

According to the author:

Current California law has made strides in protecting survivors of sexual assault, but still contains loopholes and inadequacies. Some of the shortcomings include the lack of assurance that rape kits will be preserved for long enough, ensuring that options to choose post-coital contraception will be at no cost to the victim, and providing the most tailored and applicable information regarding resources available and the legal process to survivors.

The preservation of rape kits is a problem because the emotional trauma from assault may prevent a victim from pursuing their case immediately, but our laws should ensure that, if and when they do decide to pursue this, the evidence gathered is still intact. AB 1312 will require that rape kits are preserved for at least 20 years, or if the victim was a minor at the time of the alleged assault until their 40th birthday, in order to conform with recently passed federal legislation (HR 5578, 2016). By retaining the rape kits for an extended period of time, AB 1312 will allow survivors time to make decisions regarding legal options without having to worry that their inaction will lead to the destruction of crucial evidence.

AB 1312 will also require that the post-coital contraception provided to survivors of sexual assault who choose that option be provided at no cost, and create a new information card to be given to survivors by medical providers and law enforcement with specifically tailored information on their rights, resources and the legal process.

2. Sexual Assault Victims' DNA Bill of Rights

California established the Sexual Assault Victims' Bill of Rights in 2003. (AB 898 (Chu), Chapter 537, Statutes of 2003.) In passing that law, the Legislature found and declared that "[l]aw 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." Upon the request of the survivor, law enforcement agencies investigating the sexual assault may inform the survivor of the status of the DNA testing. Specifically, the California DNA Bill of Rights provides that subject to sufficient resources to respond to requests, survivors have a right to be informed whether or not the assailant's DNA profile was developed from the rape kit evidence, whether or not that profile was uploaded to the DNA database and whether or not a hit resulted from the upload.

The Sexual Assault Victims' Bill of Rights was amended by AB 1517 (Skinner), Chapter 874, Statutes of 2014. Those amendments encouraged law enforcement and crime labs to handle and process sexual assault forensic evidence within specific time frame.

This bill adds to the Sexual Assault Victims' Bill of Rights and related sections including:

- Clarifying that the victim shall have an opportunity to shower or bathe after the exam.
- Providing that the medical provider shall notify law enforcement within 24 hours of obtaining sexual assault forensic evidence from a victim.
- Clarifying that a victim has the right to support person even if he or she has waived that right at some point in the process.
- Providing that the waiver of the right to an advocate is not admissible in court.
- Providing that the victim has a right to request to have a person of the same gender or opposite gender as the victim in the room during any interview with a law enforcement or district attorney.
- Provides that a law enforcement shall not destroy or dispose of rape kit evidence before at least 20 years or if the victim was under 18 years of age, before the victim's 40th birthday.
- Provides that a sexual assault victim shall be given a card explaining the rights of a victim of a sexual assault and specifies what the card shall include.
- Clarifies that post-coital contraception shall be dispensed to a victim shall be at no cost to that victim.

3. Support

The sponsor of this bill Rise states:

Laws that govern sexual assault drastically vary from state to state. Rise's goal is to fix this patchwork of rights for survivors. While California has many protections for sexual assault survivors, there are still loopholes in the law that allow sexual assault survivors to be revictimized by the system. AB 1312 addresses these issues.

Current reading of California's code could allow for a rape kit to be destroyed after only two years with written notification, well before the statute of limitations. Not only does this hurt the survivor by denying them access to civil and criminal justice, but it also harms the State of California's ability to prosecute these heinous crimes by destroying crucial evidence.

There are also no standards for notifying a sexual assault survivor of his or her rights. This puts the burden of navigating a complex medical and legal system on the victim, making the traumatic experience even more difficult. One California survivor was told by a hospital that she had to file a police report before getting medical treatment, contrary to California law. By the time she had gone through the entire process and filed a police report, traces of the date rape drugs that were in her system were already flushed. If she had been notified that her right to medical treatment and a rape kit were not contingent on engaging with the criminal justice system, she may have had crucial evidence for a chance at pursuing justice. This is just one example of the different ways in which our system has failed sexual assault survivors.

AB 1312's major provisions include ensuring rape kits are not destroyed prematurely, creating a standardized handling system of these kits for healthcare and criminal justice systems, informing survivors of their rights, ascertaining the retention of all applicable rights regardless of whether a survivor chooses to engage with the criminal justice system, and codifying important additional rights for survivors such as free contraception....

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