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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 1848                      **Hearing Date:** June 21, 2016  
**Author:** Chiu  
**Version:** May 9, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *DNA Evidence*

## HISTORY

**Source:** Attorney General's Office

**Prior Legislation:** AB 1517 (Skinner) – Ch. 874, Stats. 2014  
AB 322 (Portantino) –Vetoed 2011  
AB 558 (Portantino) –Vetoed 2010  
AB 1017 (Portantino) –Vetoed 2009

**Support:** Alameda County District Attorney; CALCASA: California Partnership to End Domestic Violence; City and County of San Francisco; The Junior League of San Francisco, Inc.; National Council of Jewish Women California; Planned Parenthood Affiliates of California; RISE; San Francisco Sheriff

**Opposition:** California State Sheriffs' Association

**Assembly Floor Vote:** 77 - 0

## PURPOSE

*The purpose of this bill is to require local law enforcement agencies to periodically update the Sexual Assault Forensic Evidence Tracking database (SAFE-T) on the disposition of all sexual assault evidence kits (rape kits) in their custody.*

*Existing law* requires an adult arrested for or charged with a felony and a juvenile adjudicated for a felony to submit deoxyribonucleic acid (DNA) samples. (Penal Code § 296.)

*Existing law* establishes the DNA and Forensic Identification Database and Data Bank Program to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious and accurate detection and prosecution of individuals responsible for sex offenses and other crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children. (Penal Code §§ 295, 295.1.)

*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: a) 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 b) 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. (Penal Code, §§ 680 (e) and (f), 803.)

*This bill* finds and declares that there is a significant public interest in knowing whether rape kits have been tested and if the kits have not been tested, the reasons why they were not tested.

*This bill* requires participation by law enforcement agencies in the SAFE-T database.

*This bill* requires law enforcement agencies, on a schedule set by the Department of Justice (DOJ) to submit via SAFE-T the:

- Number of rape kits collected during the set period;
- Number of kits where biological evidence was submitted to a DNA laboratory for analysis;
- Number of kits from which a DNA profile hit was generated: and
- Reasons why a particular rape kit was not submitted to a DNA laboratory for testing.

*This bill* requires DNA laboratories to enter into SAFE-T, every 120 days, and the reasons why any particular rape kit has not been tested.

*This bill* provides that upon expiration of a sexual assault case's statute of limitations, or if a law enforcement agency elects not to analyze the DNA or intends to destroy or dispose of crime scene evidence, the investigating law enforcement agency shall state in writing the reason the kit collected as part of the case's investigation was not analyzed. This written statement relieves the law enforcement agency or public laboratory of any further duty to report information related to that kit.

*This bill* states that SAFE-T shall not contain any identifying information about a victim or a suspect, any DNA profiles, or any information that would impair a pending criminal investigation.

*This bill* requires DOJ to report annually to the Legislature a summary of the information entered into SAFE-T.

*This bill* states that, beside the required report to the Legislature, all contents of SAFE-T shall be confidential, and no law enforcement agency or laboratory may be compelled in a civil or criminal proceeding to disclose the contents of SAFE-T unless the contents contain exculpatory evidence for a criminal defendant.

*This bill* finds and declares that it is necessary to keep SAFE-T's contents confidential in order to protect victims of crime.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).) The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;

- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

In recent years, the federal government has identified hundreds of thousands of rape kits that have gone unanalyzed, known as the “rape kit backlog.” Some jurisdictions have worked to decrease their backlogs to varying degrees. However, in California, no comprehensive data is currently available about the number of sexual assault evidence kits that local law enforcement agencies collect annually or how many of those kits are analyzed. Further, no comprehensive data exists about the reasons some sexual assault evidence kits are not analyzed.

A 2014 report by the California State Auditor revealed that each year, thousands of kits go unanalyzed by a DNA laboratory for a variety of reasons. The scope of the statewide rape kit backlog cannot be determined because of a lack of effective tracking at the local level. More comprehensive data could assist policy makers as they consider whether law enforcement agencies’ current approaches in this area need to change or whether or not law enforcement needs additional resources to better manage the processing of kits.

In many cases, survivors of sexual assault experience re-traumatization when undergoing the forensic evidence collection process. The neglect of these kits with no explanation why they were not analyzed simply adds to the trauma ensured by survivors seeking justice.

To address these issues, the State Auditor recommended that agencies track each sexual assault evidence kit they collect and report to the California Department of Justice (DOJ) on how many are analyzed and why some are not. In response to the State Auditor’s report, DOJ created the Sexual Assault Forensic Evidence Tracking system, or SAFE-T. This database allows local agencies to log and provide status updates for each kit they collect. With documented reasons for the decisions, agencies would be able to clearly demonstrate to victims, policy makers, and other interested parties why they did not request such analyses.

AB 1848 would require local agencies to track all rape kits collected from survivors by using SAFE-T in accordance with the State Auditor’s recommendations.

## 2. Tracking of Rape Kit Tests

A recent report by the California State Auditor found that law enforcement agencies rarely document reasons for not analyzing sexual assault evidence kits. (California State Auditor, Sexual Assault Evidence Kits (Oct. 2014).) Specifically, the report found that:

[i]n 45 cases . . . reviewed in which investigators at the three agencies we visited did not request a kit analysis; the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed. Among the 15 cases we reviewed at each of the three locations, we found no examples of this documentation at either the Sacramento Sheriff or the San Diego Police Department, and we found only six documented explanations at the Oakland Police Department. Investigative supervisors at both the Sacramento Sheriff and the San Diego Police Department indicated that their departments do not require investigators to document a decision not to analyze a sexual assault evidence kit. The lieutenant at the Oakland Police Department's Special Victims Section stated that, during the period covered by our review, the section expected such documentation from its investigators in certain circumstances, but that it was not a formal requirement at that time. (*Id.* at p. 23.)

Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases:

[The] decisions not to request sexual assault evidence kit analysis in the individual cases we reviewed appeared reasonable because kit analysis would be unlikely to further the investigation of those cases. We reviewed specific cases at each agency in which investigators did not request analysis. Our review included 15 cases from each of the three agencies we visited with offenses that occurred from 2011 through 2013, for a total of 45 cases. In those cases, we did not identify any negative effects on the investigations as a result of decisions not to request analysis. We based our conclusions on the circumstances present in the individual cases we reviewed, as documented in the files for the 45 cases and as discussed with the investigative supervisors." (*Id.* at p. 21.)

Even though the individual reasons for not testing the kits was found to be reasonable, the report still stressed the need for more information about why agencies decide to send some kits but not others. It would benefit not only investigators, but the public as well, because requiring investigators to document their reasons for not requesting kit analysis would assist agencies in responding to the public concern about unanalyzed kits. Doing so would allow for internal review and would increase accountability to the public. (*Id.* at pp. 23-24.)

## 3. Requiring Tracking

This bill would require law enforcement agencies to report information regarding rape kit evidence to the department through a database established by the Department of Justice (DOJ). For the reporting period set up by the DOJ the agency will report the number of kits collected; the number of kits from which one or more biological samples were submitted to a DNA laboratory for analysis; the number of kits from which a probative DNA profile was generated; and, the reason or reasons for not submitting evidence from a given rape kit to a DNA laboratory

for processing. The agency shall also report the reason any kit submitted for processing has not been processed within 120 days. The DOJ will then compile the information in an annual report to the Legislature.

#### **4. Support**

CALCASA supports this bill stating in part:

In recent years, the federal government identified hundreds of thousands of rape kits that have gone unanalyzed, known as the “rape kit backlog.” Some jurisdictions have worked to decrease their backlogs to varying degrees. However, in California, no comprehensive data is currently available about the number of sexual assault evidence kits that local law enforcement agencies collect annually or how many of those kits are analyzed. Further, no comprehensive data exists about the reasons some sexual assault evidence kits are not analyzed.

The scope of this problem cannot be properly estimated due to a lack of effective tracking at the local level. With documented reasons for the decisions, agencies would be able to clearly demonstrate to victims, policy makers, and other interested parties why they did not request analyses of each kit.

#### **5. Opposition**

The California State Sheriffs’ Association opposes this bill stating:

We share your intent that sexual assaults are investigated and that perpetrators not go unpunished. In 2014 CSSA worked with Assembly Member Nancy Skinner to amend her AB 1517 into a final product that will help achieve those goals without being overly burdensome. However, by requiring law enforcement agencies to provide statistics to DOJ, AB 1848 will create another unfunded mandate and would place significant cost burdens on these agencies in terms of resources and personnel

Existing law permits law enforcement to notify a victim about the status of his or her rape kit upon the victim’s request as well as requires law enforcement to notify a victim of his or her rape kit is going to be disposed of or not tested. We do not feel that this balanced approach requires alteration.

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