
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 22 **Hearing Date:** March 26, 2019
Author: Leyva
Version: December 3, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Rape Kits: Testing*

HISTORY

Source: Alameda County District Attorney
Joyful Heart Foundation
Natasha's Justice Project

Prior Legislation: SB 1449 (Leyva) Vetoed 2018
AB 1312 (Gonzalez Fletcher) Chapter 692, Stats. 2017
AB 1517 (Skinner) Chapter 874, Stats. 2014
AB 322 (Portantino) Vetoed 2011
AB 558 (Portantino) Vetoed 2010
AB 1017 (Portantino) Vetoed 2009
AB 898 (Chu) Chapter 537, Stats. 2003

Support: Change for Justice; Los Angeles Indivisible; National Association of Social Workers, California Chapter; Riverside Sheriffs' Association; Santa Barbara Women's Political Committee

Opposition: California Public Defenders Association

PURPOSE

The purpose of this bill is to require a law enforcement agency to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place and require a crime lab to either process the evidence or transmit the evidence to another crime lab for processing within existing specified time frames.

Existing law provides that notwithstanding any other limitation of the time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA if specified conditions are met. (Penal Code § 803(g).)

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:

- 1) 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
- 2) 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 provides that upon the request of a sexual assault victim, the law enforcement agency investigation a specified sex offense shall inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case. (Penal Code §680(c)(1))

Existing law establishes the Sexual Assault Victims' DNA Bill of Rights which provides victims of sexual assault with the following rights:

- 1) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from their case;
- 2) The right to be informed whether or not the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence has been entered into the Department of Justice (DOJ) Data Bank of case evidence; and,
- 3) The right to be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the DOJ Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation. (Penal Code, § 680 (c)(2).)

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 provides that in order to ensure that sexual assault forensic evidence is analyzed within the two year time frame required and to ensure the longest possible statute of limitations for sex offenses the following should occur:

- 1) A law enforcement agency in whose jurisdiction a specified sex offense occurred should do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.

- Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.
- 2) The crime lab should do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016.
 - Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence.
 - Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified.
 - 3) This subdivision does not require a lab to test all items of forensic evidence obtained in a sexual assault forensic evidence examination.
 - 4) This section does not require a DNA profile to be uploaded into CODIS if it does not meet the federal guidelines.
 - 5) A rapid turnaround DNA program is a program for training of sexual assault team personnel in the selection of a representative samples of forensic evidence from the victim to be the best evidence based on the medical evaluation and patient history, the collection and preservation of that evidence, and the transfer of the evidence directly from the medical facility to the crime lab, which is adopted pursuant to a written agreement between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is based. (Penal Code § 680 (b)(7))

This bill provides instead that in order to ensure that sexual assault forensic evidence is analyzed within the two year time frame required and to ensure the longest possible statute of limitations for sex offenses the following *shall* occur:

- 1) A law enforcement agency in whose jurisdiction a specified sex offense occurred *shall* do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.
 - Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

- 2) The crime lab *shall* do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016.
- Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence.
 - Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab *shall* upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified.

This bill provides that the sum of two million dollars is hereby appropriated from the General Fund to the Department of Justice to allocate to local law enforcement agencies to assist them with complying with Penal Code Section 680.

COMMENTS

1. Need for This Bill

According to the author:

Following a sexual assault, survivors in California may elect to undergo a forensic medical examination to collect evidence in a rape kit. If the survivor chooses to report the crime, the law enforcement agency with jurisdiction over the offense will take the kit into custody and submit it to a forensic laboratory for DNA analysis.

To maximize evidentiary value and standardize investigation of sexual assault crimes, federal best practices issued by the United States Department of Justice Bureau of Justice Assistance recommend that all rape kits connected to reported crimes be swiftly submitted to laboratories and tested for DNA. Testing DNA evidence in rape kits can identify an unknown assailant, link crimes, identify serial perpetrators, and exonerate the wrongfully convicted.

As amended by Chapter 874, Statutes of 2014, California law states that law enforcement agencies “should” transfer rape kit evidence to the appropriate forensic laboratory within 20 days and that laboratories “should” process such evidence as soon as possible, but no later than 120 days, following receipt. Due to the current language of the law, this guidance is not currently being followed by a number of law enforcement agencies in the state.

Findings from public records requests filed by the Joyful Heart Foundation demonstrate significant variation in how law enforcement agencies have interpreted and implemented this legislative guidance. Only two jurisdictions of eight surveyed in 2017 reported full compliance with the intent of the law.

Across California, sexual assault survivors are not receiving equal access to justice. Depending on the jurisdiction in which the crime occurred, the timeframe for submission and analysis of their rape kits may vary widely, slowing the criminal justice process.

By amending the language of Penal Code Section 680 from “should” to “shall,” Senate Bill 22 will require all law enforcement agencies and crime labs across the state to follow federal best practices and the intent of existing law. With this change, victims reporting sexual assault across California will have equal access to the swift submission and analysis of forensic evidence associated with their cases. Rape kits must be submitted within 20 days and tested no later than 120 days after receipt, preventing the development of rape kit backlogs in evidence rooms or laboratories throughout California.

2. Should to Shall

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.

Specifically, existing law provides that law enforcement agencies should either submit sexual assault forensic evidence to a crime lab within 20 days after it is booked into or evidence or insure that rapid turnaround DNA program in in place. This bill would provide instead that law enforcement shall take one of these actions.

Existing law also encourages a crime lab that receives sexual assault forensic evidence to either process the evidence, create DNA profiles and upload qualifying DNA profiles into CODIS or transmit the sexual assault forensic evidence to another crime lab as soon as practically possible but no later than 30 days after receiving the evidence. This bill instead provides that these actions shall be taken.

What is the real impact of changing should to shall? If entities are not currently able to do cases in these time frames, or prioritize other DNA cases over some rape kits, such as those where the perpetrator is known, will changing should to shall result in cases being done more quickly?

3. Veto of SB 1449 (Leyva) 2018

A bill identical to this one was vetoed last year with the Governor saying:

I am returning Senate Bill 1449 without my signature.

This bill would require the testing of all sexual assault forensic evidence kits within a specified period of time.

The state budget that I signed this year includes a one-time total of \$7.5 million General Fund to test rape kits-\$1 million to begin conducting an audit of untested kits and \$6.5 million to help test the existing known backlog.

While I fully support the goal of this bill, I believe that we should allow for the completion of the audit mandated by AB 3118 (Chiu)-which I am signing today-as well as for the Department of Justice to further reduce the existing backlog using the recently approved significant funding increase. I would like to allow time for this year's legislative actions to take effect so we can gauge the appropriate next steps and budget accordingly.

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