
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 916 **Hearing Date:** March 15, 2022
Author: Leyva
Version: February 2, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Sexual assault: victim's rights*

HISTORY

Source: Alameda County District Attorney

Prior Legislation: AB 1312 (Gonzalez Fletcher). Chapter 692, Stats. 2017
AB 1517 (Skinner) Chapter 874, Stats. 2014
AB 898 (Chu) Chapter 537, Stats. 2003

Support: California District Attorneys Association; Peace Officers Research Association of California

Opposition: Unknown

PURPOSE

The purpose of this bill is to require the information given to a victim of sexual assault include a statement that they cannot be found in contempt for not testifying and to make it a right for a victim to request specific information from the DOJ regarding any DNA samples that were taken.

Existing law in order to ensure the 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 provides that law enforcement agencies shall submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Penal Code § 680 (c)(1)(A).)

Existing law provides for 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 (c)(1)(B))

Existing law provides crime lab shall 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 (c)(2).)

Existing law provides that law enforcement shall not destroy evidence from an unsolved sexual assault case before at least 20 years, or if the victim was a minor, before the victim turns 40 and 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, (Penal Code §§ 680 (e) (f).)

Existing law provides that upon the request of a sexual assault victim, the investigating law enforcement agency shall inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim' (Penal Code § 680(d))

Existing law provides that subject to sufficient resources to respond to requests, sexual assault victims have the following rights:

- (a) 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.
- (b) 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 DOJ Data Bank of case evidence.
- (c) 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 will not impede or compromise and investigation. (Penal Code §680 (d)(2))

This bill provides that sexual assault victims have the right to access the Department of Justice's SAFE-T database for information involving their own forensic evidence kit and the status of the kit, including to but not limited to the information listed above in Penal Code §680 (d)(2))

Existing law provides that upon 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, that explains the rights of sexual assault victims in clear language and available in all major languages. (Penal Code § 680.2(a))

Existing law provides that the card given to sexual assault victims shall include all of the following:

- a) A clear statement that the sexual assault victim is not required to participate in the criminal justice system or receive a medical evidentiary or physical examination in order to retain his or her rights under law.
- b) Telephone or Internet Web site contact information for a nearby rape crisis center and sexual counselor.
- c) Information about the types of law enforcement protection available.
- d) Instructions for requesting the results of the analysis of the victim's sexual assault forensic evidence.

- e) 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.
- f) A clear statement that the victim has the right to have a sexual assault counselor and at least one other support person present during exams or interviews.
- g) Information about the rate of potential evidence degradation.
- h) A state that if the sexual assault forensic evidence will be tested it shall be transported to a crime laboratory and analyzed within the statutory time frames.
- i) A clear statement that the crime laboratory will retain the evidence for at least 20 years or if the victim was a minor, until the victim is 40. (Penal Code § 680.2(a)(1)-(7))

This bill provides that the card given to a sexual assault victim shall also include a clear statement that under Section 1219 of the Code of Civil Procedure, a court may not imprison or otherwise confine or place in custody a victim of sexual assault or domestic violence for contempt if the contempt consists of refusing to testify concerning a crime.

COMMENTS

1. Need for This Bill

California Penal Code Section 680.2 mandates that all local law enforcement agencies develop a card that explains in clear language the rights of sexual assault survivors, and makes this card accessible to each provider in its jurisdiction responsible for medical evidentiary or physical examinations arising out of sexual assault.

Even before undergoing the rape kit process, sexual assault survivors have clearly already suffered tremendous trauma. If and when they decide to proceed with the collection of evidence in a rape kit—which oftentimes takes several hours and is extremely invasive—it is crucial that the survivor receive clear information regarding what their rights are in an easy-to-understand and succinct manner.

Senate Bill 916 will update Penal Code Section 680 to require that survivors—via the card—be made aware that they do not have to engage with law enforcement and cannot be compelled to testify in court. By empowering them with important information following the sexual assault, survivors will be able to make more informed decisions regarding what steps they wish to take or not take in the 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. It was amended again by AB 1312 (Gonzalez Fletcher). Chapter 692, Statutes of 2017 amended the bill of rights to provide that each victim should be given a card outlining their rights.

3. Victim's rights card

Existing law provides that at first contact with law enforcement a victim of sexual assault shall be given a card that outlines their rights and the laws specifies what that card shall include. This bill provides that the card shall also include that a statement that a victim cannot be found in contempt of court for refusing to testify in a sexual assault case. The author and sponsor believe that this will give the victim all the information they need to make a choice in prosecuting their case.

4. Access to DOJ SAFE-T database

Existing law provides that subject to the commitment of sufficient resources to respond to requests for information, sex assault victims have the right to be informed about whether their rape evidence kit resulted in a DNA profile, whether that profile was entered into the case evidence databank and whether there was a match to a person in the convicted offender data bank.

This bill removes the requirement that sufficient resources have been committed and instead provides that a sexual assault victim shall have the right to access DOJ's SAFE-T database for the information involving their case.

Should this be created as a "right" if the funds may or may not be available for DOJ to respond to such requests?

One of the things DOJ will have to disclose is whether a sample of the assailant's DNA was obtained and also whether the sample matched anyone in the databank. When a sample is taken, many profiles might result from a single sample and some may need to be excluded, for example a spouse or consensual sexual partner. DOJ will not necessarily know if any profile is that of an assailant or of a consensual partner, whether disclosed or not disclosed to law enforcement. Should the language be clarified so that it is not asking DOJ to give information they have no way of knowing?

-- END --