

AMENDED IN ASSEMBLY MAY 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1517

Introduced by Assembly Member Skinner

(Coauthors: Assembly Members Atkins, Bonta, Brown, Buchanan, Chávez, Eggman, Fong, Garcia, Gonzalez, Melendez, Olsen, and Quirk, Stone, Ting, Waldron, and Wieckowski)

(Coauthor: Senator Hill)

(Coauthors: Senators Corbett, Hill, Lieu, Vidak, and Wyland)

January 15, 2014

An act to amend Section 680 of the Penal Code, relating to DNA evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as amended, Skinner. DNA evidence.

Existing law establishes the “Sexual Assault Victims’ DNA Bill of Rights,” which, among other things, encourages a law enforcement agency assigned to investigate specified sexual assault offenses to perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner to assure the longest possible statute of limitations. Existing law also requires a law enforcement agency to inform victims of certain sexual assault offenses, if the identity of the perpetrator is in issue, if the law enforcement agency elects not to analyze DNA evidence within certain time limits.

This bill instead would, *with respect to specific sex offenses*, encourage a law enforcement agency *in whose jurisdiction the sexual assault offense occurred* to submit sexual assault forensic evidence *received by the agency on or after January 1, 2016*, to the crime lab ~~as soon as practically possible, but no later than 5~~ *within 10 days after being it is*

booked into evidence, and ~~that ensure that a rapid turnaround DNA program, as defined, is in place to submit forensic evidence collected from the victim of a sexual assault to the crime lab within 5 days after the evidence is obtained from the victim. The bill would also encourage the crime lab, with respect to sexual assault forensic evidence received by the lab on or after January 1, 2016, to process that evidence, create DNA profiles when able, and upload qualifying DNA profiles into the Combined DNA Index System as soon as practically possible, but no later than 30 60 days after initially receiving the evidence is submitted by a law enforcement agency, in order to assure the longest possible statute of limitations, or to 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, as specified.~~ The bill would also ~~require~~ *revise the provisions requiring a law enforcement agency to inform victims of certain sexual assault offenses, to make the requirement applicable without regard to whether or not the identity of the perpetrator is in issue, if the law enforcement agency elects does not to analyze DNA evidence, and to require those entities to notify the victims within certain 6 months of the time limits established under existing law.* By imposing ~~additional requirements~~ *a higher level of service* on local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 680 of the Penal Code is amended to
- 2 read:
- 3 680. (a) This section shall be known as and may be cited as
- 4 the “Sexual Assault Victims’ DNA Bill of Rights.”
- 5 (b) The Legislature finds and declares all of the following:

1 (1) Deoxyribonucleic acid (DNA) and forensic identification
2 analysis is a powerful law enforcement tool for identifying and
3 prosecuting sexual assault offenders.

4 (2) Victims of sexual assaults have a strong interest in the
5 investigation and prosecution of their cases.

6 (3) Law enforcement agencies have an obligation to victims of
7 sexual assaults in the proper handling, retention and timely DNA
8 testing of rape kit evidence or other crime scene evidence and to
9 be responsive to victims concerning the developments of forensic
10 testing and the investigation of their cases.

11 (4) The growth of the Department of Justice's Cal-DNA
12 databank and the national databank through the Combined DNA
13 Index System (CODIS) makes it possible for many sexual assault
14 perpetrators to be identified after their first offense, provided that
15 rape kit evidence is analyzed in a timely manner.

16 (5) Timely DNA analysis of rape kit evidence is a core public
17 safety issue affecting men, women, and children in the State of
18 California. It is the intent of the Legislature, in order to further
19 public safety, to encourage DNA analysis of rape kit evidence
20 within the time limits imposed by subparagraphs (A) and (B) of
21 paragraph (1) of subdivision (g) of Section 803.

22 ~~(6) In order to assure the longest possible statute of limitations,~~
23 ~~pursuant to subparagraphs (A) and (B) of paragraph (1) of~~
24 ~~subdivision (g) of Section 803, the following should occur:~~

25 ~~(A) A law enforcement agency assigned to investigate a sexual~~
26 ~~assault offense specified in Section 261, 261.5, 262, 286, 288a, or~~
27 ~~289 should submit sexual assault forensic evidence to the crime~~
28 ~~lab as soon as practically possible, but no later than five days after~~
29 ~~being booked into evidence.~~

30 ~~(B) The crime lab should process evidence, create DNA profiles~~
31 ~~when able, and upload qualifying DNA profiles into CODIS as~~
32 ~~soon as practically possible, but no later than 30 days after~~
33 ~~submission by a law enforcement agency.~~

34 *(6) In order to ensure that sexual assault forensic evidence is*
35 *analyzed within the two-year timeframe required by subparagraphs*
36 *(A) and (B) of paragraph (1) of subdivision (g) of Section 803 and*
37 *to ensure the longest possible statute of limitations for sex offenses,*
38 *including sex offenses designated pursuant to those subparagraphs,*
39 *the following should occur:*

1 (A) A law enforcement agency in whose jurisdiction a sex offense
2 specified in Section 261, 261.5, 262, 286, 288a, or 289 occurred
3 should do one of the following for any sexual assault forensic
4 evidence received by the law enforcement agency on or after
5 January 1, 2016:

6 (i) Submit sexual assault forensic evidence to the crime lab
7 within 10 days after it is booked into evidence.

8 (ii) Ensure that a rapid turnaround DNA program is in place
9 to submit forensic evidence collected from the victim of a sexual
10 assault directly from the medical facility where the victim is
11 examined to the crime lab within five days after the evidence is
12 obtained from the victim.

13 (B) The crime lab should do one of the following for any sexual
14 assault forensic evidence received by the crime lab on or after
15 January 1, 2016.

16 (i) Process sexual assault forensic evidence, create DNA profiles
17 when able, and upload qualifying DNA profiles into CODIS as
18 soon as practically possible, but no later than 60 days after initially
19 receiving the evidence.

20 (ii) Transmit the sexual assault forensic evidence to another
21 crime lab as soon as practically possible, but no later than 30 days
22 after initially receiving the evidence, for processing of the evidence
23 for the presence of DNA. If a DNA profile is created, the
24 transmitting crime lab should upload the profile into CODIS as
25 soon as practically possible, but no longer than 30 days after being
26 notified about the presence of DNA.

27 (C) This subdivision does not require a lab to test all items of
28 forensic evidence obtained in a sexual assault forensic evidence
29 examination. A lab is considered to be in compliance with the
30 guidelines of this section when representative samples of the
31 evidence are processed by the lab in an effort to detect foreign
32 DNA of the perpetrator.

33 (D) For purposes of this section, a “rapid turnaround DNA
34 program” is a program for the training of sexual assault team
35 personnel in the selection of representative samples of forensic
36 evidence from the victim to be the best evidence, based on the
37 medical evaluation and patient history, the collection and
38 preservation of that evidence, and the transfer of the evidence
39 directly from the medical facility to the crime lab, which is adopted
40 pursuant to a written agreement between the law enforcement

1 *agency, the crime lab, and the medical facility where the sexual*
2 *assault team is based.*

3 (7) For the purpose of this section, “law enforcement” means
4 the law enforcement agency with the primary responsibility for
5 investigating an alleged sexual assault.

6 (c) (1) Upon the request of a sexual assault victim the law
7 enforcement agency investigating a violation of Section 261, 261.5,
8 262, 286, 288a, or 289 may inform the victim of the status of the
9 DNA testing of the rape kit evidence or other crime scene evidence
10 from the victim’s case. The law enforcement agency may, at its
11 discretion, require that the victim’s request be in writing. The law
12 enforcement agency may respond to the victim’s request with
13 either an oral or written communication, or by electronic mail, if
14 an electronic mail address is available. Nothing in this subdivision
15 requires that the law enforcement agency communicate with the
16 victim or the victim’s designee regarding the status of DNA testing
17 absent a specific request from the victim or the victim’s designee.

18 (2) Subject to the commitment of sufficient resources to respond
19 to requests for information, sexual assault victims have the
20 following rights:

21 (A) The right to be informed whether or not a DNA profile of
22 the assailant was obtained from the testing of the rape kit evidence
23 or other crime scene evidence from their case.

24 (B) The right to be informed whether or not the DNA profile
25 of the assailant developed from the rape kit evidence or other crime
26 scene evidence has been entered into the Department of Justice
27 Data Bank of case evidence.

28 (C) The right to be informed whether or not there is a match
29 between the DNA profile of the assailant developed from the rape
30 kit evidence or other crime scene evidence and a DNA profile
31 contained in the Department of Justice Convicted Offender DNA
32 Data Base, provided that disclosure would not impede or
33 compromise an ongoing investigation.

34 (3) This subdivision is intended to encourage law enforcement
35 agencies to notify victims of information which is in their
36 possession. It is not intended to affect the manner of or frequency
37 with which the Department of Justice provides this information to
38 law enforcement agencies.

39 (d) If the law enforcement agency ~~elects~~ *does not to* analyze
40 DNA evidence within *six months prior to* the time limits

1 established by subparagraphs (A) and (B) of paragraph (1) of
2 subdivision (g) of Section 803, a victim of a sexual assault offense
3 specified in Section 261, 261.5, 262, 286, 288a, or 289 shall be
4 informed, either orally or in writing, of that fact by the law
5 enforcement agency.

6 (e) If the law enforcement agency intends to destroy or dispose
7 of rape kit evidence or other crime scene evidence from an
8 unsolved sexual assault case prior to the expiration of the statute
9 of limitations as set forth in Section 803, a victim of a violation
10 of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written
11 notification by the law enforcement agency of that intention.

12 (f) Written notification under subdivision (d) or (e) shall be
13 made at least 60 days prior to the destruction or disposal of the
14 rape kit evidence or other crime scene evidence from an unsolved
15 sexual assault case where the election not to analyze the DNA or
16 the destruction or disposal occurs prior to the expiration of the
17 statute of limitations specified in subdivision (g) of Section 803.

18 (g) A sexual assault victim may designate a sexual assault victim
19 advocate, or other support person of the victim's choosing, to act
20 as a recipient of the above information required to be provided by
21 this section.

22 (h) It is the intent of the Legislature that a law enforcement
23 agency responsible for providing information under subdivision
24 (c) do so in a timely manner and, upon request of the victim or the
25 victim's designee, advise the victim or the victim's designee of
26 any significant changes in the information of which the law
27 enforcement agency is aware. In order to be entitled to receive
28 notice under this section, the victim or the victim's designee shall
29 keep appropriate authorities informed of the name, address,
30 telephone number, and electronic mail address of the person to
31 whom the information should be provided, and any changes of the
32 name, address, telephone number, and electronic mail address, if
33 an electronic mailing address is available.

34 (i) A defendant or person accused or convicted of a crime against
35 the victim shall have no standing to object to any failure to comply
36 with this section. The failure to provide a right or notice to a sexual
37 assault victim under this section may not be used by a defendant
38 to seek to have the conviction or sentence set aside.

39 (j) The sole civil or criminal remedy available to a sexual assault
40 victim for a law enforcement agency's failure to fulfill its

1 responsibilities under this section is standing to file a writ of
2 mandamus to require compliance with subdivision (d) or (e).

3 SEC. 2. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

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