

ASSEMBLY BILL

No. 1848

Introduced by Assembly Member Chiu

February 9, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as introduced, Chiu. 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 unsolved sexual assault offenses if the law enforcement agency elects not to analyze DNA evidence within certain time limits.

This bill would make technical, nonsubstantive changes to these provisions.

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

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) Existing law requires an adult arrested for or charged with
5 a felony and a juvenile adjudicated for a felony to submit DNA
6 samples as a result of that arrest, charge, or adjudication.

7 (3) Victims of sexual ~~assaults~~ *assault* have a strong interest in
8 the investigation and prosecution of their cases.

9 (4) Law enforcement agencies have an obligation to victims of
10 sexual ~~assaults~~ *assault* in the proper handling, retention, and timely
11 DNA testing of rape kit evidence or other crime scene evidence
12 and to be responsive to victims concerning the developments of
13 forensic testing and the investigation of their cases.

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

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

25 (7) In order to ensure that sexual assault forensic evidence is
26 analyzed within the two-year timeframe required by subparagraphs
27 (A) and (B) of paragraph (1) of subdivision (g) of Section 803 and
28 to ensure the longest possible statute of limitations for sex offenses,
29 including sex offenses designated pursuant to those subparagraphs,
30 the following should occur:

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

36 (i) Submit sexual assault forensic evidence to the crime lab
37 within 20 days after it is booked into evidence.

38 (ii) Ensure that a rapid turnaround DNA program is in place to
39 submit forensic evidence collected from the victim of a sexual
40 assault directly from the medical facility where the victim is

1 examined to the crime lab within five days after the evidence is
2 obtained from the victim.

3 (B) The crime lab should do one of the following for any sexual
4 assault forensic evidence received by the crime lab on or after
5 January 1, ~~2016~~. 2016:

6 (i) Process sexual assault forensic evidence, create DNA profiles
7 when able, and upload qualifying DNA profiles into CODIS as
8 soon as practically possible, but no later than 120 days after initially
9 receiving the evidence.

10 (ii) Transmit the sexual assault forensic evidence to another
11 crime lab as soon as practically possible, but no later than 30 days
12 after initially receiving the evidence, for processing of the evidence
13 for the presence of DNA. If a DNA profile is created, the
14 transmitting crime lab should upload the profile into CODIS as
15 soon as practically possible, but no longer than 30 days after being
16 notified about the presence of DNA.

17 (C) This subdivision does not require a lab to test all items of
18 forensic evidence obtained in a sexual assault forensic evidence
19 examination. A lab is considered to be in compliance with the
20 guidelines of this section when representative samples of the
21 evidence are processed by the lab in an effort to detect the foreign
22 DNA of the perpetrator.

23 (D) This section does not require a DNA profile to be uploaded
24 into CODIS if the DNA profile does not meet federal guidelines
25 regarding the uploading of DNA profiles into CODIS.

26 (E) For purposes of this section, a “rapid turnaround DNA
27 program” is a program for the training of sexual assault team
28 personnel in the selection of representative samples of forensic
29 evidence from the victim to be the best evidence, based on the
30 medical evaluation and patient history, the collection and
31 preservation of that evidence, and the transfer of the evidence
32 directly from the medical facility to the crime lab, which is adopted
33 pursuant to a written agreement between the law enforcement
34 agency, the crime lab, and the medical facility where the sexual
35 assault team is based.

36 (8) For the purpose of this section, “law enforcement” means
37 the law enforcement agency with the primary responsibility for
38 investigating an alleged sexual assault.

39 (c) (1) Upon the request of a sexual assault victim, the law
40 enforcement agency investigating a violation of Section 261, 261.5,

1 262, 286, 288a, or 289 may inform the victim of the status of the
2 DNA testing of the rape kit evidence or other crime scene evidence
3 from the victim's case. The law enforcement agency may, at its
4 discretion, require that the victim's request be in writing. The law
5 enforcement agency may respond to the victim's request with
6 either an oral or written communication, or by email, if an email
7 address is available. Nothing in this subdivision requires that the
8 law enforcement agency communicate with the victim or the
9 victim's designee regarding the status of DNA testing absent a
10 specific request from the victim or the victim's designee.

11 (2) Subject to the commitment of sufficient resources to respond
12 to requests for information, sexual assault victims have the
13 following rights:

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

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

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

27 (3) This subdivision is intended to encourage law enforcement
28 agencies to notify victims of information which is in their
29 possession. It is not intended to affect the manner of or frequency
30 with which the Department of Justice provides this information to
31 law enforcement agencies.

32 (d) If the law enforcement agency does not analyze DNA
33 evidence within six months prior to the time limits established by
34 subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of
35 Section 803, a victim of a sexual assault offense specified in
36 Section 261, 261.5, 262, 286, 288a, or 289 shall be informed, either
37 orally or in writing, of that fact by the law enforcement agency.

38 (e) If the law enforcement agency intends to destroy or dispose
39 of rape kit evidence or other crime scene evidence from an
40 unsolved sexual assault case prior to the expiration of the statute

1 of limitations as set forth in Section 803, a victim of a violation
2 of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written
3 notification by the law enforcement agency of that intention.

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

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

14 (h) It is the intent of the Legislature that a law enforcement
15 agency responsible for providing information under subdivision
16 (c) do so in a timely manner and, upon request of the victim or the
17 victim's designee, advise the victim or the victim's designee of
18 any significant changes in the information of which the law
19 enforcement agency is aware. In order to be entitled to receive
20 notice under this section, the victim or the victim's designee shall
21 keep appropriate authorities informed of the name, address,
22 telephone number, and email address of the person to whom the
23 information should be provided, and any changes of the name,
24 address, telephone number, and email address, if an email address
25 is available.

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

31 (j) The sole civil or criminal remedy available to a sexual assault
32 victim for a law enforcement agency's failure to fulfill its
33 responsibilities under this section is standing to file a writ of
34 mandamus to require compliance with subdivision (d) or (e).