

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1848

Introduced by Assembly Member Chiu

February 9, 2016

An act to ~~amend Section 680 of~~ *add Section 680.1* to the Penal Code, relating to DNA evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as amended, 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 require law enforcement agencies to report information regarding rape kit evidence to the department through a database established by the department. The bill would require that information to include, among other things, the number of kits collected, the number of kits from which one or more biological evidence samples were submitted to a DNA laboratory for analysis, and the number of kits from which a probative DNA profile was generated. The bill would additionally require a public DNA laboratory, or a law enforcement agency contracting with a private laboratory, to provide a reason for not testing a sample every 120 days the sample is untested. By imposing

additional duties on local law enforcement, this bill would create a state-mandated local program.

This bill would require the department to file a report to the Legislature on a quarterly basis summarizing the information in its database. The bill would prohibit law enforcement agencies or laboratories from being compelled to provide any contents of the database in a civil or criminal case, except as required by a law enforcement agency’s duty to produce exculpatory evidence to a defendant in a criminal case.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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.

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

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

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

- 1 *SECTION 1. Section 680.1 is added to the Penal Code, to read:*
- 2 *680.1. (a) The Legislature finds and declares the following:*
- 3 *(1) There is a significant public interest in knowing what*
- 4 *percentage of rape kit biological samples are analyzed for the*
- 5 *perpetrator’s DNA profile, as well as why any untested rape kit*
- 6 *samples are not analyzed. Currently, there is no mandatory*
- 7 *statewide tracking mechanism in place to collect and report these*
- 8 *metrics. It is the intent of the Legislature in enacting this section,*
- 9 *pursuant to recommendations by the California State Auditor to*
- 10 *the Joint Legislative Audit Committee, to correct that.*

1 (2) *In 2015, the Department of Justice created the Sexual Assault*
2 *Forensic Evidence Tracking (SAFE-T) database to track the status*
3 *of all sexual assault evidence kits collected in the state based on*
4 *voluntary data input from law enforcement agencies. It is the intent*
5 *of the Legislature by enacting this section to require participation*
6 *in that database.*

7 (b) *On a schedule set forth by the Department of Justice, each*
8 *law enforcement agency that has investigated a case involving the*
9 *collection of sexual assault kit evidence during the relevant period*
10 *of time, as determined by the department, shall report to the*
11 *department, through the SAFE-T database, the data required by*
12 *the department in its communications to law enforcement. The*
13 *data shall include, but are not limited to, the following:*

14 (1) *The number of kits collected during the period.*

15 (2) *The number of kits from which one or more biological*
16 *evidence samples were submitted to a DNA laboratory for analysis.*

17 (3) *The number of kits from which a probative DNA profile was*
18 *generated.*

19 (4) *The reason or reasons for not submitting evidence from a*
20 *given rape kit to a DNA laboratory for processing.*

21 (c) *After 120 days following submission of rape kit biological*
22 *evidence for processing, if a public DNA laboratory has not*
23 *conducted DNA testing, that laboratory shall provide the reasons*
24 *for the status in the appropriate SAFE-T data field. If the*
25 *investigating law enforcement agency has contracted with a private*
26 *laboratory to conduct DNA testing on rape kit evidence, the*
27 *submitting law enforcement agency shall provide the 120-day*
28 *update in SAFE-T. The process described in this subdivision shall*
29 *take place every 120 days until DNA testing occurs.*

30 (d) *The SAFE-T database shall not contain any identifying*
31 *information about a victim or a suspect, shall not contain any DNA*
32 *profiles, and shall not contain any information that would impair*
33 *a pending criminal investigation.*

34 (e) *On a quarterly basis, the Department of Justice shall file a*
35 *report to the Legislature in compliance with Section 9795 of the*
36 *Government Code summarizing data entered into the SAFE-T*
37 *database during that year. The report shall not reference individual*
38 *victims, suspects, investigations, or prosecutions. The report shall*
39 *be made public by the department.*

1 (f) Except as provided in subdivision (e), in order to protect the
2 confidentiality of the SAFE-T database information, SAFE-T
3 database contents shall be confidential and a participating law
4 enforcement agency or laboratory shall not be compelled in a
5 criminal or civil proceeding, except as required by a law
6 enforcement agency's duty to produce exculpatory evidence to a
7 criminal defendant, to provide any SAFE-T database contents to
8 any person or party seeking those records or information.

9 SEC. 2. The Legislature finds and declares that Section 1 of
10 this act, which adds Section 680.1 to the Penal Code, imposes a
11 limitation on the public's right of access to the meetings of public
12 bodies or the writings of public officials and agencies within the
13 meaning of Section 3 of Article I of the California Constitution.
14 Pursuant to that constitutional provision, the Legislature makes
15 the following findings to demonstrate the interest protected by this
16 limitation and the need for protecting that interest:

17 In order to protect the privacy of victims of crime, it is necessary
18 to keep the information in the SAFE-T database confidential.

19 SEC. 3. If the Commission on State Mandates determines that
20 this act contains costs mandated by the state, reimbursement to
21 local agencies and school districts for those costs shall be made
22 pursuant to Part 7 (commencing with Section 17500) of Division
23 4 of Title 2 of the Government Code.

24 SECTION 1. ~~Section 680 of the Penal Code is amended to~~
25 ~~read:~~

26 ~~680. (a) This section shall be known as and may be cited as~~
27 ~~the "Sexual Assault Victims' DNA Bill of Rights."~~

28 ~~(b) The Legislature finds and declares all of the following:~~

29 ~~(1) Deoxyribonucleic acid (DNA) and forensic identification~~
30 ~~analysis is a powerful law enforcement tool for identifying and~~
31 ~~prosecuting sexual assault offenders.~~

32 ~~(2) Existing law requires an adult arrested for or charged with~~
33 ~~a felony and a juvenile adjudicated for a felony to submit DNA~~
34 ~~samples as a result of that arrest, charge, or adjudication.~~

35 ~~(3) Victims of sexual assault have a strong interest in the~~
36 ~~investigation and prosecution of their cases.~~

37 ~~(4) Law enforcement agencies have an obligation to victims of~~
38 ~~sexual assault in the proper handling, retention, and timely DNA~~
39 ~~testing of rape kit evidence or other crime scene evidence and to~~

1 be responsive to victims concerning the developments of forensic
2 testing and the investigation of their cases.

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

8 ~~(6) Timely DNA analysis of rape kit evidence is a core public~~
9 ~~safety issue affecting men, women, and children in the State of~~
10 ~~California. It is the intent of the Legislature, in order to further~~
11 ~~public safety, to encourage DNA analysis of rape kit evidence~~
12 ~~within the time limits imposed by subparagraphs (A) and (B) of~~
13 ~~paragraph (1) of subdivision (g) of Section 803.~~

14 ~~(7) In order to ensure that sexual assault forensic evidence is~~
15 ~~analyzed within the two-year timeframe required by subparagraphs~~
16 ~~(A) and (B) of paragraph (1) of subdivision (g) of Section 803 and~~
17 ~~to ensure the longest possible statute of limitations for sex offenses,~~
18 ~~including sex offenses designated pursuant to those subparagraphs,~~
19 ~~the following should occur:~~

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

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

27 ~~(ii) Ensure that a rapid turnaround DNA program is in place to~~
28 ~~submit forensic evidence collected from the victim of a sexual~~
29 ~~assault directly from the medical facility where the victim is~~
30 ~~examined to the crime lab within five days after the evidence is~~
31 ~~obtained from the victim.~~

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

35 ~~(i) Process sexual assault forensic evidence, create DNA profiles~~
36 ~~when able, and upload qualifying DNA profiles into CODIS as~~
37 ~~soon as practically possible, but no later than 120 days after initially~~
38 ~~receiving the evidence.~~

39 ~~(ii) Transmit the sexual assault forensic evidence to another~~
40 ~~crime lab as soon as practically possible, but no later than 30 days~~

1 after initially receiving the evidence, for processing of the evidence
2 for the presence of DNA. If a DNA profile is created, the
3 transmitting crime lab should upload the profile into CODIS as
4 soon as practically possible, but no longer than 30 days after being
5 notified about the presence of DNA.

6 ~~(C) This subdivision does not require a lab to test all items of~~
7 ~~forensic evidence obtained in a sexual assault forensic evidence~~
8 ~~examination. A lab is considered to be in compliance with the~~
9 ~~guidelines of this section when representative samples of the~~
10 ~~evidence are processed by the lab in an effort to detect the foreign~~
11 ~~DNA of the perpetrator.~~

12 ~~(D) This section does not require a DNA profile to be uploaded~~
13 ~~into CODIS if the DNA profile does not meet federal guidelines~~
14 ~~regarding the uploading of DNA profiles into CODIS.~~

15 ~~(E) For purposes of this section, a “rapid turnaround DNA~~
16 ~~program” is a program for the training of sexual assault team~~
17 ~~personnel in the selection of representative samples of forensic~~
18 ~~evidence from the victim to be the best evidence, based on the~~
19 ~~medical evaluation and patient history, the collection and~~
20 ~~preservation of that evidence, and the transfer of the evidence~~
21 ~~directly from the medical facility to the crime lab, which is adopted~~
22 ~~pursuant to a written agreement between the law enforcement~~
23 ~~agency, the crime lab, and the medical facility where the sexual~~
24 ~~assault team is based.~~

25 ~~(8) For the purpose of this section, “law enforcement” means~~
26 ~~the law enforcement agency with the primary responsibility for~~
27 ~~investigating an alleged sexual assault.~~

28 ~~(e) (1) Upon the request of a sexual assault victim, the law~~
29 ~~enforcement agency investigating a violation of Section 261, 261.5,~~
30 ~~262, 286, 288a, or 289 may inform the victim of the status of the~~
31 ~~DNA testing of the rape kit evidence or other crime scene evidence~~
32 ~~from the victim’s case. The law enforcement agency may, at its~~
33 ~~discretion, require that the victim’s request be in writing. The law~~
34 ~~enforcement agency may respond to the victim’s request with~~
35 ~~either an oral or written communication, or by email, if an email~~
36 ~~address is available. Nothing in this subdivision requires that the~~
37 ~~law enforcement agency communicate with the victim or the~~
38 ~~victim’s designee regarding the status of DNA testing absent a~~
39 ~~specific request from the victim or the victim’s designee.~~

1 ~~(2) Subject to the commitment of sufficient resources to respond~~
2 ~~to requests for information, sexual assault victims have the~~
3 ~~following rights:~~

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

7 ~~(B) The right to be informed whether or not the DNA profile~~
8 ~~of the assailant developed from the rape kit evidence or other crime~~
9 ~~scene evidence has been entered into the Department of Justice~~
10 ~~Data Bank of case evidence.~~

11 ~~(C) The right to be informed whether or not there is a match~~
12 ~~between the DNA profile of the assailant developed from the rape~~
13 ~~kit evidence or other crime scene evidence and a DNA profile~~
14 ~~contained in the Department of Justice Convicted Offender DNA~~
15 ~~Data Base, provided that disclosure would not impede or~~
16 ~~compromise an ongoing investigation.~~

17 ~~(3) This subdivision is intended to encourage law enforcement~~
18 ~~agencies to notify victims of information which is in their~~
19 ~~possession. It is not intended to affect the manner of or frequency~~
20 ~~with which the Department of Justice provides this information to~~
21 ~~law enforcement agencies.~~

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

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

34 ~~(f) Written notification under subdivision (d) or (e) shall be~~
35 ~~made at least 60 days prior to the destruction or disposal of the~~
36 ~~rape kit evidence or other crime scene evidence from an unsolved~~
37 ~~sexual assault case where the election not to analyze the DNA or~~
38 ~~the destruction or disposal occurs prior to the expiration of the~~
39 ~~statute of limitations specified in subdivision (g) of Section 803.~~

1 ~~(g) A sexual assault victim may designate a sexual assault victim~~
2 ~~advocate, or other support person of the victim's choosing, to act~~
3 ~~as a recipient of the above information required to be provided by~~
4 ~~this section.~~

5 ~~(h) It is the intent of the Legislature that a law enforcement~~
6 ~~agency responsible for providing information under subdivision~~
7 ~~(c) do so in a timely manner and, upon request of the victim or the~~
8 ~~victim's designee, advise the victim or the victim's designee of~~
9 ~~any significant changes in the information of which the law~~
10 ~~enforcement agency is aware. In order to be entitled to receive~~
11 ~~notice under this section, the victim or the victim's designee shall~~
12 ~~keep appropriate authorities informed of the name, address,~~
13 ~~telephone number, and email address of the person to whom the~~
14 ~~information should be provided, and any changes of the name,~~
15 ~~address, telephone number, and email address, if an email address~~
16 ~~is available.~~

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

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