

AMENDED IN ASSEMBLY MAY 9, 2016  
AMENDED IN ASSEMBLY MARCH 15, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1848**

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**Introduced by Assembly ~~Member Chiu~~ Members *Chiu and Quirk*  
(Principal coauthor: *Assembly Member Burke*)  
(Coauthors: *Assembly Members Cooper, Cristina Garcia, and Weber*)  
(Coauthor: *Senator Glazer*)**

February 9, 2016

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An act to 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~~. *untested, except as specified*. 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~~ *on an annual* 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.

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 680.1 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,

1 pursuant to recommendations by the California State Auditor to  
2 the Joint Legislative Audit Committee, to correct that.

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

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

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

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

19 (3) The number of kits from which a probative DNA profile  
20 was generated.

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

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

33 (d) *Upon expiration of a sexual assault case's statute of*  
34 *limitations set forth in Section 803, or if a law enforcement agency*  
35 *elects not to analyze the DNA or intends to destroy or dispose of*  
36 *the crime scene evidence pursuant to subdivision (f) of Section*  
37 *680, the investigating law enforcement agency shall state in writing*  
38 *the reason the kit collected as part of that case's investigation was*  
39 *not analyzed. This written statement relieves the investigating law*

1 *enforcement agency or public laboratory of any further duty to*  
2 *report information related to that kit pursuant to this section.*

3 ~~(d)~~

4 (e) The SAFE-T database shall not contain any identifying  
5 information about a victim or a suspect, shall not contain any DNA  
6 profiles, and shall not contain any information that would impair  
7 a pending criminal investigation.

8 ~~(e)~~

9 (f) ~~On a quarterly~~ *an annual* basis, the Department of Justice  
10 shall file a report to the Legislature in compliance with Section  
11 9795 of the Government Code summarizing data entered into the  
12 SAFE-T database during that year. The report shall not reference  
13 individual victims, suspects, investigations, or prosecutions. The  
14 report shall be made public by the department.

15 ~~(f)~~

16 (g) Except as provided in subdivision ~~(e)~~, (f), in order to protect  
17 the confidentiality of the SAFE-T database information, SAFE-T  
18 database contents shall be confidential and a participating law  
19 enforcement agency or laboratory shall not be compelled in a  
20 criminal or civil proceeding, except as required by a law  
21 enforcement agency’s duty to produce exculpatory evidence to a  
22 criminal defendant, to provide any SAFE-T database contents to  
23 any person or party seeking those records or information.

24 SEC. 2. The Legislature finds and declares that Section 1 of  
25 this act, which adds Section 680.1 to the Penal Code, imposes a  
26 limitation on the public’s right of access to the meetings of public  
27 bodies or the writings of public officials and agencies within the  
28 meaning of Section 3 of Article I of the California Constitution.  
29 Pursuant to that constitutional provision, the Legislature makes  
30 the following findings to demonstrate the interest protected by this  
31 limitation and the need for protecting that interest:

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

34 SEC. 3. If the Commission on State Mandates determines that  
35 this act contains costs mandated by the state, reimbursement to  
36 local agencies and school districts for those costs shall be made  
37 pursuant to Part 7 (commencing with Section 17500) of Division  
38 4 of Title 2 of the Government Code.

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