
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1744 **Hearing Date:** June 21, 2016
Author: Cooper
Version: May 5, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Sexual Assault Forensic Medical Evidence Kit*

HISTORY

Source: California Clinical Forensic Medical Training Center

Prior Legislation: AB 1475 (Cooper) – Chapter 210, Stats. 2015
AB 1517 (Skinner) – Chapter 874, Stats. 2014
SB 271 (Wyland) not heard 2012
AB 322 (Portantino) Vetoed 2011

Support: Alameda County District Attorney; Attorney General's Office; CALCASA;
California District Attorneys Association; California Association of Crime
Laboratory Directors; California Peace Officers' Association; California Sexual
Assault Investigators Association; Crime Victims United of California

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to require the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists to work collaboratively with public crime laboratories, in conjunction with the California Clinical Forensic Medical Training Center, to develop a standardized sexual assault forensic medical evidence kit for use by all California jurisdictions.

Existing law codifies the "Sexual Assault Victims' DNA Bill of Rights." (Penal Code, § 680.)

Existing law states that to ensure the delivery of standardized curriculum, essential for consistent examination procedures throughout the state, one hospital-based training center shall be established through a competitive bidding process, to train medical personnel on how to perform medical evidentiary examinations for victims of child abuse or neglect, sexual assault, domestic violence, elder abuse, and abuse or assault perpetrated against persons with disabilities. (Penal Code, § 13823.99 (b).)

Existing law requires the hospital based training center to provide training for investigative and court personnel involved in dependency and criminal proceedings, on how to interpret the findings of medical evidentiary examinations. (Penal Code, § 13823.99 (b).)

Existing law provides the training provided by the training center shall be made available to medical personnel, law enforcement, and the courts throughout the state and meet specified criteria. (Penal Code § 13823.99 (b) and (c).)

Existing law requires the training center to develop and implement a standardized training program for medical personnel that has been reviewed and approved by a multidisciplinary peer review committee. (Penal Code, § 13823.99 (d)(1).)

This bill provides that the Department of Justice’s Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists shall provide leadership and work collaboratively with public crime laboratories to develop a standardized sexual assault forensic medical evidence for use by all California jurisdictions.

This bill provides that the packaging and appearance of the kit may vary, but the kit shall contain a minimum number of basic components and also clearly permit swabs or representative evidence samples to be earmarked for a rapid turnaround DNA program when applicable.

This bill provides that the collaboration to establish the basic components for a standardized sexual assault forensic medical evidence kit would be completed by January 30, 2018 and shall be conducted in conjunction with the California Clinical Forensic Medical Training Center that is responsible for the development of sexual assault standardized forensic medical report forms and for providing training programs.

This bill provides that on or before May 30, 2019, the California Clinical Forensic Medical Training Center, in coordination with the Department of Justice’s Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists shall issue guidelines pertaining to the use of the standardized sexual assault kit components throughout the state.

This bill provides that every local and state agency shall remain responsible for its own costs in purchasing a standardized sexual assault forensic medical evidence kit.

This bill provides that failure to use the standardized sexual assault forensic medical evidence kit created under this bill shall not constitute grounds to exclude evidence.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

There are variations in sexual assault forensic medical evidence kits in California. The CA Department of Justice Bureau of Forensic Services (BFS) serves 48 counties with one kit. The ten large California counties have separate kits. This causes problems for sexual assault nurse examiners who perform sexual assault forensic medical exams for several jurisdictions. Their job is to collect evidence (including DNA evidence) and properly preserve, package and label it to ensure that chain of custody has been properly followed for all exams.

Sexual assault victims and California communities expect effective and competent intervention at from all disciplines in response to sexual assault. Inter-agency cooperation and collaboration within disciplines is essential to deliver optimum care to victims of sexual assault.

There are approximately 10-12 different sexual assault evidence “rape kits” used in California. Some forensic medical examination teams are required to be familiar with multiple kits which creates the potential for error.

Currently, crime laboratories create their own kits based on the statutory exam elements and the required standard state form. As a result, there are variations among crime laboratories. Some exam teams serve multiple crime laboratories depending upon which law enforcement jurisdiction the crime occurred and must adapt to variations in crime laboratory evidence kits.

AB 1744 would require that the California Department of Justice’s Bureau of Forensic Services, the California Association of Crime Laboratory Directors, the California Association of Criminalists and the California Clinical Forensic Medical Training Center to collaborate and develop a standardized sexual assault evidence kit.

2. Bureau of Forensic Services

The Bureau of Forensic Services (BFS) is the scientific arm of the Attorney General’s Office whose mission is to serve the people of California on behalf of the Attorney General’s Office. Forensic scientists collect, analyze, and compare physical evidence from suspected crimes. They provide analysis of evidence in toxicology, including alcohol, controlled substances and clandestine drug labs, biology and DNA, firearms, impression evidence such as shoeprints, tire marks or fingerprints, trace evidence including hair, fibers, and paint, and crime-scene analysis of blood spatter patterns and evidence collection, and they testify in state and federal court cases about their analyses in criminal trials. Descriptions of the forensic services BFS provides as well as the BFS regional service areas can be found on the BFS Laboratory Services page. BFS also offers specialized forensic science training to personnel who are practitioners in the field of forensic science through the California Criminalistics Institute (CCI). (<https://oag.ca.gov/bfs>) 3)

3. California Clinical Forensic Medical Training Center

The California Clinical Forensic Medical Training Center was established by state law in 1995 to increase access by victims of interpersonal violence to trained nursing and medical professionals. The California legislature determined that access to healthcare professionals knowledgeable about medical evidentiary examinations and psychological trauma caused by violence and abuse was uneven in both rural and urban areas throughout California. As a result, laws were enacted to meet this need and create this public policy direction. The Center is primarily funded by the California Governor’s Office of Emergency Services (Cal OES) with Federal and State funds, and other sources of funding. (www.ccfmtc.org/about-us-2/history-and-mission/)

4. Standardized Sexual Assault Evidence Collection Kits

The U.S. Department of Justice developed a national protocol for sexual assault examinations in 2004. The protocol has continued to be updated. This protocol was developed with the input of national, local, and tribal experts throughout the country, including law enforcement representatives, prosecutors, advocates, medical personnel, forensic scientists, and others. The protocol recommended that sexual assault examine kits meet minimum standards. It also suggested standardization of sexual assault evidence collection kits within a jurisdiction and across a state, although it recognized potential issues with standardization. (A National Protocol for Sexual Assault Medical Forensic Examinations, U.S. DOJ, Office on Violence Against Women, April 2013, p. 71.)

To the extent that evidence kits are standardized, the protocol makes the following recommendations (Id. at p. 72.):

- a) That a designated agency in the jurisdiction be responsible for oversight of kit development and distribution.
- b) Ensure that facilities that conduct sexual assault medical forensic exams are involved in kit development and supplied with kits.
- c) Work with relevant agencies (e.g., crime labs, law enforcement agencies, exam facilities and examiner programs, advocacy programs, and prosecutors' offices) to keep abreast of related changes in technology, scientific advances, and cutting-edge practice.
- d) Review periodically (e.g., every 2 to 3 years) kit efficiency and usefulness.
- e) Make adjustments to the kit as necessary.
- f) Establish mechanisms to ensure that kits at exam facilities are kept up to date (e.g., if a new evidence collection procedure is added, facilities need to know what additional supplies should be readily available).

The protocol recognized the potential challenges of a standardized sexual assault evidence collection kit. Some challenges could include building consensus across communities regarding best practices, obtaining buy-in from involved agencies, and costs to the state and local communities.

This bill has the Department of Justice's Bureau of Forensic Services, the California Association of Criminalists and the California Association of Crime Laboratories work together to create a standardized sexual assault forensic medical kit for use in California.

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