
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2499 **Hearing Date:** June 28, 2016
Author: Maienschein
Version: May 27, 2016
Urgency: No **Fiscal:** Yes
Consultant: ML

Subject: *Sexual Assault Evidence Kits*

HISTORY

Source: Natasha's Justice Project; Alameda County District Attorney

Prior Legislation: AB 1848 (Chiu), pending in Assembly Appropriations Committee
AB 909 (Quirk), pending in Senate Appropriations Committee
AB 1517 (Skinner), Chapter 874, Statutes 2014
AB 558 (Portantino), 2009-2010 Legislative Session, vetoed by Governor
AB 898 (Chu), Chapter 537, Statutes 2003

Support: CALCASA; California Police Chiefs Association; Californians for Safety and Justice; Crime Victims United of California; Joyful Heart Foundation

Opposition: None Known

Assembly Floor Vote: 80 - 0

PURPOSE

The purpose of this bill is to require the Department of Justice (DOJ), on or before July 1, 2018 to establish a process by which victims of sexual assault may inquire to review the disposition of their rape kit.

Existing law establishes the DNA and Forensic Identification Database and Data Bank Program to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious and accurate detection and prosecution of individuals responsible for sex offenses and other crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children. (Penal Code, §§ 295, 295.1.)

Existing law encourages DNA analysis of rape kits within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. (Penal Code, § 680, subd. (b)(6).)

Existing law encourages law enforcement agencies to submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Penal Code, § 680, subd. (b)(7)(A)(i).)

Existing law encourages the establishment of rapid turnaround DNA programs, where the rape kit is sent directly from the facility where it was collected to the lab for testing within five days. (Penal Code, § 680, subs. (b)(7)(A)(ii) and (E).)

Existing law Encourages crime labs to do one of the following:

- a) Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into the combined DNA Index System (CODIS) within 120 days of receipt of the rape kit; or
- b) Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA. (Penal Code, § 680, subd. (b)(7)(B).)

Existing law requires law enforcement agencies to inform victims of sexual assault, as specified, to notify the victim if their rape kit is not tested six months prior to the statute of limitations for underlying sexual assault offense. (Penal Code, § 680, subd. (d).)

Existing law requires law enforcement agencies to inform victims of sexual assault, as specified, to notify the victim if the law enforcement agency intends to destroy a rape kit in an unsolved case prior to the expiration of the statute of limitations for the underlying sexual assault offense. (Penal Code, § 680, subd. (e).)

Existing law allows law enforcement agencies to inform victims of sexual assault, as specified, of the status of their rape kit when the victim requests an update. (Penal Code, § 680, subd. (c).)

Existing law states that sexual assault victims have the following rights, subject to the commitment of sufficient resources to respond to requests for information:

- c) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of their rape kit or from other evidence from the crime scene,
- d) The right to be informed whether or not the DNA profile of the assailant has been entered into DOJ's Data Bank of case evidence, and
- e) The right to be informed whether or not there was a match between the DNA profile of the assailant and a DNA profile contained in CODIS, provided that disclosure would not impede or compromise an ongoing investigation. (Penal Code, § 680, subd. (c)(2).)

Existing law encourages law enforcement to notify victims of information in their possession regarding victims' rape kits. (Penal Code, § 680, subd. (c)(2).)

This bill requires the Department of Justice (DOJ), on or before July 1, 2018 and in consultation with law enforcement agencies and crime victims groups, to establish a process by which victims of sexual assault may inquire regarding the location and information of their sexual assault evidence kits.

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. Stated Need for This Bill

According to the author:

Last year the Department of Justice created and implemented the Sexual Assault Forensic Evidence Tracking program of its own volition. We applaud the Department for doing that. However, there is no mechanism in the program for a survivor of sexual assault and rape to track and see the information regarding her/his Rape Kit. The program is purely for internal purposes and to be used by law enforcement agencies only. A victim has no way of knowing where the kit is located in the analysis process or if it has even gotten to that step yet.

2. Background - SAFE-T and the Disposition of Rape Kits

The Sexual Assault Forensic Evidence Tracking program (SAFE-T) was created by DOJ in 2015 in part to help track how many rape kits were not being tested and why, to help determine the scope of the problem and to determine if mandatory testing may lead to the apprehension of more repeat offenders or the exoneration of more criminal defendants. SAFE-T is accessible only by law enforcement agencies and DOJ, due to the sensitive investigatory and privacy concerns of the information contained in the database. The database includes the disposition of rape kits both at the local law enforcement agency investigating the sexual assault allegation and the disposition of rape kits that have been sent to a crime laboratory for testing.

Rape kits can have many dispositions. A law enforcement agency may not refer a rape kit for testing if they do not believe a crime has occurred, if the agency has already identified the suspect, or if the agency believes they do not need further evidence to prosecute. If the law enforcement agency does refer a rape kit for testing, the investigator may request that a crime lab analyze a rape kit to try to match the DNA profile to a suspect in the investigation. The lab can then upload the profile to CODIS, a network of local, state, and federal databases that allows law enforcement agencies to test DNA profiles against one another. With access to SAFE-T, victims could see if their rape kit has been referred for testing or if testing has been completed.

This bill would create a process in which the victim can view the disposition of their rape kit.

3. Interaction with AB 1848

This bill would not provide information regarding why a rape kit has or has not been tested, but AB 1848 (Chiu) would require more information to be entered into SAFE-T that victims would be able to access should both AB 1848 and this bill pass. Currently, neither crime laboratories nor law enforcement agencies are required to test rape kits, nor are they currently required to include in SAFE-T the reasons why any particular rape kit has not been tested. AB 1848 (Chiu), would require law enforcement agencies to include the reason or reasons why each rape kit under their control has not been tested.

4. Argument in Support

The Alameda County District Attorney stated, in part:

Law enforcement agencies are not required to track or report the number of sexual assault kits (SAKs) that are collected and how many go unanalyzed. Due to this lack of requirements, the total number of unanalyzed SAKs statewide is unknown, which deprives victims of justice and closure while allowing perpetrators to walk free. In 2014, faced with a mounting backlog of agencies to submit to government crime labs to process SAKs we sponsored AB 1517 which created tight timelines for law enforcement agencies to submit to government crime labs to process SAKs. In 2015, the Department of Justice created a program of its own that would track SAKs in the analysis process. This program is called the Sexual Assault Forensic Evidence Tracking Program, or SAFE-T, but it does not permit victims to have access to the program to get information regarding the status of their SAK.

AB 2499 will give a victim of sexual assault to track the process of their SAK kit while it is being analyzed and processed in the crime lab via a secure, electronic process. This will provide victims with the peace of mind by being able to see where their SAK is in the process and ensure that law enforcement is doing their duty to analyze the SAK in a timely manner.

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