SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 909	**Hearing Date:**	June 23, 2015
Author:	Quirk		
Version:	February 26, 2015		
Urgency:	No	**Fiscal:**	Yes
Consultant:	JRD		

Subject: ***Sexual Assault Crimes***

HISTORY

Source: Unknown

Prior Legislation: AB 1517 (Skinner) – Chapter 874, Statutes of 2014
SB 978 (DeSaulnier) – Chapter 136, Statutes of 2014
AB 322 (Portantino) – vetoed by Governor, 2011-12
AB 558 (Portantino) – vetoed by Governor, 2009-10
AB 1017 (Portantino) – vetoed by Governor, 2009-10

Support: National Association of Social Workers

Opposition: California State Sheriffs' Association

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to require: 1) law enforcement agencies responsible for taking or processing rape kit evidence to annually report to the Department of Justice (DOJ) specified information pertaining to the processing of rape kits; and 2) DOJ to submit a report to the appropriate policy committees of the Legislature summarizing the information DOJ receives, as specified.

Existing law establishes the Sexual Assault Victims' DNA Bill of Rights which provides victims of sexual assault with the following rights:

- The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from their case;

- The right to be informed whether or not the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence has been entered into DOJ Data Bank of case evidence; and,

- The right to be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA

profile contained in the DOJ Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation.

(Penal Code § 680(c)(2).)

Existing law states the Legislative finding that law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention, and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases. (Penal Code § 680(b)(4).)

Existing law specifies that law enforcement should do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2015:

- Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence; or

- Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

(Penal Code § 680(b)(7)(A).)

Existing law specifies that the crime lab should do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016:

- Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into the Combined DNA Index System (CODIS) as soon as practically possible, but not later than 120 days after initially receiving the evidence; or

- Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab should upload the profile into CODIS as soon as practically possible, but no later than 30 days after being notified about the presence of DNA.

(Penal Code § 680(b)(7)(B).)

Existing law provides that the above provisions establishing timelines for testing DNA do not require a lab to test all items of forensic evidence obtained in a sexual assault forensic evidence examination. A lab is considered to be in compliance with the guidelines set forth in those provisions when representative samples of the evidence are processed by the lab in an effort to detect the foreign DNA of the perpetrator. (Penal Code § 680(b)(7)(C).)

Existing law defines "rapid turnaround DNA program" as a program for the training of sexual assault team personnel in the selection of representative samples of forensic evidence from the victim to be the best evidence, based on the medical evaluation and patient history, the collection and preservation of that evidence, and the transfer of the evidence directly from the medical facility to the crime lab, which is adopted pursuant to a written agreement between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is

based. (Penal Code § 680(b)(7)(E).)

Existing law states if the law enforcement agency elects not to analyze DNA evidence within 6 months prior to the established time limits, a victim of a sexual assault offense as specified, shall be informed, either orally or in writing, of that fact by the law enforcement agency. (Penal Code § 680(d).)

Existing law states notwithstanding any other limitation of time described, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

- The crime is one that requires the defendant to register as a sex offender; and,
- The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(Penal Code § 803(g)(1).)

This bill requires a law enforcement agency responsible for taking or processing rape kit evidence to annually report, by July 1 of each year, the following information to the Department of Justice:

- The number of rape kits the law enforcement agency collects;
- The number of rape kits the law enforcement agency collects that are tested; and
- The number of rape kits the law enforcement agency collects that are not tested and the reason the rape kit was not tested.

This bill requires, beginning January 1, 2017, and each January 1 after that date, DOJ to submit a report to the appropriate policy committees of the Legislature summarizing the information DOJ receives pursuant to the provisions in this bill.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 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).

While significant gains have been made in reducing the prison population, the state now 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 Legislation

According to the Author:

> Over the last several years, hundreds of thousands of unanalyzed rape kits have been discovered nationwide. In response, several states have passed legislation that sets timelines for analyzing the kits in a timely manner. Others passed measures to track and report rape kits.
>
> An October 2014 California State Auditor report highlighted the pressing need for California to more adequately track and report rape kits and recommended that law enforcement agencies report this information annually.
>
> Tracking and reporting rape kits is essential to fully understanding why investigators choose to send some kits to be analyzed and not others. It is essential to understand how large the backlog really is in order to tackle the problem effectively.

> Law enforcement agencies are not required to track or report the number of rape kits they collect or how many go unanalyzed. Further, investigators are not required to document their reasons for not submitting a rape kit to be tested. Due to the lack of tracking and reporting requirements, the total number of unanalyzed kits statewide is unknown. The unknown number of unanalyzed kits that are sitting in evidence rooms across the state allow perpetrators to walk free and deprive victims of justice.
>
> AB 909 will require local law enforcement agencies to track and report on the number of rape kits they collect, test and how many go untested. For untested rape kits, law enforcement agencies will be required to document the reason for not submitting the kit to be tested. Law enforcement agencies will also be required to submit this information to the Department of Justice annually.

2. Effect of Legislation

A recent report by the California State Auditor found that law enforcement agencies rarely document reasons for not analyzing sexual assault evidence kits. (California State Auditor, *Sexual Assault Evidence Kits* (Oct. 2014).) Specifically, the report found that:

> [i]n 45 cases . . . reviewed in which investigators at the three agencies we visited did not request a kit analysis, the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed. Among the 15 cases we reviewed at each of the three locations, we found no examples of this documentation at either the Sacramento Sheriff or the San Diego Police Department, and we found only six documented explanations at the Oakland Police Department. Investigative supervisors at both the Sacramento Sheriff and the San Diego Police Department indicated that their departments do not require investigators to document a decision not to analyze a sexual assault evidence kit. The lieutenant at the Oakland Police Department's Special Victims Section stated that, during the period covered by our review, the section expected such documentation from its investigators in certain circumstances, but that it was not a formal requirement at that time. (*Id*. at 23.)

Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases:

> Law enforcement decisions not to request sexual assault evidence kit analysis in the individual cases we reviewed appeared reasonable because kit analysis would be unlikely to further the investigation of those cases. We reviewed specific cases at each agency in which investigators did not request analysis. Our review included 15 cases from each of the three agencies we visited with offenses that occurred from 2011 through 2013, for a total of 45 cases. In those cases, we did not identify any negative effects on the investigations as a result of decisions not to request analysis. We based our conclusions on the circumstances present in the individual cases we reviewed, as documented in the files for the 45 cases and as discussed with the investigative supervisors. (*Id*. at 21.)

Even though the individual reasons for not testing the kits were found to be reasonable, the report still stressed the need for more information about why agencies decide to send some kits but not others because tracking this information would allow for internal review and would increase accountability to the public. (*Id*. at 23-24.)

Specifically, the report recommended the Legislature:

> Direct law enforcement agencies to report to Justice annually how many sexual assault evidence kits they collect and the number of kits they analyze each year. The Legislature should also direct law enforcement agencies to report annually to Justice their reasons for not analyzing sexual assault evidence kits. The Legislature should require an annual report from Justice that details this information. (*Id*. at 4.)

This legislation implements this recommendation by requiring a law enforcement agency responsible for taking or processing rape kit evidence to annually report, by July 1 of each year, to the Department of Justice: (1) the number of rape kits the law enforcement agency collects; (2) the number of rape kits the law enforcement agency collects that are tested; and, (3) the number of rape kits the law enforcement agency collects that are not tested and the reason the rape kit was not tested. This legislation, additionally, requires DOJ to prepare an annual report for the legislature.

3. Previous Legislation

AB 558 (Portantino) and AB 1017 (Portantino), of the 2009-10 Legislative Session, would have required local law enforcement agencies responsible for taking or collecting rape kit evidence to annually report to the Department of Justice statistical information pertaining to the testing and submission for DNA analysis of rape kits, and would have made the reports subject to inspection under the California Public Records Act. AB 558 and AB 1017 were both vetoed. The AB 555 veto message stated:

> This bill is similar to AB 1017 (2009), which I also vetoed. Unfortunately, while this measure is well-intended, it continues to ignore the precarious fiscal conditions of California's crime laboratories. Indeed, as noted by the California Crime Laboratory Review Task Force in its 2009 report, DNA, fingerprints, and firearms testing have been identified as areas where requests often exceed staffing capabilities. The Task Force also noted that in order to eliminate the backlog for DNA testing, an additional 282 analysts would have to be funded. Unfortunately, AB 558 will not provide any additional funding or staffing for crime laboratories and will instead divert resources away from testing to sending reports to the Department of Justice. In this time of fiscal crisis, I cannot condone this shift in priorities.

4. Argument in Support

The National Association of Social Workers, California Chapter, supports AB 909:

> [W]hich will require local law enforcement agencies to track and report on the number of rape kits they collect, how many they test and how many go untested. For untested rape kits, law enforcement agencies will be required to document the reason for not submitting the kit to be tested. Law enforcement agencies will also

be required to submit this information to the DOJ by July 1 of each year. This measure will also require the DOJ to submit an annual report to the appropriate legislative committees beginning January 1, 2017.

Currently law enforcement agencies are not required to track or report information about the number of rape kits they collect or how many go unanalyzed. Further, investigators are not required to document their reasons for not submitting a rape kit to be tested. Due to the lack of tracking and reporting requirements, the total number of unanalyzed kits statewide is unknown. The unknown number of unanalyzed kits that are sitting in evidence rooms across the state allow perpetrators to walk free and deprive victims of justice.

5. Argument in Opposition

According to the California State Sheriffs' Association,

By requiring law enforcement agencies to provide statistics to DOJ, AB 909 will create another unfunded mandate and would place significant cost burdens on these agencies in terms of resources and personnel. Doing so could inadvertently hamper our ability to process these kits.

Local law enforcement agencies are still dealing with the effects of significant budget cuts over the last several years while trying to maintain critical services. Adding an additional reporting requirement would divert limited resources away from providing current services.

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