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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 41                      **Hearing Date:** June 6, 2017  
**Author:** Chiu  
**Version:** March 27, 2017  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *DNA Evidence*

## HISTORY

**Source:** Alameda County District Attorney

**Prior Legislation:** AB 1517 (Skinner), Chapter 874, Stats. 2014,  
AB 322 (Portantino) Vetoed 2011  
AB 558 (Portantino) Vetoed 2010  
AB 1017 (Portantino) Vetoed 2009

**Support:** Association for Los Angeles Deputy Sheriffs; California College and University Police Chiefs Association; California District Attorneys Association; the California Narcotic Officers Association; City and County of San Francisco, San Francisco Department on the Status of Women; Crime Victims United of California; Joyful Heart Foundation; Junior Leagues of California; Los Angeles County District Attorney's Office; Los Angeles County Probation Officers Union AFSCME Local 685; Los Angeles Police Protective League; National Association of Social Workers, California Chapter; Riverside Sheriffs' Association; Sheriff of San Francisco City and County; San Francisco District Attorney; Santa Barbara County District Attorney; Santa Clara District Attorney

**Opposition:** California State Sheriffs' Association

**Assembly Floor Vote:** 74 - 0

## PURPOSE

*The purpose of this bill is to require local law enforcement agencies to periodically update the Sexual Assault Forensic Evidence Tracking (SAFE-T) database on the disposition of all sexual assault evidence kits in their custody.*

*Existing law* requires an adult arrested for or charged with a felony and a juvenile adjudicated for a felony to submit deoxyribonucleic acid (DNA) samples. (Penal Code § 296.)

*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 (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 (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 (b)(7)(A)(ii) and (E).)

*Existing law* encourages crime labs to do one of the following:

- Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or
- 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 (b)(7)(B).)

*Existing law* requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out. (Penal Code §§ 680 (e) and (f), 803.)

*This bill* requires law enforcement agencies to report information regarding rape kit evidence, within 120 days of the collection of the kit, to the Department of Justice (DOJ) through a database established by the DOJ. Specifies that information shall include, among other things:

- The number of kits collected;
- If biological evidence samples were submitted to a DNA laboratory for analysis; and
- If a probative DNA profile was generated.

*This bill* requires 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, except as specified.

*This bill* provides that upon expiration of a sexual assault case's statute of limitations, or if a law enforcement agency elects not to analyze the DNA or intends to destroy or dispose of the crime scene evidence pursuant to existing law, the agency shall state in writing the reason the kit collected as part of the case's investigation was not analyzed.

*This bill* imposes these requirements for kits collected on or after January 1, 2018.

*This bill* requires that the DOJ file a report to the Legislature on an annual basis summarizing the information in its database.

*This bill* prohibits 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.

*This bill* finds and declares the following:

There is a significant public interest in knowing the percentage of rape kits that are analyzed to identify the perpetrator's DNA profile, as well as the reason for any untested rape kits not being analyzed. Currently, there is no mandatory statewide tracking mechanism to collect and report these metrics. It is the intent of the Legislature in enacting this section, pursuant to recommendations by the California State Auditor to the Joint Legislative Audit Committee, to correct that; and

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

## COMMENTS

### 1. Need for This Bill

According to the author:

In recent years, the federal government has identified hundreds of thousands of rape kits that have gone unanalyzed, known as the "rape kit backlog." Some jurisdictions have worked to decrease their backlogs to varying degrees. However, in California, no comprehensive data is currently available about the number of sexual assault evidence kits that local law enforcement agencies collect annually or how many of those kits are analyzed. Further, no comprehensive data exists about the reasons some sexual assault evidence kits are not analyzed.

A 2014 report by the California State Auditor revealed that each year, thousands of kits go unanalyzed by a DNA laboratory for a variety of reasons. The scope of the statewide rape kit backlog cannot be determined because of a lack of effective tracking at the local level. More comprehensive data could assist policy makers as they consider whether law enforcement agencies' current approaches in this area need to change or whether or not law enforcement need additional resources to better manage the processing of kits.

In many cases, survivors of sexual assault experience re-traumatization when undergoing the forensic evidence collection process. The neglect of these kits with no explanation why they were not analyzed simply adds to the trauma ensured by survivors seeking justice.

To address these issues, the State Auditor recommended that agencies track each sexual assault evidence kit they collect and report to the California Department of Justice (DOJ) on how many are analyzed and why some are not. In response to the State Auditor's report, DOJ created the Sexual Assault Forensic Evidence Tracking system, or SAFE-T. This database allows local agencies to log and provide status

updates for each kit they collect. With documented reasons for the decisions, agencies would be able to clearly demonstrate to victims, policy makers, and other interested parties why they did not request such analyses.

According to background submitted by the author, "The local law enforcement investigator may request that a crime lab analyze the sexual assault evidence kit to try to match the DNA profile to a suspect in the investigation. The lab can then upload the profile to the combined DNA Index System (CODIS), a network of local, state, and federal databases that allows law enforcement agencies to test DNA profiles against one another. Through this process, labs will sometimes obtain the name of a previously unknown suspect or match multiple cases where the suspect remains unknown.

"The value of DNA evidence in the investigation and prosecution of sexual assault crimes makes these evidence kits critical for law enforcement."

"Even in instances where the identity of assailants is known, forensic analysis often helps identify repeat offenders. However, there is no state or federal law that requires agencies to request analysis of every sexual assault evidence kit."

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.

## 2. Tracking of Rape Kit Tests

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).) <<https://www.bsa.ca.gov/pdfs/reports/2014-109.pdf>> 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 p. 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. The "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 p. 21.)

Even though the individual reasons for not testing the kits was found to be reasonable, the report still stressed the need for more information about why agencies decide to send some kits but not others. It would benefit not only investigators, but the public as well, because requiring investigators to document their reasons for not requesting kit analysis would assist agencies in responding to the public concern about unanalyzed kits. Doing so would allow for internal review and would increase accountability to the public. (*Id.* at pp. 23-24.)

### 3. Argument in Support

According to the Alameda County District Attorney:

A 2014 report by the California State Auditor revealed that each year, thousands of sexual assault kits (SAKs) go unanalyzed by a DNA laboratory for a variety of reasons. I found in my own county, that we had a backlog of over 1,900 untested SAKs. The scope of the statewide SAK cannot be determined because of a lack of effective tracking at the local level. More comprehensive data could assist policy makers as they consider whether law enforcement agencies' current approaches in this area need to change or whether or not law enforcement needs additional resources to better manage the processing of kits.

In many cases, survivors of sexual assault experience re-traumatization when undergoing the forensic evidence collection process. The neglect of these SAKs with no explanation why they were not analyzed simply adds to the trauma ensured by survivors seeking justice. The value of DNA evidence in the investigation and prosecution of sexual assault crimes makes these SAK critical for law enforcement. Even in instances where the identity of the assailants is known, forensic analysis often helps identify repeat offenders.

AB 41 would require local agencies to track all SAKs collected from survivors by using SAFE-T in accordance with the State Auditor's recommendations. This improved tracking will help the prosecution of sexual assault cases and provide victims of sexual assault who reported a crime with information about their case that they deserve to know.

### 4. Argument in Opposition

According to the California State Sheriffs' Association:

We share your intent that sexual assaults are investigated and perpetrators not go unpunished. In 2014, CSSA worked with then-Assembly Member Nancy Skinner to amend her AB 1517 into a final product that will help achieve those goals without being overly burdensome. However, by requiring law enforcement agencies to provide statistics to the DOJ, AB 41 will create another unfunded mandate and would place significant cost burdens on these agencies in terms of resources and personnel.

Existing law permits law enforcement to notify a victim about the status of his or her rape kit upon the victim's request as well as requires law enforcement to notify a victim if his or her rape kit is going to be disposed of or not tested. We do not feel that his balanced approach requires alteration.

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.

**-- END --**