



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
February 25, 2014

To: Honorable Mayor and Members of the City Council
From: Councilmember Susan Wengraf
Subject: Support of AB 1517

RECOMMENDATION

Adopt a Resolution supporting Assembly Bill 1517, introduced by Assemblymembers Nancy Skinner, (15th AD) and Rob Bonta, (18th AD). Assembly Bill 1517 sets time limits for law enforcement agencies and forensics labs to process evidence collected from victims after sexual assaults.

The bill stipulates that sexual assault forensic evidence must be sent to a crime lab within five days after it is booked into evidence by a law enforcement agency.

The crime lab would then have to process the evidence and upload DNA profiles to the Combined DNA Index System, or CODIS, within 30 days.

FINANCIAL IMPLICATIONS

None

BACKGROUND

Existing law, as established within the “Sexual Assault Victims’ DNA Bill of Rights”, does not address a strict timeline for submission of sexual assault forensic evidence (rape kit). This bill would amend Section 680 of the Penal Code, relating to DNA evidence and establish that law enforcement agencies have to submit sexual assault forensic evidence within five (5) days, and for labs to test and upload results into a national Combined DNA Index database of felon DNA profiles within 30 days. It would also require police to notify victims if their rape kits are not being tested. Currently the number of untested rape kits could be as many as 1900 in Alameda County alone.

CONTACT PERSON

Councilmember Susan Wengraf Council District 6 510-981-7160

Attachments:

- 1: Resolution
- 2: AB 1517

RESOLUTION NO. ##,###-N.S.

SUPPORT AB 1517

WHEREAS, current law in the state of California does not require a law enforcement agency to submit sexual assault forensic evidence to the crime lab within a specified amount of time; and

WHEREAS, there is a huge backlog of untested rape kits collecting dust in evidence rooms; and

WHEREAS, there is an ongoing failure by law enforcement agencies to test all rape kits, putting the public at risk of assault; and

WHEREAS, AB 1517 proposes to amend Penal Code 680 to require that rape kits be submitted to crime labs within five (5) days of a sexual assault, and for labs to test and upload results into a national combined DNA Index database of felon DNA profiles within 30 days; and

WHEREAS, 1900 untested rape kits are still sitting on a shelf in Alameda County alone.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it supports the passage of AB 1517 as submitted by Assemblymembers Nancy Skinner and Rob Bonta.

BILL NUMBER: AB 1517 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Skinner
 (Coauthors: Assembly Members Buchanan, Melendez, Olsen, and
Waldron)
 (Coauthor: Senator Hill)

JANUARY 15, 2014

An act to amend Section 680 of the Penal Code, relating to DNA evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as introduced, Skinner. 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 sexual assault offenses, if the identity of the perpetrator is in issue, if the law enforcement agency elects not to analyze DNA evidence within certain time limits.

This bill instead would encourage a law enforcement agency to submit sexual assault forensic evidence to the crime lab as soon as practically possible, but no later than 5 days after being booked into evidence, and that the crime lab process evidence, create DNA profiles when able, and upload qualifying DNA profiles into the Combined DNA Index System as soon as practically possible, but no later than 30 days after the evidence is submitted by a law enforcement agency, in order to assure the longest possible statute of limitations. The bill would also require a law enforcement agency to inform victims of certain sexual assault offenses, whether or not the identity of the perpetrator is in issue, if the law enforcement agency elects not to analyze DNA evidence within certain time limits. By imposing additional requirements on local law enforcement agencies, this bill would impose a state-mandated local program.

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:

SECTION 1. Section 680 of the Penal Code is amended to read:

680. (a) This section shall be known as and may be cited as the "Sexual Assault Victims' DNA Bill of Rights."

(b) The Legislature finds and declares all of the following:

(1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a powerful law enforcement tool for identifying and prosecuting sexual assault offenders.

(2) Victims of sexual assaults have a strong interest in the investigation and prosecution of their cases.

(3) 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.

(4) The growth of the Department of Justice's Cal-DNA databank and the national databank through the Combined DNA Index System (CODIS) makes it possible for many sexual assault perpetrators to be identified after their first offense, provided that rape kit evidence is analyzed in a timely manner.

(5) Timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. It is the intent of the Legislature, in order to further public safety, to encourage DNA analysis of rape kit evidence within the time limits imposed by subparagraphs (A) and (B) of paragraph (1) of subdivision ~~(i)~~ (g) of Section 803.

(6) ~~A law~~ In order to assure the longest possible statute of limitations, pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of Section 803, the following should occur:

(A) A law enforcement agency assigned to investigate a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289 should ~~perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner in order to assure the longest possible statute of limitations, pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.~~ submit sexual assault forensic evidence to the crime lab as soon as practically possible, but no later than five days after being booked into evidence.

(B) The crime lab should process evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 30 days after submission by a law enforcement agency.

(7) For the purpose of this section, "law enforcement" means the law enforcement agency with the primary responsibility for investigating an alleged sexual assault.

(c) (1) Upon the request of a sexual assault victim the law enforcement agency investigating a violation of Section 261, 261.5, 262, 286, 288a, or 289 may inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case. The law enforcement agency may, at its discretion, require that the victim's request be in writing. The law enforcement agency may respond to the victim's request with either an oral or written communication, or by electronic mail, if an electronic mail address is available. Nothing in this subdivision requires that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing absent a specific request from the victim or the victim's designee.

(2) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims have the following rights:

(A) 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.

(B) 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 the Department of Justice Data Bank of case evidence.

(C) 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 Department of Justice Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation.

(3) This subdivision is intended to encourage law enforcement agencies to notify victims of information which is in their possession. It is not intended to affect the manner of or frequency with which the Department of Justice provides this information to law enforcement agencies.

(d) If the law enforcement agency elects not to analyze DNA evidence within the time limits established by subparagraphs (A) and (B) of paragraph (1) of subdivision ~~(i)~~ (g) of Section 803, a victim of a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or ~~289, where the identity of the perpetrator is in issue,~~ 289 shall be informed, either orally or in writing, of that fact by the law enforcement agency.

(e) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case prior to the expiration of the statute of limitations as set forth in Section 803, a victim of a violation of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written notification by the law enforcement agency of that intention.

(f) Written notification under subdivision (d) or (e) shall be made at least 60 days prior to the destruction or disposal of the rape kit evidence or other crime scene evidence from an unsolved sexual assault case where the election not to analyze the DNA or the destruction or disposal occurs prior to the expiration of the statute of limitations specified in subdivision ~~(i)~~ (g) of Section 803.

(g) A sexual assault victim may designate a sexual assault victim advocate, or other support person of the victim's choosing, to act as a recipient of the above information required to be provided by this section.

(h) It is the intent of the Legislature that a law enforcement agency responsible for providing information under subdivision (c) do so in a timely manner and, upon request of the victim or the victim's designee, advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware. In order to be entitled to receive notice under this section, the victim or the victim's designee shall keep appropriate authorities informed of the name, address, telephone number, and electronic mail address of the person to whom the information should be provided, and any changes of the name, address, telephone number, and electronic mail address, if an electronic mailing address is available.

(i) A defendant or person accused of a crime against the victim shall have no standing to object to any failure to comply with this section. The failure to provide a right or notice to a sexual assault victim under this section may not be used by a defendant to seek to have the conviction or sentence set aside.

(j) The sole civil or criminal remedy available to a sexual

assault victim for a law enforcement agency's failure to fulfill its responsibilities under this section is standing to file a writ of mandamus to require compliance with subdivision (d) or (e).

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