

Date of Hearing: May 10, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 1368 (Lackey) – As Introduced February 17, 2023

Policy Committee: Public Safety

Vote: 8 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill requires a law enforcement agency to submit specified sexual assault forensic evidence received prior to January 1, 2016 to a crime lab for testing, and requires the crime lab to process that kit and upload DNA profiles to the Combined DNA Index System (CODIS).

Specifically, this bill:

- 1) Requires a law enforcement agency to submit sexual assault forensic evidence received prior to January 1, 2016, to a crime lab for testing on or before January 31, 2025, if the evidence is connected to a reported crime.
- 2) Requires crime labs to process a sexual assault evidence kit by January 31, 2026, if the kit was received by a law enforcement agency prior to January 1, 2016, and was submitted to the crime lab on or before January 1, 2024.

FISCAL EFFECT:

- 1) Costs (General Fund) to the Department of Justice (DOJ) of an unknown but significant amount. When considering AB 18 (Lackey), of the 2019-2020 Legislative Session, which was similar to this bill, DOJ reported costs of \$317,000 in the first fiscal year (FY) of implementation, \$1.3 million in the second FY, and \$649,000 in the third FY for personnel, operating expenses, and equipment to test sexual assault forensic evidence received before January 1, 2016. Costs for this bill may be similar. Unlike AB 18, this bill does not require testing of all evidence received before 2016 – only evidence that is connected to a reported crime must be tested. If this provision reduces the number of evidence kits DOJ must test, DOJ's costs may be lower than estimated above.
- 2) Possible reimbursable costs (local funds/General Fund) of an unknown amount, potentially in the hundreds of thousands of dollars annually for local law enforcement agencies to test sexual assault forensic evidence received prior to January 1, 2016. Local costs to comply with this bill would be subject to reimbursement by the state to the extent the Commission on State Mandates determines this bill imposes a reimbursable state-mandated local program.

COMMENTS:

- 1) **Author's Statement.** According to the author:

Victim-Survivors of sexual assault experience one of the most destabilizing recovery processes – which would only be worsened by finding out that DNA collected from your body sat on a shelf for years without any action. Survivors often face fatigue when confronted with apathy as self-advocates. A victim should not be responsible for following up with detectives and district attorneys in their journey to realize justice, especially for a felony charge. Behind each untested rape kit is a person whose life has been devastatingly altered. We owe it to the survivors represented by these untested kits to help them seek justice.

- 2) **Background.** The Sexual Assault Victims' Bill of Rights was amended in 2014. Those amendments encouraged law enforcement agencies and crime labs to handle and process sexual assault forensic evidence within a specific time frame. Specifically, a law enforcement agency was encouraged to either submit sexual assault forensic evidence to a crime lab within 20 days after it is booked into evidence or insure that a rapid turnaround DNA program is in place.

In 2019, the Legislature passed SB 22 (Leyva), Chapter 588, Statutes of 2019. SB 22 requires law enforcement agencies to submit to a crime lab all sexual assault forensic evidence received after January 1, 2016. SB 22 requires crime labs to process the evidence for DNA profiles and upload them to CODIS. This bill requires sexual assault evidence received prior to January 1, 2016, be tested and uploaded into CODIS if the evidence is connected to a reported crime. Unlike the previous version of this bill, AB 1368 requires crime labs to process sexual assault evidence received before 2016 only if it is connected to a reported crime. If an evidence kit received by a law enforcement agency before 2016 is submitted to a crime lab, this bill requires the crime lab to process the kit, create DNA profiles, and upload qualifying DNA profiles into CODIS by January 31, 2026.

- 3) **DOJ Audit.** AB 3118 (Chiu), Chapter 950, Statutes of 2018 required each law enforcement agency, crime lab, medical facility or other facility in possession of sexual assault kits to conduct an audit of all the kits in its possession and report that information to the DOJ. DOJ issued its audit report in April 2020.

DOJ received responses from a total of 149 law enforcement agencies and crime laboratories. 134 agencies reported at least one untested sexual assault examination kit and 15 reported no untested sexual assault examination kits. DOJ's own crime laboratories process all sexual assault examination kits within 120 days of receipt and had no inventory of untested kits to report. DOJ found 35% of kits went untested because the victim declined prosecution, while 29% of kits weren't processed because the allegations couldn't be substantiated or officials found the case was not prosecutable. DOJ announced a \$2 million grant program to help California law enforcement agencies clear their backlogs.

- 4) **Prior Legislation.** AB 18 (Lackey), of the 2021-2022 Legislative Session, was similar to this bill. AB 18 was held on this committee's suspense file.

AB 2481 (Lackey), of the 2019-2020 Legislative Session, was substantially similar to AB 18. AB 2481 was held on this committee's suspense file.