
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: SB 464 **Hearing Date:** April 25, 2023
Author: Wahab
Version: March 22, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal law: rights of victims and witnesses of crimes*

HISTORY

Source: RISE

Prior Legislation: AB 3118 (Chiu) Chapter 950 Stats. 2018

Support: California National Organization for Women

Opposition: None known

PURPOSE

The purpose of this bill is to give sex assault victims additional rights during a medical evidentiary examination and interview; to require law enforcement agencies to report specified data to the DOJ regarding sexual assault kits; and, to shorten the time frame in which victims and witnesses get written notice regarding the disposition of a case. .

Existing law provides that a victim of sexual assault has the right to have victim advocate, a support person of the victim's choosing, and a licensed attorney representing the victim present at any interview by law enforcement authorities, district attorneys or defense attorneys. A victim retains this right regardless of whether they have waived the right in a previous medical evidentiary exam. (Penal Code § 679.04 (a))

This bill would in addition allow a person to have a licensed attorney representing the victim present.

Existing law provides that prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, the victim shall be notified in writing by the attending law enforcement authority or district attorney that they have the right to have victim advocate and a support person of their choosing present at the interview or contact, about other rights of the victim pursuant to law, and the victim has the right to request to have a person of the same gender or opposite gender as the victim present in the room during any interview with a law enforcement official or district attorney, unless no such person is reasonably available. (Penal Code § 679.04 (b)(1))

This bill would in addition allow a person to have a licensed attorney representing the victim present.

Existing law provides that at the time the victim is advised of their rights, the attending law enforcement authority or district attorney shall advise the victim of the right to have victim advocate and a support person at any interview by the defense attorney or investigators or agents employed by the defense attorney. (Penal Code § 679.04 (b)(2))

This bill provides that they shall be advised of their right to have victim advocates, a support person, and a licensed attorney representing the victim at any interview by the defense attorney or investigators.

Existing law requires all law enforcement agencies, medical facilities, crime laboratories, and any other facilities that receive, maintain, store, or preserve sexual assault evidence kits to conduct an audit of all untested sexual assault evidence kits in their possession and required these entities to report certain data to the Department of Justice (DOJ) by not later than July 1, 2019 and DOJ was in their possession and the DOJ was to submit a report to the legislature. (Penal Code § 680.4)

This bill provides that each law enforcement agency, medical facility, crime laboratory, and other facility that receives, maintains, stores, or preserves sexual assault kits shall submit a report with similar information to the DOJ by July 1, 2026.

Existing law requires that, upon request of a victim or a witness of a crime, the prosecuting attorney shall, within 60 days of the final disposition of the case, inform the victim or witness by letter of such final disposition. (Penal Code § 11116.10)

This bill requires the notice by letter to be within 72 hours of the final disposition.

COMMENTS

1. Need for This Bill

According to the author:

SB 464 requires law enforcement agencies to report to the California Department of Justice the number of sexual assault evidence kits they collect, and the number of untested kits in their possession. This bill also provides survivors of sexual assault with the necessary legal protections and ensures case disposition is shared in a timely manner.

SB 464 is a critical step towards ensuring that every sexual assault evidence kit is tested, that survivors are informed about the status of their kit, and that perpetrators of sexual assault are brought to justice. By allowing Californians to understand the status of all sexual assault evidence kits in the state, SB 464 will help to identify any systemic issues that may prevent timely testing of these kits, and provide transparency and accountability for survivors, law enforcement, and the public.

2. Right for victim to have attorney present

Existing law allows a victim of a sex assault to have a victim advocate and a person of their choosing in any medical evidentiary or physical exam, any interviews with law enforcement, and any interviews with the suspect's defense attorney. This will would, in addition, allow a person to have a licensed attorney of their choosing present.

It is unclear what a licensed attorney would add to a medical exam. An attorney may be helpful in an interview with the prosecutor or defense attorney, if the victims advocate is not enough to keep the person from being overly stressed.

3. Report on sexual assault kits

Existing law required any facility that any facility that received, stored or preserved sexual assault evidence kits to conduct an audit of all untested kits and submit information on the following to the DOJ: the total number of kits and for each kit specified information regarding the untested kits by July 2019. The DOJ submitted a report in July of 2020. That report can be found here. (<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/ag-rpt-audit-usasfe-kits-2020.pdf>)

There were a number of reasons that kits were not tested: the case could not be prosecuted or investigated for various reasons; testing was not necessary for the identification of a suspect (the assailant was known to the victim); the investigation was ongoing; the kit was not expected to yield any DNA; a courtesy report was taken by one agency on behalf of another; it was determined there was not crime or sexual assault.

This bill requires a similar information regarding untested kits to be submitted to the DOJ by any of the organization who take such take or preserve sexual assault kits no later than July 1, 2026 with DOJ reporting to the legislature by July 1, 2027.

4. Notice to victim

Existing law requires, upon the request of the victim or witness of a crime, the prosecutor to notify the victim or witness of a crime of the final disposition of the case by letter within 60 days. This bill changes that time frame to 72 hours. If 60 days is too long is 72 hours realistic? Is it 72 hours to mail the letter or receive it?

5. Argument in Support

RISE the sponsor of this bill states:

Many survivors of sexual assault lack the legal expertise necessary to effectively advocate for themselves and to ensure that evidence related to their case is properly collected. Further, when cases drag on for long periods of time, survivors may be retraumatized by the legal process. Moreover, in 2021, the Department of Justice released an audit of untested rape kits. Of the 693 law enforcement agencies in the state, only 149 reported data for the audit. This lack of participation raises concerns about law enforcement transparency and their ability to properly protect evidence.