

Date of Hearing: June 27, 2023
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 464 (Wahab) – As Amended March 22, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires specified agencies and facilities to conduct an audit of all untested sexual assault kits in their possession and to submit the results of those audits to the Department of Justice (DOJ). Specifically, **this bill**:

- 1) Requires each law enforcement agency (LEA), medical facility, crime laboratory, and any other facility that receives, maintains, stores, or preserves sexual assault evidence kits to conduct an audit of all untested sexual assault kits in their possession.
- 2) Requires entities to submit the audit to the DOJ no later than July 1, 2026.
- 3) Requires the audit to include the following information:
 - a) The total number of untested sexual assault kits in their possession;
 - b) For each kit, the following information:
 - i) Whether or not the assault was reported to a law enforcement agency; and
 - ii) Unless the victim has chosen not to pursue prosecution, the date the kit was collected, the date the kit was picked up by a law enforcement agency, the date the kit was delivered to a crime laboratory, and the reason the kit has not been tested, if applicable.
 - c) The number of kits where the victim has chosen not to pursue prosecution at the time of the audit.
- 4) Requires DOJ, by no later than July 1, 2027, to prepare and submit a report to the Legislature summarizing the information received from the audits.
- 5) Changes the time period within which the prosecuting attorney is required to inform the victim or witness, if they have requested to be informed, of the disposition of a case at the trial court level from 60 days to 30 days.

EXISTING LAW:

- 1) Requires the prosecuting attorney, upon the request of a victim or a witness of a crime, to inform the victim or witness by letter of the final disposition of a case within 60 days. (Pen.

Code, § 11116.10, subd. (a).)

- 2) Defines “final disposition” as an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the prosecuting attorney, for whatever reason, not to file the case. (Pen. Code, § 11116.10, subd. (d).)
- 3) Creates the Sexual Assault Victims’ DNA Bill of Rights, which regulates the timing of the testing of samples taken from a sexual assault victim including duties of crime labs and how the samples shall be upload to the Combined DNA Index System (CODIS). (Pen. Code, § 680.)
- 4) Requires a LEA in whose jurisdiction a specified sex offense occurred to do one of the following for any sexual assault forensic evidence received by the LEA on or after January 1, 2016:
 - a) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence; or
 - b) 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 (Pen. Code, § 680, subd. (c)(1).)
- 5) Provides that the crime lab shall do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016:
 - a) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence; or,
 - b) 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 shall upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA. (Pen. Code, § 680, subd. (c)(2).)
- 6) Requires the LEA investigating the crime to 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, upon the victim’s request. The LEA may, at its discretion, require that the victim’s request be in writing. The LEA shall respond to the victim’s request with either an oral or written communication, or by email, if an email address is available. The LEA is not required to 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. (Pen. Code, § 680 subd. (d)(1).)
- 7) States that sexual assault victims have the right to access the DOJ’s Sexual Assault Forensic Evidence Tracking (SAFE-T) database portal for information involving their own forensic

kit. (Pen. Code, § 680 subd. (d)(2).)

- 8) Provides that 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 DOJ Data Bank of case evidence; and,
 - 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 DOJ Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation. (Pen. Code, § 680, subd. (d)(3).)
- 9) Requires that, if an LEA does not analyze DNA evidence within six months prior to the established time limits, a victim of a sexual assault offense be informed, either orally or in writing, of that fact by the LEA. (Pen. Code, § 680, subd. (e).)
- 10) Provides that if an LEA intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the victim shall be given written notification by the LEA of that intention. (Pen. Code, § 680, subd. (f)(1).)
- 11) Prohibits an LEA from destroying or disposing of rape kit evidence or other crime scene evidence from an unsolved sexual assault case before at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, before the victim's 40th birthday. (Pen. Code, § 680, subd. (f)(2).)
- 12) Specifies that written notification to the victim about the destruction of the evidence in an unsolved sexual assault case shall be made at least 60 days prior to its destruction or disposal. (Pen. Code, § 680, subd. (g).)
- 13) Provides that 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. (Pen. Code, § 680, subd. (h).)
- 14) Requires that the (DOJ, on or before July 1, 2022, and in consultation with LEAs and crime victims groups, establish a process that allows a survivor of sexual assault to track and receive updates privately, securely, and electronically regarding the status, location, and information regarding their sexual assault evidence kit in the department's SAFE-T database. (Pen. Code, § 680.1.)
- 15) Provides that the DOJ DNA Laboratory is to serve as a repository for blood specimens, buccal swab, and other biological samples collected and is required to analyze specimens and samples and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

- a) Forensic casework and forensic unknowns;
- b) Known and evidentiary specimens and samples from crime scenes or criminal investigations;
- c) Missing or unidentified persons;
- d) Persons required to provide specimens, samples, and print impressions;
- e) Legally obtained samples; and,
- f) Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control. (Pen. Code, § 295.1, subd. (c)(1)-(6).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** 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) **Sexual Assault Evidence Kits Overview:** After a possible sexual assault has occurred, victims of the crime may choose to be seen by a medical professional, who then conducts an examination to collect any possible biological evidence left by the perpetrator. To collect forensic evidence, many jurisdictions provide what is called a “sexual assault evidence kit” (SAE kit). SAE kits often contain a range of scientific instruments designed to collect forensic evidence such as swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers.

Prior to 2019, the composition of SAE kits varied throughout California. ([Audit of Untested Sexual Assault Forensic Evidence Kits: 2020 Report \(ca.gov\)](#) at p. 4 [as of June 20, 2023]) Although they were similar, the exact SAE kit used by a medical facility was determined by the crime laboratory serving that jurisdiction. (*Ibid.*) AB 1744 (Cooper), chapter 857, Statutes of 2016, required the DOJ’s Bureau of Forensic Services, the California Association of Crime Laboratory Directors and the California Association of Criminalists to collaborate with public crime laboratories and the California Clinical Forensic Medical Training Center to develop a standardized SAE kit to be used by all California jurisdictions. (*Ibid.*) The basic components were to be established by January 30, 2018, and guidelines pertaining to the use of the kit components were to be issued on or before May 30, 2019. (*Ibid.*) The new

standardized kit was finalized and ready for production in September 2019. (*Ibid.*)

Analyzing forensic evidence from SAE kits assists in linking the perpetrator to the sexual assault. Generally, once a hospital or clinic has conducted a SEA kit examination, it transfers the kit to a local law enforcement agency. From there, the law enforcement agency may send the kit to a forensic laboratory. Evidence collected from a kit can be analyzed by crime laboratories and could provide the DNA profile of the offender. Once law enforcement authorities have that genetic profile, they could then upload the information onto CODIS.

CODIS is a national database that stores the genetic profiles of sexual assault offenders onto a software program. By exchanging, testing, and comparing genetic profiles through CODIS, law enforcement agencies can discover the name of an unknown suspect who was in the system or link together cases that still have an unknown offender. The efficacy of CODIS depends on the volume of genetic profiles that law enforcement agencies submit. (FBI website, Combined DNA Index System (CODIS), available at: <https://le.fbi.gov/science-and-lab-resources/biometrics-and-fingerprints/codis#Combined-DNA%20Index%20System%20CODIS>, [as of June 20, 2023].) At present, more than 190 public law enforcement laboratories use CODIS. (*Ibid.*)

- 3) **Untested Sexual Assault Evidence Kits:** There are a number of reasons why law enforcement authorities may not submit a SAE kit to a crime lab. For example, the identity of the suspect may never have been at issue. Often times, whether or not the victim consented to the sexual activity is the most important issue in the case, not the identity of the suspect. In other cases, charges may be dropped for a variety of reasons, or a guilty plea may be entered rendering further investigation moot. (NIJ, *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases*, May 2011, at page 3, available at: <https://www.ncjrs.gov/pdffiles1/nij/233279.pdf>, [as of March 20, 2023].)

A 2020 report by the California Attorney General Division of Law Enforcement Bureau of Forensic Service found that the backlog for analyzing sexual assault evidence kits continues:

Until 2015, California did not have a system in place for collecting comprehensive data on the number of SAE kits collected from survivors/victims of sexual assault and the status of untested kits. SAE kit records were only maintained at the agency level and were not centrally tracked or reported. In an effort to collect and centralize data regarding the status and disposition of SAE kits in the possession of LEAs and crime laboratories, the Department created the Sexual Assault Forensic Evidence Tracking (SAFE-T) database in 2015. Access to SAFE-T is strictly limited to designated users from LEAs, public crime laboratories, and district attorneys' offices. Although strongly encouraged, LEAs and crime laboratories were not legally mandated to use SAFE-T to track their SAE kits until 2017 when AB 41 (Stats. 2017, ch. 694) went into effect. This bill required that all survivor/victim SAE kits collected as of January 1, 2018, be reported in the SAFE-T database. However, because the mandate does not extend retroactively to include kits that were collected from a survivor/victim prior to January 1, 2018, SAFE-T does not provide a comprehensive view of the current size and distribution of, or reasons for, California's SAE kit backlog.

This report is a first step in a larger effort to work with other agencies that handle SAE kits to fill the information gaps. Addressing the backlog issue requires knowing the

number of untested kits across the state and understanding the reasons they remain untested.

...

A wide range of reasons exist for SAE kits to remain untested. The reasons included: A victim not pursuing prosecution; A case could not be investigated or prosecuted; Testing was not necessary/case adjudicated; Unknown/other Active investigation/prosecution; An analysis was unlikely to yield DNA profile; The kit belongs to another jurisdiction; No crime/crime other than rape. ([Audit of Untested Sexual Assault Forensic Evidence Kits: 2020 Report \(ca.gov\)](#) at pp. 5 & 9 [as of March 21, 2023])

It is important to note that just because a kit goes untested does not necessarily mean that the suspect's DNA profile was never uploaded to CODIS in order to potentially link the suspect to other crimes. If a suspect is convicted of, or even arrested for, certain qualifying offenses, a DNA sample is collected pursuant to and the DNA profile uploaded to the Arrestee Index or the Convicted Offender Index in CODIS. (Pen. Code, § 296.) A conviction for any felony will require the collection of a DNA profile for both adults and juveniles. And an arrest or charge against an adult for any felony or any offense that would result in requiring the person to register as a sex offender, if convicted, would similarly result in the collection of a DNA profile. (*Ibid.*). Such profiles are then regularly searched against the already-existing profiles in CODIS.

This bill would require LEAs, medical facilities, crime laboratories, and other facilities that handle sexual assault evidence kits to conduct audits of all untested sexual assault kits and report to DOJ the results of those audits.

- 4) **Practical Consideration:** This bill also changes the time period within which the prosecuting attorney is required to inform the victim or witness, if they have requested to be informed, of the final disposition of a case at the trial court level from 60 days to 30 days. Under existing law, "final disposition" is defined as "an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the prosecuting attorney, for whatever reason, not to file the case." (Pen. Code, § 11116.10, subd. (d).) The definition does not include appeals. Currently, a defendant must file a notice of appeal within 60 days of the judgment. (Cal. Rules of Court, rule 8.308(a).) By changing the deadline to 30 days, a prosecuting attorney's office may have to report the "final disposition" to a victim or witness well before a defendant decides whether to appeal the judgment.
- 5) **Argument in Support:** According to *RISE*, "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."

6) Related Legislation:

- a) AB 1368 (Lackey), would have required law enforcement agencies to submit, and the crime lab to process, sexual assault kits within specified time frames. AB 1368 was held in the Assembly Appropriations Committee in the Suspense File.
- b) SB 376 (S. Rubio) would grant victims of human trafficking the right to have a human trafficking advocate and support person at an interview by law enforcement authorities, district attorneys, or the suspect's defense attorney, and be advised of such right. SB 376 is currently pending in the Assembly Appropriations Committee.

7) Prior Legislation:

- a) AB 18 (Lackey), of the 2021-2022 Legislative Session, was nearly identical to AB 1368. AB 18 was held in the Assembly Committee on Appropriations Suspense File.
- b) SB 916 (Leyva), Chapter 916, Statutes of 2022, entitles a sexual assault victim to access the DOJ SAFE-T database portal for information involving their own forensic evidence kit and the status of the kit.
- c) AB 2481 (Lackey), of the 2019-2020 Legislative Session, was nearly identical to AB 1368. AB 2481 was held in the Assembly Committee on Appropriations Suspense File.
- d) SB 215 (Leyva), Chapter 634, Statutes of 2021, required the DOJ to establish, on or before July 1, 2022, a process that allows a survivor of sexual assault to privately, securely and electronically track and receive updates regarding the status, location and information of their sexual assault evidence kit in the DOJ SAFE-T database.
- e) AB 358 (Low), of the 2019-2020 Legislative Session, would have required DOJ, no later than July 1, 2023, to create a statewide tracking system that allows a sexual assault victim to monitor the testing and processing of the sexual assault forensic evidence collected in their case. AB 358 was held on the Assembly Committee on Appropriations Suspense File.
- f) AB 1496 (Frazier), of the 2019-2020 Legislative Session, would have required a law enforcement agency to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place and require a crime lab to either process the evidence or transmit the evidence to another crime lab for processing within existing specified time frames. AB 1496 was held on the Assembly Committee on Appropriations Suspense File.
- g) AB 3059 (Kalra), of the 2019-2020 Legislative Session, was substantially similar to SB 376. AB 3059 was held in the Assembly Public Safety Committee.
- h) SB 22 (Levy), Chapter 588, Statutes of 2019, requires law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place. This law also requires crime labs to either process evidence for DNA profiles and upload them into the CODIS or transmit the evidence to another crime

lab for processing and uploading.

- i) AB 41, Chapter 694, Statutes of 2017, requires 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.
- j) AB 280 (Low), Chapter 698, Statutes of 2017, established the Rape Kit Back Log Voluntary Tax Contribution Fund and allowed taxpayers to contribute their own funds to the Fund through a designation on the state personal income tax return.
- k) AB 1744 (Chiu), Chapter 857, Statutes of 2016, requires the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists to work collaboratively with public crime laboratories, in conjunction with the California Clinical Forensic Medical Training Center, to develop a standardized sexual assault forensic medical evidence kit, containing minimum basic components, to be used by all California jurisdictions.

REGISTERED SUPPORT / OPPOSITION:**Support**

California National Organization for Women
Joyful Heart Foundation
Rise, INC.

1 Private individual

Opposition

None submitted.

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744