

SENATE THIRD READING
SB 464 (Wahab)
As Amended September 1, 2023
Majority vote

SUMMARY

Requires specified agencies and facilities to participate in 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).

Major Provisions

- 1) Requires each law enforcement agency (LEA), medical facility, public crime laboratory, and any other entity that receives, maintains, stores, or preserves sexual assault evidence kits to participate in an audit of all untested sexual assault kits in their possession.
- 2) Requires, no later than July 1, 2026, each LEA and public crime laboratory, as specified, to create a record in the SAFE-T database for every victim sexual assault kit in their possession that has not had DNA testing completed as of July 1, 2026.
- 3) Requires, if a medical facility submitted selected evidence samples directly to a crime laboratory under a rapid turnaround DNA program, and those samples have been taken through the DNA testing process, the entire sexual assault kit to be considered tested.
- 4) Prohibits a kit that has only undergone biological screening from being considered tested.
- 5) Provides that a tested kit is one that has been taken, at minimum, through the DNA quantitation process, and either of the following:
 - a) If the DNA quantitation results indicate that there is no DNA foreign to the victim, or the foreign DNA is of insufficient quality and quantity for DNA typing to provide genetic information about an alleged perpetrator, analysis can stop at DNA quantitation, and the kit shall be considered tested; or,
 - b) If the DNA quantitation results indicate that DNA typing may provide genetic information about an alleged perpetrator, and the DNA is of sufficient quantity and quality to be successfully typed, the analysis shall continue through DNA typing for the kit to be considered tested.
- 6) Provides that the SAFE-T database shall only contain records for sexual assault evidence kits collected from victims.
- 7) Provides that sexual assault evidence kits collected from suspects shall also be subject to the audit, as specified, but they shall not be entered into the SAFE-T database.
- 8) Provides that a sexual assault victim may request that a kit collected them not be tested, and prohibits a kit for which this request has been made from being tested.
- 9) Requires the following information to be reported separately by each entity in a format prescribed by the DOJ:

- a) The total number of untested sexual assault kits in their possession;
- b) For each kit, the following information:
 - i) The date the suspect kit was collected;
 - ii) The date the suspect kit was picked up by an LEA, for each LEA that has taken custody of the kit;
 - iii) The date the suspect kit was delivered to a crime laboratory; and,

The reason the suspect kit has not been tested, if applicable.

- 10) Provides that sexual assault evidence other than evidence collected in kits, including clothing and bedding, DNA reference samples collected from suspects and consensual partners, and kits collected under circumstances where no sexual assault is alleged or suspected to have occurred, are not subject to this audit and shall not be entered into the SAFE-T database or reported for this audit.
- 11) Requires, no later than July 1, 2026, each medical facility and other non-law enforcement entity, as specified, to report to DOJ, in the format prescribed by DOJ, all of the following:
 - a) The total number of untested sexual assault kits in their possession that were not submitted to an LEA or public crime laboratory because the victim chose not to report the assault to law enforcement at the time of collection, and had not chosen to report the assault to law enforcement by the time of the audit.
 - b) For untested sexual assault evidence kits in their possession where the victim chose to report the assault to law enforcement:
 - i) The total number of untested sexual assault kits in their possession.
 - ii) For each kit, the following information:
 - (1) The date the kit was collected;
 - (2) The name of the medical facility, law enforcement agency, public crime laboratory, or other entity from which the kit was received;
 - (3) The date the kit was received by the entity; and,
 - (4) The reason the kit has not been submitted to a law enforcement agency or public crime laboratory.
 - iii) Provides that this reporting requirement does not apply to untested kits that have been recently collected and are temporarily being stored pending release to an LEA or public crime laboratory.
- 12) 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.

- 13) 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.
- 14) Provides that a record of a sexual assault kit collected prior to January 1, 2016, that is created in SAFE-T, as specified, is excluded from the 120-day update requirement to provide reasons for not conducting DNA testing.

COMMENTS

Practical Consideration: This bill 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." (Penal Code Section 11116.10, subsection. (d).) The definition does not include appeals. Currently, a defendant must file a notice of appeal within 60 days of the judgment. (California 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.

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."

Arguments 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."

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs (local funds, General Fund) of an unknown amount to cities and counties to conduct the required audit of untested SAE kits and report data to DOJ. This bill requires each law enforcement agency, medical facility, crime laboratory, and other facility that possesses SAE kits to audit its untested kits and report related information to DOJ's SAFE-T database. In the aggregate statewide, these costs will be significant, likely in the hundreds of thousands to low millions of dollars. General Fund costs will depend on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.
- 2) Workload costs to DOJ (General Fund), likely in the low hundreds of thousands of dollars annually, to provide outreach and assistance to law enforcement agencies, labs, and medical facilities; to review, compile, and correct the agencies' audit reports; and to analyze the reported data and prepare the report to the Legislature. DOJ may incur additional IT costs if this bill significantly increases the number of agencies reporting information through the SAFE-T database or otherwise requires changes to the system. According to DOJ, the DNA Identification Fund's revenues have declined significantly and cannot fund the duties required by this bill, so DOJ would need a General Fund appropriation to complete this work.

VOTES**SENATE FLOOR: 40-0-0**

YES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Seyarto, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener, Wilk

ASM PUBLIC SAFETY: 8-0-0

YES: Jones-Sawyer, Alanis, Bonta, Bryan, Lackey, Ortega, Santiago, Jackson

ASM APPROPRIATIONS: 11-0-5

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Wilson

ABS, ABST OR NV: Megan Dahle, Dixon, Mathis, Sanchez, Soria

UPDATED

VERSION: September 1, 2023

CONSULTANT: Andrew Ironside / PUB. S. / (916) 319-3744

FN: 0001640