

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: July 31, 2018

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No: 18-0002-S86
Assignment No: 18-07-0645

SUBJECT: Resolution (Martinez - Ryu) in Support of SB 1449 (Leyva)

CLA RECOMMENDATION: Adopt Resolution (Martinez - Ryu) to include in the City's 2017 - 2018 State Legislative Program SUPPORT for SB 1449 (Leyva), which would require law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place, and require crime labs to either process or transmit the evidence to another crime lab for processing within existing timeframes.

SUMMARY:

On June 29, 2018, a Resolution (Martinez – Ryu) was introduced in support of SB 1449 (Leyva). The Resolution states that under current law, law enforcement and crime labs are encouraged to process sexual assault forensic evidence within a specified timeframe, but are not required to. The Resolution further states that only a small number of law enforcement agencies and crime labs process these evidence kits within the encouraged time frame.

The Resolution states that SB 1449 would amend current law to require that sexual assault evidence kits be processed within a specified timeframe in order to ensure that victims of sexual assault are provided justice. The Resolution, therefore, seeks an official position of the City of Los Angeles to support SB 1449, which would require law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place, and require crime labs to either process or transmit the evidence to another crime lab for processing within existing specified timeframes.

BACKGROUND

Under current law, law enforcement agencies are encouraged to submit Sexual Assault Evidence Kits (SAEKs) to crime labs within 20 days of booking the kit into evidence. Current law also encourages law enforcement agencies to create rapid turnaround DNA programs (RTDP), where SAEKs are sent directly from the facility where it is collected to the lab for testing within five days. Further, current law encourages crime labs to process SAEKs, create DNA profiles when able, and upload qualifying DNA profiles into the FBI's Combined DNA Index System (CODIS) as soon as practically possible, but no later than 120 days after initially receiving the evidence.

SB 1449 would strengthen current law by requiring law enforcement agencies to either submit SAEKs to a crime lab within 20 days or ensure that a RTDP is in place, and requires crime labs to either process the evidence for DNA profiles and upload them into CODIS or transmit the kit to another lab for processing and uploading.

This bill would ensure that SAEKs are processed in a timely manner, and that victims of sexual assault and rape are provided equal access to justice. Further, this bill would ensure that evidence is quickly made available to law enforcement agencies so that perpetrators of these crimes can be quickly identified and prosecuted. This legislation is supported by a number of non-profit organizations, law enforcement organizations, members of congress and other civic organizations.

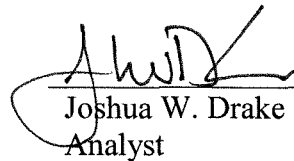
The Police Department (LAPD) states that it would be able to comply with the requirements set forth in SB 1449. Currently, LAPD processes all evidence kits in-house and would continue to do so if this bill is passed. LAPD's Robbery Homicide Division (Special Assault Section) ensures the SAEKs are submitted to LAPD's Forensic Sciences Division (FSD) within 20 days of booking. The Serology/DNA Unit then completes all testing within 90 days of receiving the evidence.

DEPARTMENTS NOTIFIED

Police Department

BILL STATUS

02/16/2018	Bill introduced
03/08/2018	Referred to the Senate Committee on Public Safety
04/03/2018	From committee: do pass (6-0) and re-refer to the Senate Committee on Appropriations
05/25/2018	From committee: do pass as amended (7-0)
05/30/2018	Read third time. Passed (38-0). Ordered to the Assembly
06/11/2018	Referred to the Assembly Committee on Public Safety
06/26/2018	From committee: do pass (7-0) and re-refer to the Assembly Committee on Appropriations


Joshua W. Drake
Analyst

SMT:jwd

Attachments: (1) Resolution (Martinez - Ryu)
(2) SB 1449 (Leyva)

RESOLUTION RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, In 2003, the state established the Sexual Assault Victim's Bill of Rights, which finds that law enforcement agencies have an obligation to victims of sexual assault in the proper handling, retention and timely DNA testing of rape kit evidence and other crime scene evidence; and

WHEREAS, under current law, law enforcement and crime labs are encouraged to process sexual assault forensic evidence within a specified time frame; and

WHEREAS, while law enforcement and crime labs are encouraged to process this type of evidence in a timely manner, this is not always the case; and

WHEREAS, only a small number of law enforcement agencies and crime labs process sexual assault evidence kits within the encouraged time frame; and

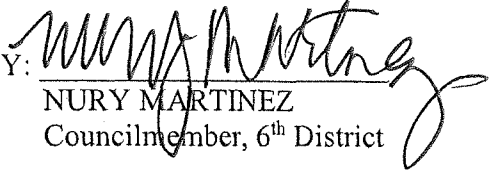
WHEREAS, SB 1449 (Leyva) would amend current law in order to require law enforcement agencies and crime labs to handle and process sexual assault evidence kits within specified time frames; and

WHEREAS, SB 1449 would require law enforcement to transfer rape kits to a crime lab within 20 days and require those labs to process this evidence within 120 days or transfer it to another lab to be processed within the allotted time frame; and

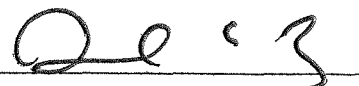
WHEREAS, SB 1449 would ensure that victims of sexual assault are provided justice, and that all evidence in their cases is appropriately processed in a timely manner;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017 - 2018 State Legislative Program SUPPORT for SB 1449 (Leyva), which would require law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place, and require crime labs to either process or transmit the evidence to another crime lab for processing within existing specified timeframes.

PRESENTED BY:


NURY MARTINEZ
Councilmember, 6th District

SECONDED BY:



JUN 29 2016

jwd

AMENDED IN SENATE MAY 25, 2018
AMENDED IN SENATE MARCH 22, 2018

SENATE BILL

No. 1449

Introduced by Senator Leyva
(Coauthors: Assembly Members Chiu and Grayson)

February 16, 2018

An act to amend Section 680 of the Penal Code, relating to ~~evidence;~~
~~and making an appropriation therefor.~~ *evidence.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1449, as amended, Leyva. Rape kits: testing.

Existing law declares that timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. Existing law encourages law enforcement agencies to either submit sexual assault forensic evidence received on or after January 1, 2016, to a crime lab within 20 days after it is booked into evidence or to ensure that a rapid turnaround DNA program is in place, as specified. Existing law also encourages a crime lab that receives sexual assault forensic evidence on or after January 1, 2016, to either process the evidence, create DNA profiles when able, and upload qualifying DNA profiles into the Combined DNA Index System, as specified, or transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after receiving the evidence, for processing of the evidence for the presence of DNA.

This bill would instead require a law enforcement agency to either submit sexual assault forensic evidence to a crime lab or ensure that a rapid turnaround DNA program is in place, as specified, and require a crime lab to either process the evidence or transmit the evidence to

another crime lab for processing, as specified. Because this bill would impose a higher level of service on local law enforcement agencies in processing that evidence, it would impose a state-mandated local program. ~~The bill would appropriate \$2,000,000 from the General Fund to the Department of Justice to allocate to local law enforcement agencies to assist them with complying with that requirement.~~

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 the statutory provisions noted above.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes-no~~. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The sum of two million dollars (\$2,000,000) is~~
 2 ~~hereby appropriated from the General Fund to the Department of~~
 3 ~~Justice to allocate to local law enforcement agencies to assist them~~
 4 ~~with complying with the amendments to Section 680 of the Penal~~
 5 ~~Code made by this act.~~

6 ~~SEC. 2.~~

7 ~~SECTION 1.~~ Section 680 of the Penal Code is amended to read:
 8 680. (a) This section shall be known as and may be cited as
 9 the "Sexual Assault Victims' DNA Bill of Rights."

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

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

14 (2) Existing law requires an adult arrested for or charged with
 15 a felony and a juvenile adjudicated for a felony to submit DNA
 16 samples as a result of that arrest, charge, or adjudication.

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

19 (4) Law enforcement agencies have an obligation to victims of
 20 sexual assaults in the proper handling, retention, and timely DNA
 21 testing of rape kit evidence or other crime scene evidence and to

1 be responsive to victims concerning the developments of forensic
2 testing and the investigation of their cases.

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

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

15 (7) In order to ensure that sexual assault forensic evidence is
16 analyzed within the two-year timeframe required by subparagraphs
17 (A) and (B) of paragraph (1) of subdivision (g) of Section 803 and
18 to ensure the longest possible statute of limitations for sex offenses,
19 including sex offenses designated pursuant to those subparagraphs,
20 the following shall occur:

21 (A) A law enforcement agency in whose jurisdiction a sex
22 offense specified in Section 261, 261.5, 262, 286, 288a, or 289
23 occurred shall do one of the following for any sexual assault
24 forensic evidence received by the law enforcement agency on or
25 after January 1, 2016:

26 (i) Submit sexual assault forensic evidence to the crime lab
27 within 20 days after it is booked into evidence.

28 (ii) Ensure that a rapid turnaround DNA program is in place to
29 submit forensic evidence collected from the victim of a sexual
30 assault directly from the medical facility where the victim is
31 examined to the crime lab within five days after the evidence is
32 obtained from the victim.

33 (B) The crime lab shall do one of the following for any sexual
34 assault forensic evidence received by the crime lab on or after
35 January 1, 2016.

36 (i) Process sexual assault forensic evidence, create DNA profiles
37 when able, and upload qualifying DNA profiles into CODIS as
38 soon as practically possible, but no later than 120 days after initially
39 receiving the evidence.

1 (ii) Transmit the sexual assault forensic evidence to another
2 crime lab as soon as practically possible, but no later than 30 days
3 after initially receiving the evidence, for processing of the evidence
4 for the presence of DNA. If a DNA profile is created, the
5 transmitting crime lab shall upload the profile into CODIS as soon
6 as practically possible, but no longer than 30 days after being
7 notified about the presence of DNA.

8 (C) This subdivision does not require a lab to test all items of
9 forensic evidence obtained in a sexual assault forensic evidence
10 examination. A lab is considered to be in compliance with the
11 guidelines of this section when representative samples of the
12 evidence are processed by the lab in an effort to detect the foreign
13 DNA of the perpetrator.

14 (D) This section does not require a DNA profile to be uploaded
15 into CODIS if the DNA profile does not meet federal guidelines
16 regarding the uploading of DNA profiles into CODIS.

17 (E) For purposes of this section, a “rapid turnaround DNA
18 program” is a program for the training of sexual assault team
19 personnel in the selection of representative samples of forensic
20 evidence from the victim to be the best evidence, based on the
21 medical evaluation and patient history, the collection and
22 preservation of that evidence, and the transfer of the evidence
23 directly from the medical facility to the crime lab, which is adopted
24 pursuant to a written agreement between the law enforcement
25 agency, the crime lab, and the medical facility where the sexual
26 assault team is based.

27 (8) For the purpose of this section, “law enforcement” means
28 the law enforcement agency with the primary responsibility for
29 investigating an alleged sexual assault.

30 (e)

31 (c) (1) Upon the request of a sexual assault victim, the law
32 enforcement agency investigating a violation of Section 261, 261.5,
33 262, 286, 288a, or 289 shall inform the victim of the status of the
34 DNA testing of the rape kit evidence or other crime scene evidence
35 from the victim’s case. The law enforcement agency may, at its
36 discretion, require that the victim’s request be in writing. The law
37 enforcement agency shall respond to the victim’s request with
38 either an oral or written communication, or by email, if an email
39 address is available. Nothing in this subdivision requires that the
40 law enforcement agency communicate with the victim or the

1 victim's designee regarding the status of DNA testing absent a
2 specific request from the victim or the victim's designee.

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

6 (A) The right to be informed whether or not a DNA profile of
7 the assailant was obtained from the testing of the rape kit evidence
8 or other crime scene evidence from their case.

9 (B) The right to be informed whether or not the DNA profile
10 of the assailant developed from the rape kit evidence or other crime
11 scene evidence has been entered into the Department of Justice
12 *Justice's CAL-DNA* Data Bank of case evidence.

13 (C) The right to be informed whether or not there is a match
14 between the DNA profile of the assailant developed from the rape
15 kit evidence or other crime scene evidence and a DNA profile
16 contained in the Department of Justice Convicted Offender DNA
17 Data Base, provided that disclosure would not impede or
18 compromise an ongoing investigation.

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

24 (d) If the law enforcement agency does not analyze DNA
25 evidence within six months prior to the time limits established by
26 subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of
27 Section 803, a victim of a sexual assault offense specified in
28 Section 261, 261.5, 262, 286, 288a, or 289 shall be informed, either
29 orally or in writing, of that fact by the law enforcement agency.

30 (e) (1) If the law enforcement agency intends to destroy or
31 dispose of rape kit evidence or other crime scene evidence from
32 an unsolved sexual assault case, a victim of a violation of Section
33 261, 261.5, 262, 286, 288a, or 289 shall be given written
34 notification by the law enforcement agency of that intention.

35 (2) A law enforcement agency shall not destroy or dispose of
36 rape kit evidence or other crime scene evidence from an unsolved
37 sexual assault case before at least 20 years, or if the victim was
38 under 18 years of age at the time of the alleged offense, before the
39 victim's 40th birthday.

1 (f) Written notification under subdivision (d) or (e) shall be
2 made at least 60 days prior to the destruction or disposal of the
3 rape kit evidence or other crime scene evidence from an unsolved
4 sexual assault case.

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

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

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

26 (j) The sole civil or criminal remedy available to a sexual assault
27 victim for a law enforcement agency's failure to fulfill its
28 responsibilities under this section is standing to file a writ of
29 mandamus to require compliance with subdivision (d) or (e).

30 ~~SEC. 3.~~

31 *SEC. 2.* If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.

O