


**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-S87
Assignment No: 18-07-0646

SUBJECT: Resolution (Martinez - Ryu) in Support of AB 3118 (Chiu)

CLA RECOMMENDATION: Adopt Resolution (Martinez - Ryu) to include in the City's 2017 - 2018 State Legislative Program SUPPORT for AB 3118 (Chiu), which would require each law enforcement agency, crime lab, medical facility, or any other facility that possesses Sexual Assault Evidence Kits (SAEK) to conduct an audit of all kits in their possession and report the findings to the California Department of Justice (DOJ).

SUMMARY:

On June 29, 2018, a Resolution (Martinez – Ryu) was introduced in support of AB 3118 (Chiu). The Resolution states that under current law, law enforcement and crime labs are encouraged to process sexual assault forensic evidence in a timely manner, but that this is not always the case. The Resolution further states that there is a backlog of over 13,000 SAEKs awaiting processing and DNA testing across California.

The Resolution states that there is no comprehensive data on the number of kits that have been collected and the reason why kits have not been tested in the time period encouraged in State law. The Resolution states that AB 3118 would remedy this issue by requiring various agencies that possess SAEKs to audit their inventories and report their findings the State. The Resolution, therefore, seeks an official position of the City of Los Angeles to support AB 3118, which would require law any law enforcement agency, crime lab, medical facility or any other facility that possesses SAEKs to conduct an audit of all kits in their possession and report the findings to the California Department of Justice.

BACKGROUND

Under current law, law enforcement agencies and crime labs are encouraged, but not required, to process SAEKs in specified timeframes. A number of agencies across the State are not processing SAEKs in a timely manner, creating a backlog of untested kits. AB 3118 would require all law enforcement agencies, crime labs, medical facilities or any other type of facilities that possess SAEKs to conduct an audit of SAEKs in their custody and report the findings to the California Department of Justice.

Proponents of this legislation state that there is a backlog of at least 13,000 SAEKs awaiting testing, but there is no information on why kits have not been tested, or if there are legitimate reasons they have not been tested. AB 3118 would definitively identify the number of SAEKs awaiting testing, and provide information on reasons for delays.


The Police Department (LAPD) has indicated that it would be able to comply with this legislation, if passed. The City recognized a backlog of untested SAEKs in 2008, and took steps to rectify the problem. As of 2011, the LAPD had eliminated the backlog, and all SAEKs have been tested. LAPD produces a SAEK Progress Report monthly and is current with testing, as the Department tests all SAEKs in its possession within 90 days.

DEPARTMENTS NOTIFIED

Police Department

BILL STATUS

| | |
|------------|-------------------------------------------------------------------------------------------------|
| 02/16/2018 | Bill introduced |
| 03/12/2018 | Referred to the Assembly Committee on Public Safety |
| 04/10/2018 | Coauthors revised |
| 04/10/2018 | From committee: do pass (7-0) and re-refer to the Assembly Committee on Appropriations |
| 05/25/2018 | From committee: do pass as amended (16-0) |
| 05/30/2018 | Read third time. Passed (77-0). Ordered to the Senate |
| 06/13/2018 | Referred to the Senate Committee on Public Safety |
| 06/26/2018 | From committee: do pass as amended (7-0) and re-refer to the Senate Committee on Appropriations |


Joshua W. Drake
Analyst

SMT:jwd

Attachments: (1) Resolution (Martinez - Ryu)
(2) AB 3118 (Chiu)

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, across the state, there is a backlog of over 13,000 sexual assault evidence kits awaiting processing and DNA testing; and

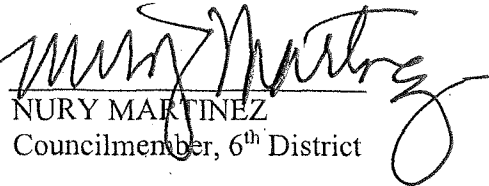
WHEREAS, there is no comprehensive data on the number of kits that have been collected, or the reason why kits have not been tested in the time period encouraged under state law; and

WHEREAS, AB 3118 (Chiu) would remedy this issue by requiring local law enforcement agencies, crime labs, and any other agency that has sexual assault evidence kits audit the number of kits they have in evidence, and report that information to the California Department of Justice; and

WHEREAS, victims of sexual assault deserve to have their cases handled in a timely manner, and AB 3118 will enable the state to identify the scope of processing the backlog;

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 AB 3118 (Chiu), which would require each law enforcement agency, crime lab, medical facility, or any other facility that possesses sexual assault evidence kits to conduct an audit of all kits in their possession and report the findings to the California Department of Justice (DOJ).

PRESENTED BY:


NURY MARTINEZ
Councilmember, 6th District

SECONDED BY:



JUN 29 2018

AMENDED IN SENATE JULY 5, 2018
AMENDED IN ASSEMBLY MAY 25, 2018
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 3118

**Introduced by Assembly Members Chiu and Gonzalez Fletcher
(Coauthors: Assembly Members Lackey, Rodriguez, and Mullin)
(Coauthor: Senator Leyva)**

February 16, 2018

An act to add and repeal Section 680.4 of the Penal Code, relating to sexual assault.

LEGISLATIVE COUNSEL'S DIGEST

AB 3118, as amended, Chiu. Sexual assault: investigations.

Existing law establishes the "Sexual Assault Victims' DNA Bill of Rights" which prescribes requirements for law enforcement agencies and crime labs regarding the processing of forensic evidence in sexual assault cases and requires certain notifications to be made to the victim.

This bill would require 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 report certain data to the Department of Justice by no later than July 1, 2019.

The bill would also require the Department of Justice to prepare and submit a report to the Legislature regarding the results of these audits by no later than July 1, 2020.

By requiring local government entities to complete an audit and submit a report, this bill would impose a state-mandated local program.

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: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 680.4 is added to the Penal Code, to read:
2 680.4. (a) Each law enforcement agency, medical facility,
3 crime laboratory, and any other facility that receives, maintains,
4 stores, or preserves sexual assault evidence kits shall conduct an
5 audit of all untested sexual assault kits in their possession and
6 shall, no later than July 1, 2019, submit a report to the Department
7 of Justice containing the following information:
8 (1) The total number of untested sexual assault kits in their
9 possession.
10 (2) For each kit, the following information:
11 (A) Whether or not the assault was reported to a law
12 enforcement agency.
13 (B) ~~The~~ *For kits other than those described in subparagraph*
14 *(C), the following dates, data, as applicable:*
15 (i) The date the kit was collected.
16 (ii) The date the kit was picked up by a law enforcement agency,
17 for each law enforcement agency that has taken custody of the kit.
18 (iii) The date the kit was delivered to a crime laboratory.
19 ~~(C)~~
20 (iv) The reason the kit has not been tested, if applicable.
21 *(C) For kits where the victim has chosen not to pursue*
22 *prosecution at the time of the audit, only the number of kits.*
23 (b) The Department of Justice shall, no later than July 1, 2020,
24 prepare and submit a report to the Legislature summarizing the
25 information received pursuant to subdivision (a).
26 (c) The report required by subdivision (b) shall be submitted in
27 compliance with Section 9795 of the Government Code.

1 (d) Pursuant to Section 10231.5 of the Government Code, this
2 section is repealed on July 1, 2024.

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

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