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AB-41 DNA evidence. (2017-2018)

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Assembly Bill No. 41

CHAPTER 694

An act to add Section 680.3 to the Penal Code, relating to DNA evidence.

[Approved by Governor October 12, 2017. Filed with Secretary of State October 12, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 41, Chiu. DNA evidence.

Existing law establishes the Sexual Assault Victims' DNA Bill of Rights, which, among other things, encourages a law enforcement agency assigned to investigate specified sexual assault offenses to perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner to ensure the longest possible statute of limitations. Existing law also requires a law enforcement agency to inform victims of certain unsolved sexual assault offenses if the law enforcement agency elects not to analyze DNA evidence within certain time limits.

This bill would require law enforcement agencies to report information regarding rape kit evidence, within 120 days of the collection of the kit, to the Department of Justice through a database established by the department. The bill would require that information to include, among other things, whether biological evidence samples were submitted to a DNA laboratory for analysis and if a probative DNA profile was generated. The bill would additionally require a public DNA laboratory, or a law enforcement agency contracting with a private laboratory, to provide a reason for not testing a sample every 120 days the sample is untested, except as specified. The bill would only impose these requirements for a kit collected on or after January 1, 2018. By imposing additional duties on local law enforcement, the bill would create a state-mandated local program. The bill would require that money received by the Office of Emergency Services from the federal Office on Violence Against Women be used before appropriating money from the General Fund for purposes of reimbursing any costs determined by the Commission on State Mandates to be mandated by the state to a local law enforcement agency by the bill.

This bill would require the department to file a report to the Legislature on an annual basis summarizing the information in its database. The bill would prohibit law enforcement agencies or laboratories from being compelled to provide any contents of the database in a civil or criminal case, except as required by a law enforcement agency's duty to produce exculpatory evidence to a defendant in a criminal case.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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 these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

(a) There is a significant public interest in knowing the percentage of rape kits that are analyzed to identify the perpetrator's DNA profile, as well as the reason for any untested rape kits not being analyzed. Currently, there is no mandatory statewide tracking mechanism to collect and report these metrics. It is the intent of the Legislature in enacting this act, pursuant to recommendations by the California State Auditor to the Joint Legislative Audit Committee, to correct that.

(b) In 2015, the Department of Justice created the Sexual Assault Forensic Evidence Tracking (SAFE-T) database to track the status of all sexual assault evidence kits collected in the state based on voluntary data input from law enforcement agencies. It is the intent of the Legislature by enacting this act to require participation in that database.

SEC. 2. Section 680.3 is added to the Penal Code, to read:

680.3. (a) Each law enforcement agency that has investigated a case involving the collection of sexual assault kit evidence shall, within 120 days of collection, create an information profile for the kit on the Department of Justice's SAFE-T database and report the following:

(1) If biological evidence samples from the kit were submitted to a DNA laboratory for analysis.

(2) If the kit generated a probative DNA profile.

(3) If evidence was not submitted to a DNA laboratory for processing, the reason or reasons for not submitting evidence from the kit to a DNA laboratory for processing.

(b) After 120 days following submission of rape kit biological evidence for processing, if a public DNA laboratory has not conducted DNA testing, that laboratory shall provide the reasons for the status in the appropriate SAFE-T data field. If the investigating law enforcement agency has contracted with a private laboratory to conduct DNA testing on rape kit evidence, the submitting law enforcement agency shall provide the 120-day update in SAFE-T. The process described in this subdivision shall take place every 120 days until DNA testing occurs, except as provided in subdivision (c).

(c) Upon expiration of a sexual assault case's statute of limitations, or if a law enforcement agency elects not to analyze the DNA or intends to destroy or dispose of the crime scene evidence pursuant to subdivision (f) of Section 680, the investigating law enforcement agency shall state in writing the reason the kit collected as part of that case's investigation was not analyzed. This written statement relieves the investigating law enforcement agency or public laboratory of any further duty to report information related to that kit pursuant to this section.

(d) The SAFE-T database shall not contain any identifying information about a victim or a suspect, shall not contain any DNA profiles, and shall not contain any information that would impair a pending criminal investigation.

(e) On an annual basis, the Department of Justice shall file a report to the Legislature in compliance with Section 9795 of the Government Code summarizing data entered into the SAFE-T database during that year. The report shall not reference individual victims, suspects, investigations, or prosecutions. The report shall be made public by the department.

(f) Except as provided in subdivision (e), in order to protect the confidentiality of the SAFE-T database information, SAFE-T database contents shall be confidential, and a participating law enforcement agency or laboratory shall not be compelled in a criminal or civil proceeding, except as required by *Brady v. Maryland* (1963) 373 U.S. 83, to provide any SAFE-T database contents to a person or party seeking those records or information.

(g) The requirements of this section shall only apply to sexual assault evidence kit evidence collected on or after January 1, 2018.

(h) Money received by the Office of Emergency Services from the federal Office on Violence Against Women that may be used for the testing of sexual assault kit evidence shall be used before appropriating money from the General Fund for purposes of reimbursing any costs determined by the Commission on State Mandates to be mandated by the state to a local law enforcement agency by this section.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 680.3 to the Penal Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the

meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy and safety of victims of crime and witnesses to crime, as well as the confidentiality of criminal records and investigations, it is necessary to keep the information in a SAFE-T database confidential.

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