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SB-916 Sexual assault: victim's rights. (2021-2022)

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Senate Bill No. 916

CHAPTER 709

An act to amend Sections 680 and 680.2 of the Penal Code, relating to sexual assault.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 916, Leyva. Sexual assault: victim's rights.

Existing law, the Sexual Assault Victims' DNA Bill of Rights, requires that sexual assault victims be provided with specified information about their case, including the status of the DNA testing of the rape kit evidence or other crime scheme evidence from the victim's case. Existing law, subject to commitment of sufficient resources to respond to requests for information, gives sexual assault victims the right to be informed whether or not a DNA profile of the assailant was obtained from testing of the rape kit or other evidence, whether that evidence has been submitted to the state database, and whether a DNA match was found.

This bill would, instead, give the a victim of sexual assault the right to access the Department of Justice's SAFE-T database portal involving their own forensic evidence kit and the status of the kit, and the right to information relating to the testing of evidence and DNA in state and federal databases.

Existing law, upon initial interaction with a sexual assault victim, requires a law enforcement officer or medical provider to provide the victim with a card that explains all of the rights of sexual assault victims, including, among other things, a clear statement that a sexual assault victim is not required to participate in the criminal justice system or to receive a medical evidentiary or physical examination to retain their rights under the law.

This bill would require the card to also include a notification that a court may not imprison or otherwise confine or place in custody a victim of sexual assault or domestic violence for contempt if the contempt consists of refusing to testify concerning the crime.

By requiring higher levels of service from local law enforcement, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 680 of the Penal Code proposed by SB 1228 to be operative only if this bill and SB 1228 are enacted and this bill is enacted last.

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 Local Program: yes

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

SECTION 1. Section 680 of the Penal Code is amended to read:

680. (a) This section shall be known as and may be cited as the "Sexual Assault Victims' DNA Bill of Rights."

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

- (1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a powerful law enforcement tool for identifying and prosecuting sexual assault offenders.
- (2) Existing law requires an adult arrested for or charged with a felony and a juvenile adjudicated for a felony to submit DNA samples as a result of that arrest, charge, or adjudication.
- (3) Victims of sexual assaults have a strong interest in the investigation and prosecution of their cases.
- (4) Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention, and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.
- (5) The growth of the Department of Justice's Cal-DNA databank and the national databank through the Combined DNA Index System (CODIS) makes it possible for many sexual assault perpetrators to be identified after their first offense, provided that rape kit evidence is analyzed in a timely manner.
- (6) Timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. It is the intent of the Legislature, in order to further public safety, to encourage DNA analysis of rape kit evidence within the time limits imposed by subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of Section 803.

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

(1) A law enforcement agency in whose jurisdiction a sex offense specified in Section 261, 261.5, 286, 287, or 289 or former Section 262 or 288a occurred shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency 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.

(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.

(2) 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.

(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.

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

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

(5) For purposes of this section, a "rapid turnaround DNA program" is a program for the training of sexual assault team personnel in the selection of representative samples of forensic evidence from the victim to be the best evidence, based on the medical evaluation and patient history, the collection and preservation of that evidence, and the transfer of the evidence directly from the medical facility to the crime lab, which is adopted pursuant to a written agreement between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is based.

(6) For the purpose of this section, "law enforcement" means the law enforcement agency with the primary responsibility for investigating an alleged sexual assault.

(d) (1) Upon the request of a sexual assault victim, the law enforcement agency investigating a violation of Section 261, 261.5, 286, 287, or 289 or of former Section 262 or 288a shall 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. The law enforcement agency may, at its discretion, require that the victim's request be in writing. The law enforcement agency shall respond to the victim's request with either an oral or written communication, or by email, if an email address is available. This subdivision does not require that the law enforcement agency 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.

(2) Sexual assault victims have the right to access the Department of Justice's SAFE-T database portal consistent with subdivision (e) of Section 680.3 for information involving their own forensic kit and the status of the kit.

(3) Sexual assault victims have the right to be informed of the following:

(A) 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) 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 Department of Justice Data Bank or the federal Department of Justice or Federal Bureau of Investigation CODIS database of case evidence.

(C) Whether or not there is a confirmed 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 Department of Justice Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation.

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

(e) If the law enforcement agency does not analyze DNA evidence within six months prior to the time limits established by subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of Section 803, a victim of a sexual assault offense specified in Section 261, 261.5, 286, 287, or 289 or former Section 262 or 288a shall be informed, either orally or in writing, of that fact by the law enforcement agency.

(f) (1) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, a victim of a violation of Section 261, 261.5, 286, 287, or 289 or former Section 262 or 288a shall be given written notification by the law enforcement agency of that intention.

(2) A law enforcement agency shall not destroy or dispose 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.

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

(h) 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 required to be provided by this section.

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

(j) A defendant or person accused or convicted of a crime against the victim shall not have standing to object to any failure to comply with this section. The failure to provide a right or notice to a sexual assault victim under this section may not be used by a defendant to seek to have the conviction or sentence set aside.

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

SEC. 1.5. Section 680 of the Penal Code is amended to read:

680. (a) This section shall be known as and may be cited as the "Sexual Assault Victims' DNA Bill of Rights."

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

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

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

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

(4) Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention, and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.

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

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

(7) DNA reference samples collected directly from a victim of sexual assault, and reference samples of DNA collected from any individual that were voluntarily provided for the purpose of exclusion, shall be protected as provided in Section 679.12.

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

(1) A law enforcement agency in whose jurisdiction a sex offense specified in Section 261, 261.5, 286, 287, or 289 or former Section 262 or 288a occurred shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency 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.

(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.

(2) 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.

(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.

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

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

(5) For purposes of this section, a "rapid turnaround DNA program" is a program for the training of sexual assault team personnel in the selection of representative samples of forensic evidence from the victim to be the best evidence, based on the medical evaluation and patient history, the collection and preservation of that evidence, and the transfer of the evidence directly from the medical facility to the crime lab, which is adopted pursuant to a written agreement between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is based.

(6) For the purpose of this section, "law enforcement" means the law enforcement agency with the primary responsibility for investigating an alleged sexual assault.

(d) (1) Upon the request of a sexual assault victim, the law enforcement agency investigating a violation of Section 261, 261.5, 286, 287, or 289 or of former Section 262 or 288a shall 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. The law enforcement agency may, at its discretion, require that the victim's request be in writing. The law enforcement agency shall respond to the victim's request with either an oral or written communication, or by email, if an email address is available. This subdivision does not require that the law enforcement agency 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.

(2) Sexual assault victims have the right to access the Department of Justice's SAFE-T database portal consistent with subdivision (e) of Section 680.3 for information involving their own forensic kit and the status of the kit.

(3) Sexual assault victims have the right to be informed of the following:

(A) 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) 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 Department of Justice Data Bank or the federal Department of Justice or Federal Bureau of Investigation CODIS database of case evidence.

(C) Whether or not there is a confirmed 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 Department of Justice Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation.

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

(e) If the law enforcement agency does not analyze DNA evidence within six months prior to the time limits established by subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of Section 803, a victim of a sexual assault offense specified in Section 261, 261.5, 286, 287, or 289 or former Section 262 or 288a shall be informed, either orally or in writing, of that fact by the law enforcement agency.

(f) (1) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, a victim of a violation of Section 261, 261.5, 286, 287, or 289 or former Section 262 or 288a shall be given written notification by the law enforcement agency of that intention.

(2) A law enforcement agency shall not destroy or dispose 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.

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

(h) 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 required to be provided by this section.

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

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

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

SEC. 2. Section 680.2 of the Penal Code is amended to read:

680.2. (a) Upon the initial interaction with a sexual assault victim, a law enforcement officer or medical provider shall provide the victim with a card to be developed by every local law enforcement agency, in consultation with sexual assault experts, that explains all of the rights of sexual assault victims in clear language that is comprehensible to a person proficient in English at the fifth grade level, in at least 12-point font, and available in all major languages of the state. This card shall include, but is not limited to, all of the following:

- (1) A clear statement that a sexual assault victim is not required to participate in the criminal justice system or to receive a medical evidentiary or physical examination in order to retain their rights under law.
- (2) A clear statement that, under Section 1219 of the Code of Civil Procedure, a court may not imprison or otherwise confine or place in custody a victim of sexual assault or domestic violence for contempt if the contempt consists of refusing to testify concerning the crime.
- (3) Telephone or internet website contact information for a nearby rape crisis center and sexual assault counselor.
- (4) Information about the types of law enforcement protection available to the sexual assault victim, including a temporary protection order, and the process to obtain that protection.
- (5) Instructions for requesting the results of the analysis of the victim's sexual assault forensic evidence.
- (6) Information about state and federal compensation funds for medical and other costs associated with the sexual assault and information on any municipal, state, or federal right to restitution for sexual assault victims if a criminal trial occurs.
- (7) A clear statement that the victim has the right to have a sexual assault counselor and at least one other support person of the victim's choosing present at any initial medical evidentiary examination, physical examination, or investigative interview arising out of a sexual assault, and that a sexual assault counselor can be contacted 24 hours a day.
- (8) Information about the rate of potential evidence degradation.
- (9) A clear statement that if sexual assault forensic evidence will be tested, it should be transported to the crime laboratory and analyzed within the time limits imposed by subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of Section 803.
- (10) A clear statement that the law enforcement agency or crime laboratory will retain the sexual assault forensic evidence for at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, at least until the victim's 40th birthday.

(b) A law enforcement official shall, upon written request by a sexual assault victim, furnish a free copy of the initial crime report related to the sexual assault, regardless of whether the report has been closed by the law enforcement agency, to the victim. A law enforcement agency may redact personal, identifying information in the copy furnished to the victim.

(c) A prosecutor shall, pursuant to Section 290.46, upon written request by a sexual assault victim, provide the convicted defendant's information on a sex offender registry to the victim, if the defendant is required to register as a sex offender.

(d) The law enforcement agency shall provide sufficient copies of the card described in subdivision (a) to each provider in its jurisdiction of medical evidentiary examinations or physical examinations arising out of sexual assault.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 680 of the Penal Code proposed by both this bill and Senate Bill 1228. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends Section 680 of the Penal Code, and (3) this bill is enacted after Senate Bill 1228, in which case Section 1 of this bill shall not become operative.

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.