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**SB-464 Criminal law: rights of victims and witnesses of crimes.** (2023-2024)

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**Senate Bill No. 464**

**CHAPTER 715**

An act to amend Sections 680, 680.3, and 11116.10 of, and to repeal and add Section 680.4 of the Penal Code, relating to criminal law.

[ Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 464, Wahab. Criminal law: rights of victims and witnesses of crimes.

Existing law requires a prosecuting attorney, upon the request of a victim or a witness of a crime, to inform the victim or witness by letter of the final disposition of the case within 60 days of the final disposition.

This bill would instead require the prosecuting attorney, upon the request of a victim or a witness of a crime, to inform the victim or witness by letter of the final disposition of the case within 30 days.

Existing law requires 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 required these entities to report certain data to the Department of Justice by no later than July 1, 2019. Existing law required 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. Existing law requires the Department of Justice to prepare an information profile on each kit in the department's SAFE-T database, and to develop a process to allow a survivor to track and receive updates regarding their sexual assault evidence kit.

This bill would require all law enforcement agencies, medical facilities, public 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. The bill would require each law enforcement agency and public crime laboratory to create a record in the SAFE-T database for every victim sexual assault kit that has not had DNA testing completed, as specified, by no later than July 1, 2026. The bill would specify that the SAFE-T database not include sexual assault evidence kits collected from suspects, but would require those kits to also be subject to the audit, as specified. The bill would require each medical facility and other non-law enforcement entity to report certain data relating to untested kits to the Department of Justice by no later than July 1, 2026. The bill would additionally 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, 2027. By requiring local government entities to complete an audit and submit a report, this bill would impose a state-mandated local program. The bill would authorize a victim to request that a kit collected from them not be tested, and would exempt that kit from being tested.

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

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## 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 limit imposed by 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 timeframe required by 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 Database, 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 limit established by 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 of 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) (1) 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.

(2) A sexual assault victim may request that a kit collected from them not be tested. A kit for which this request has been made shall not be tested and shall not be subject to the requirements of this section, Section 680.3, or Section 680.4.

(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 680.3 of the Penal Code is amended to read:

**680.3.** (a) Each law enforcement agency that has investigated a case involving the collection of sexual assault kit evidence from a victim shall, within 120 days of collection, create an information record 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 sexual assault 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 vendor laboratory to conduct DNA testing on 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 is complete, except as provided in subdivision (c).

(c) (1) 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 (g) 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.

(2) A record of a kit collected prior to January 1, 2016, that is created in SAFE-T pursuant to subdivision (b) of Section 680.4 is excluded from the 120-day update requirement.

(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) The SAFE-T database shall, on or before July 1, 2022, allow a survivor of sexual assault to track and receive updates privately, securely, and electronically regarding the status and location of the survivor's sexual assault evidence kit, as provided in Section 680.1.

(f) 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.

(g) 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.

(h) The requirements of this section shall only apply to sexual assault kit evidence from a victim collected on or after January 1, 2018, and to sexual assault kit evidence from a victim required to be entered into the SAFE-T database pursuant to subdivision (b) of Section 680.4.

**SEC. 3.** Section 680.4 of the Penal Code is repealed.

**SEC. 4.** Section 680.4 is added to the Penal Code, to read:

**680.4.** (a) Each law enforcement agency, medical facility, public crime laboratory, and any other entity that receives, maintains, stores, or preserves sexual assault evidence kits shall participate in an audit of all untested sexual assault kits in their possession

pursuant to this section.

(b) No later than July 1, 2026, each law enforcement agency and public crime laboratory subject to subdivision (a) shall create a record in the SAFE-T database, pursuant to Section 680.3, for every victim sexual assault kit in their possession that has not had DNA testing completed as of July 1, 2026.

(1) 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 shall be considered tested for the purposes of this section.

(2) A kit that has only undergone biological screening shall not be considered tested for the purposes of this section. 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 for the purposes of this section.

(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 for the purposes of this section.

(3) The SAFE-T database shall only contain records for sexual assault evidence kits collected from victims. Sexual assault evidence kits collected from suspects shall also be subject to the audit pursuant to this section, but they shall not be entered into the SAFE-T database. The following information shall be reported separately by each entity in a format prescribed by the Department of Justice:

(A) The total number of untested suspect sexual assault kits in their possession.

(B) For each suspect kit, the following information:

(i) The date the suspect kit was collected.

(ii) The date the suspect kit was picked up by a law enforcement agency, for each law enforcement agency that has taken custody of the kit.

(iii) The date the suspect kit was delivered to a crime laboratory.

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

(4) 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.

(c) No later than July 1, 2026, each medical facility and other non-law enforcement entity subject to subdivision (a) shall report to the Department of Justice, in the format prescribed by the department, all of the following:

(1) The total number of untested sexual assault kits in their possession that were not submitted to a law enforcement agency 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.

(2) For untested sexual assault evidence kits in their possession where the victim chose to report the assault to law enforcement:

(A) The total number of untested sexual assault kits in their possession.

(B) For each kit, the following information:

(i) The date the kit was collected.

(ii) The name of the medical facility, law enforcement agency, public crime laboratory, or other entity from which the kit was received.

(iii) The date the kit was received by the entity.

(iv) The reason the kit has not been submitted to a law enforcement agency or public crime laboratory.

(C) This reporting requirement does not apply to untested kits that have been recently collected and are temporarily being stored pending release to a law enforcement agency or public crime laboratory.

(d) The Department of Justice shall, by no later than July 1, 2027, prepare and submit a report to the Legislature summarizing the information received pursuant to subdivisions (b) and (c).

(e) The report required by subdivision (d) shall be submitted in compliance with Section 9795 of the Government Code.

**SEC. 5.** Section 11116.10 of the Penal Code is amended to read:

**11116.10.** (a) Upon the request of a victim or a witness of a crime, the prosecuting attorney shall, within 30 days of the final disposition of the case, inform the victim or witness by letter of such final disposition. Such notice shall state the information described in Section 13151.1.

(b) As used in this section, "victim" means any person alleged or found, upon the record, to have sustained physical or financial injury to person or property as a direct result of the crime charged.

(c) As used in this section, "witness" means any person who has been or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

(d) As used in this section, "final disposition," means 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.

(e) Subdivision (a) does not apply in any case where the offender or alleged offender is a minor unless the minor has been declared not a fit and proper subject to be dealt with under the juvenile court law.

(f) This section shall not apply to any case in which a disposition was made prior to the effective date of this section.

**SEC. 6.** 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.