

Date of Hearing: May 17, 2017

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Lorena Gonzalez Fletcher, Chair  
AB 1312 (Gonzalez Fletcher) – As Amended April 6, 2017

Policy Committee: Public Safety Vote: 7 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

**SUMMARY:**

This bill:

- 1) Requires law enforcement and medical professionals to provide victims of sexual assault with written notification of their rights and provides additional rights to victims of sexual assault, in addition to specified free services.
- 2) Mandates law enforcement and crime labs to complete tasks related to rape kit evidence within specific time periods. And requires, for unsolved crimes, the retention of rape kit evidence or crime scene evidence for at least 20 years, or at least until the 40<sup>th</sup> birthday if the victim was under 18 years of age at the time of the sexual assault.
- 3) Requires the courts upon request by a sexual assault victim during a criminal proceeding related to the alleged sexual assault, to provide the victim and the victim's family members, friends, and witnesses with a secure waiting area separate from the district attorney's office and defendant's friends and family members.

**FISCAL EFFECT:**

- 1) Unknown but significant trial court costs (GF/special funds) in the low millions of dollars to provide a secure waiting area for the victim, and the victim's family, friends, and witnesses.

The Judicial Council questions the ability of courthouses to accommodate the secure waiting area requirement within existing space resources. Several new multi-million dollar courthouses have been completed in the past four years, and not one has this particular facility and the layout of older courthouses makes it impossible to create the waiting area. To accommodate the secure waiting area most courts would be forced to obtain and fund additional space.

In addition, this bill requires the waiting area to be "secure." To make the waiting area "secure," courts will be required to provide staff resources to secure the waiting area as well as expend funds for any associated facilities costs.

- 2) Capital cost of \$3 million (GF) for a new storage facility for Department of Justice (DOJ) to construct a storage facility to house rape kits and other sexual assault evidence for 20 to 40 years for unsolved crimes. This will require an additional \$150,000 in annual maintenance in the on-going years, and additional resources to staff the facility.
- 3) DOJ also has identified additional unknown costs to litigate additional cases.

- 4) Unknown but significant reimbursable state-mandated costs (GF) in the tens of thousands of dollars for the additional requirements imposed on local law enforcement agencies, including the requirement for processing the DNA evidence by specified time lines.

#### COMMENTS:

- 1) **Purpose.** According to the author, "The Center for Disease Control estimates that 25 million Americans are rape survivors. In California, there are an estimated 2 million female victims of rape and 5.6 million female victims of other sexual violence."

The author also states, "While California has made efforts to improve the testing and tracking of rape kits and the treatment of survivors, there are still loopholes in the other law and problems. For instance, current reading of California's code could allow for a rape kit to be destroyed after only two years. Furthermore, the complex medical and legal systems survivors face after the assault continues to be difficult to navigate for many due to a lack of clear information or extra accommodations an individual might need."

The author further states, "AB 1312 would ensure rape kits are not prematurely destroyed, and expand the protections and services granted to victims of sexual assault. These additional rights for victims and clear distribution of relevant information will make the process easier for survivors and more mindful of their needs."

- 2) **Background.** Current law requires the Office of Emergency Services (OES) to use the discretionary funds from federal grants awarded to the agency through the federal Office of Violence Against Women, to cover the cost, of up to \$300, of the medical evidentiary examination portion of a medical examination of a sexual assault victim.

The Sexual Assault Victims' Bill of Rights encourages law enforcement and crime labs to handle and process sexual assault forensic evidence within specific time frame. As a result of AB 1517 (Skinner), Chapter 874, Statutes of 2014, the Victims' DNA Bill of Rights currently provides that law enforcement should submit sexual assault forensic evidence to the crime labs within specified times and that crime labs should process the sexual assault forensic evidence within certain times.

This bill changes the advisory language of Sexual Assault Victims' DNA Bill of Rights to mandatory language, but does not change the time frames.

Current law requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to its destruction, when the case is unsolved and the statute of limitations has not run out.

AB 1312 sets requirements for the retention of evidence, and provides for requirements prior to the destruction of evidence. Survivors of sexual assault will not have to worry about the destruction of evidence.

California law already provides a number of rights for sexual assault victims. This bill provides additional guarantees such as access to a free police report, notification to the victim about ramifications of delaying the sexual assault exam, access to a shower or

bath after a sexual assault examination, and written advisement of victim rights and resources for help.

- 3) **Support:** According to the Los Angeles County Professional Peace Officers Association, “The more the victim can be provided a sense of control in the process right from the start, (and throughout the interview), the more they'll be able to cooperate during the interview with law enforcement. AB 1312 states that prior to the initial interview by law enforcement or the district attorney regarding a crime of sexual assault, the victim must be notified orally or in writing that the victim has the right to have victim advocates and a support person of the victim's choosing present at the interview or contact, and that the victim has the right to have the same individuals present at any interview by the defense attorney or members of the defense team.
- 4) **Opposition.** According to the California State Sheriffs' Association, "AB 1312 will result in law enforcement agencies and crime labs being required to expend significant resources to test rape kit evidenced and store evidence for decades. Rape kits may go untested for numerous reasons including the identity of perpetrator is not in question or the victim may have recanted his or her testimony. This bill makes no allowance for such a situation, or even a scenario in which the victim indicates that he or she no longer wishes to have his or her rape kit tested.”
- 5) **Related Legislation:** AB 334 (Cooper) will clarify rights of individuals that undergo a sexual assault medical examination. Specifies guidelines to establish implied consent to conduct a sexual assault medical exam when the patient is incapacitated. AB 334 is in this Committee on Suspense.

AB 41 (Chiu) requires local law enforcement agencies to update the Sexual Assault Forensic Evidence Tracking (SAFE-T) database on the disposition of all sexual assault evidence kits in their custody that were collected after January 1, 2018. Also, the Department of Justice (DOJ) is required to provide quarterly reports to the Legislature summarizing the data received. This bill is on the Assembly floor.

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