

ITEM 3
TEST CLAIM
PROPOSED DECISION

Penal Code Section 680 as Amended by
Statutes 2019, Chapter 588 (SB 22)

Sexual Assault Evidence Kits: Testing

20-TC-01

City of San Diego, Claimant

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STATE of CALIFORNIA
COMMISSION ON STATE
MANDATES



TEST CLAIM FORM

Section 1

Proposed Test Claim Title:

Senate Bill 22 – Sexual Assault Evidence Kits (SAEK): Testing

Section 2

Local Government (Local Agency/School District) Name:

City of San Diego

Name and Title of Claimant's Authorized Official pursuant to CCR, tit.2, § 1183.1(a)(1-5):

Matthew Vespi – Chief Financial Officer

Street Address, City, State, and Zip:

202 C Street, 9th Floor, San Diego, CA 92101

Telephone Number

Fax Number

Email Address

619 236 6218

619 533 4669

mvespi@sandiego.gov

Section 3

Claimant Representative: Jeffrey Jordon Title Captain

Organization: City of San Diego – San Diego Police Department

Street Address, City, State, Zip:

1401 Broadway, San Diego, CA 92101

Telephone Number

Fax Number

Email Address

619 756 5264

619 531 2530

jjjordon@pd.sandiego.gov

For CSM Use Only	
Filing Date:	<div>RECEIVED December 31, 2020 Commission on State Mandates</div>
Test Claim #:	20-TC-01

Section 4 – Please identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to Government Code section 17553 and don't forget to check whether the code section has since been amended or a regulation adopted to implement it (refer to your completed WORKSHEET on page 7 of this form):

Penal Code 680, Statutes of 2019, Chapter 588 [SB 22], effective date 01/01/2020

☒ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 12 / 31 / 2020

☒ A: Which is not later than 12 months following [insert the effective date of the test claim statute(s) or executive order(s)] 01 / 01 / 2020, the effective date of the statute(s) or executive order(s) pled; or

☐ B: Which is within 12 months of [insert the date costs were *first* incurred to implement the alleged mandate] / / , which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

(Gov. Code § 17551(c); Cal. Code Regs., tit. 2, §§ 1183.1(c) and 1187.5.)

Section 5 – Written Narrative:

☒ Includes a statement that actual and/or estimated costs exceed one thousand dollars (\$1,000). (Gov. Code § 17564.)

☒ Includes all of the following elements for each statute or executive order alleged pursuant to Government Code section 17553(b)(1) (refer to your completed WORKSHEET on page 7 of this form):

☒ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;

☒ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;

☒ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

- ☒ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;
Following FY: 2020 - 2021 Total Costs: \$8,000,000
- ☒ Identifies all dedicated funding sources for this program; State: None
Federal: None Local agency's general purpose funds: None
Other nonlocal agency funds: State COPS (grant) \$190,880.00 used in FY2020-2021 already.
Fee authority to offset costs: None
- ☒ Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: None
- ☒ Identifies a legislatively determined mandate that is on the same statute or executive order: None

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to Government Code Section 17553(b)(2) and California Code of Regulations, title 2, section 1187.5, as follows (refer to your completed WORKSHEET on page 7 of this form):

- ☒ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- ☒ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- ☒ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).
- ☒ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Government Code section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Government Code section 17574.
- ☒ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to Government Code section 17553(b)(3) and California Code of Regulations, title 2, § 1187.5 (refer to your completed WORKSHEET on page 7 of this form):

- ☒ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate. Pages 35 to 40.

- ☐ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages _____ to _____.
- ☒ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 14 to 14.
- ☒ Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5).* Pages 21 to 24.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to Government Code section 17553

- ☒ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to California Code of Regulations, title 2, section 1183.1(a)(1-5) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in section 1183.1(a)(1-5) of the Commission's regulations, and not by the representative.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. (Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.)

Matthew Vespi

Chief Financial Officer

Name of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Print or Type Title


Signature of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

2/22/2021
Date

000004

Test Claim Form Sections 4-7 WORKSHEET

Complete Worksheets for Each New Activity and Modified Existing Activity Alleged to Be Mandated by the State, and Include the Completed Worksheets With Your Filing.

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number:

Penal Code sections 680, Statutes of 2019, Chapter 588 [SB 22], effective date 01/01/2020

Activity: SB 22 creates an alleged statutory mandate by amending language in Penal Code 680 Section (c)(2)(A) requiring local law enforcement agencies to process sexual assault evidence, create DNA profiles and upload DNA profiles into CODIS no later than 120 days after receiving it.

Initial FY 2019-2020 Cost: \$62,483.20 Following FY: 2020-2021 Cost: \$1,072,444.80

Evidence (if required): Declaration of Captain Jeff Jordon

All dedicated funding sources; State: None Federal: None

Local agency's general purpose funds: None

Other nonlocal agency funds: None

Fee authority to offset costs: None

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register

Number: Penal Code sections 680, Statutes of 2019, Chapter 588 [SB 22], effective date 01/01/2020

Activity: SB 22 creates an alleged statutory mandate by amending language in Penal Code 680 Section (c)(2)(B) requiring local law enforcement agencies to transmit sexual assault evidence to another crime lab, no later than 30 days after receiving it, for the processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting lab shall upload it into CODIS within 30 days after being notified about the presence of DNA.

Initial FY2019-2020 Cost: \$53,655.75 Following FY2020-2021 Cost: \$1,262,860.94

Evidence (if required): Declaration of Captain Jeff Jordon

All dedicated funding sources; State: None Federal: None

Local agency's general purpose funds: None

Other nonlocal agency funds: State COPS (grant) \$190,880.00 used in FY2020-2021 already, estimates this amount will increase to \$214,855.00 during FY2020-2021.

Fee authority to offset costs: None

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: _____

Activity: _____

Initial FY: _____ - _____ Cost: _____ Following FY: _____ - _____ Cost: _____

Evidence (if required): _____

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Test Claim of City of San Diego
Sexual Assault Evidence Kit Testing
Penal Code section 680, Statutes of 2019,
Chapter 588 [SB 22], effective date 01/01/2020

STATEMENT OF CLAIM

NARRATIVE SUMMARY:

Sexual assault forensic evidence kits (SAEK), which the state legislature has referred to as “rape kits,” are used by health professionals to collect DNA evidence related to criminal investigations that involve sexual assaults. Law enforcement agencies receive this evidence, and work with criminal or private laboratories, as circumstances dictate, to have this evidence analyzed to identify suspects in sexual assaults. After analysis, DNA profiles that meet certain criteria are uploaded into the FBI’s Combined DNA Index System, or CODIS, and this may generate investigative leads in cases where biological evidence is recovered from a crime victim or scene.

Prior to the passage of SB 22, California Penal Code 680 encouraged; however, it did not require local agencies charged with investigating sexual assaults to have sexual assault forensic evidence kits sent to a lab for testing or for labs to test the SAEKs they received. There are a number of reasons why this did not occur including, but not limited to, the following factors: the identity of the suspect was already known, consent of the victim was a primary factor in the prosecution of a crime, or the suspect entered a guilty plea rendering an investigation moot (See Exhibits 1 and 10).

Senate Bill Number 22 (See Exhibit 2) was approved by the governor on October 8, 2019, and became effective January 1, 2020. It modifies three Penal Codes 680, 680.3 and 13823.14 - known in California as the “Sexual Assault Victims’ DNA Bill of Rights.” **The claimant, City of San Diego, implemented and began to incur costs related to SB 22 on January 2, 2020, when it began to test and process all SAEKs received within its crime lab after January 1, 2016 as required by legislation that amended California Penal Code sections 680(c)(2)(A) and 680(c)(2)(B). Compliance with these specific penal code sections require local agencies to provide a higher level of service.**

The enactment of SB 22 produced a legislative mandate, which moved beyond encouraging local law enforcement agencies and labs to test sexual assault forensic evidence under Penal Code 680. SB 22 now requires local law enforcement agencies to submit every SAEK for specified sexual assault offenses to a crime lab, either its own or a contracted facility, and for the lab to test this evidence in specified time frames. SB 22 is retroactive, meaning it also requires crime labs to process the sexual assault kits they have received since January 1, 2016 for the presence of DNA, or transmit them to another labs for testing.

For claimant, the legislative mandate from **Penal Code section 680(c)(2)(A)** required our local agency to process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as possible, but no later than 120 days after initially receiving the evidence. In response, claimant needed to employ a Program Manager to oversee the increased volume of SAEK tests being processed within the police department’s lab, hire additional criminalists to conduct the tests within its lab, and budget for more “consumables” or materials needed to test the sexual assault evidence kits.

Additionally, when claimant determined it would not be able to process SAEKs in the timeline mandated by **Penal Code section 680(c)(2)(A)**, it outsourced this evidence to a contract lab for testing pursuant to the legislative requirements found in **Penal Code section 680(c)(2)(B)**. This allows local agencies to 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. However, working with a contract lab produces external costs associated with testing SAEKs, and internal costs for local agency criminalists that must process the evidence after it is returned from the outside lab, and sworn investigators who must review the newly tested evidence to determine if it impacts an ongoing or completed criminal investigation.

The legislative history of SB 22 envisioned there would be legislatively mandated costs to local agencies, as well as to the Department of Justice, and these costs would vary. "The Department of Justice anticipates receiving about 121 additional kits annually if this measure is enacted. To accommodate the increased workload within the timeframe required, DOJ reports that it would need 3.0 new Criminalists and 1.0 Criminalist Supervisor." (See Exhibit 3)

Additionally, it was noted the Los Angeles County Sheriff's Department anticipated having to hire more lab personnel and estimated additional costs of \$450,000 annually for them to process evidence in the timeframe being mandated by SB 22 after it amended sections with Penal Code 680. It was also argued by legislators the mandated activities outlined in SB 22 would facilitate the identification of criminal offenders, and be particularly effective in California. (See Exhibit 1)

The draft SB 22 bill initially included a direct appropriation of two million dollars from the General Fund to DOJ for allocation to local law enforcement agencies to facilitate compliance with this measure, but it was removed from the final version of SB 22 approved by the state legislature. (See Exhibits 3 and 4)

The Legislative Counsel's Digest of SB 22 also states, "Because this bill will impose a higher level of service on local law enforcement agencies in processing that evidence, it would be a state-mandated local program." (See Exhibit 2)

While SB 22 also amended Penal Codes 680.3 and 13823.14, it is not being argued by this claimant that language changes in these specific codes forced local agencies to perform new or modified activities that led to increased costs.

SPECIFIC STATUTORY SECTIONS WHICH CONTAIN ALLEGED LEGISLATIVE MANDATED ACTIVITIES THAT REQUIRED CLAIMANT TO INCUR COSTS:

Penal Code 680 Mandated Activities:

Prior to SB 22, Penal Code 680 **encouraged** a crime lab that receives sexual assault forensic evidence to either process the evidence, create DNA profiles and upload qualifying DNA profiles into CODIS or transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after receiving the evidence.

This activity is no longer encouraged as a result of SB 22, but rather legislatively mandated. Specifically, Penal Code Section (c)(2) was amended to read, "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," and specified the required activities where claimant incurred costs under Penal Code sections 680(c)(2)(A) and 680(c)(2)(B).

Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as possible, but no later than 120 days after initially receiving the evidence.
(Ca. Penal Code Section 680 (c)(2)(A))

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."

(Ca. Penal Code Section 680 (c)(2)(B)

(See Exhibit 5)

A) DETAILED DESCRIPTION OF NEW ACTIVITIES AND COSTS THAT ARISE FROM MANDATE:

While some law enforcement agencies already submitted and tested all of its sexual assault forensic evidence kits within the "encouraged" language previously found in Penal Code 680, before SB 22 amended it, other agencies like the San Diego Police Department did not. As a result, new activities and costs modified by this alleged legislative mandate are unique to every agency mostly depending on their investigative practices, existing staffing, available equipment, and volume of sexual assaults investigated.

The San Diego Police Department (SDPD) was among the local agencies that already investigated, collected, and submitted sexual assault forensic evidence kits to its own lab for testing on some, but not all, of the sexual assaults it investigated. In essence, prior to the passage of SB 22 and the amendment of Penal Code 680, SDPD had discretion over whether to submit and test the sexual assault forensic kits in its possession, and this led to a substantial amount of evidence kits not tested by the Department. **(See Exhibit 10)**

The passage of SB 22 took away this discretion and stated that local agencies **shall** perform specific functions by modifying Penal Code Sections 680 (c)(1)(A), (c)(1)(B), (c)(2)(A), and (c)(2)(B). Each section is described as follows:

Penal Code Section 680(c)(1)(A):

Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.

Penal Code Section 680(c)(1)(B):

Transport evidence from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

Penal Code Section 680(c)(2)(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.

Penal Code Section 680(c)(2)(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 the 30 days after being notified about the presence of DNA.

In analyzing each new activity and cost, as well as new costs incurred from modifying existing activities, claimant determined that while SB 22 amended Penal Code Sections 680(c)(1)(A) PC and 680(c)(1)(B) and mandated new activities, costs stemming from these new duties were de minimis. They are not being pursued in this Test Claim.

Instead, since claimant's costs related to SB 22 are being driven by the mandated activities detailed in Penal Code Sections 680(c)(2)(A) PC and Penal Code Section 680(c)(2)(B) PC, these sections are the focus of this Test Claim.

1) Sexual Assault Evidence Kit Outsourcing:

In order to comply with Penal Code Section 680(c)(2)(B), SDPD immediately needed to perform a number of new activities. First, it had to determine the number of untested sexual assault forensic evidence kits that had been received by its crime lab on or after January 1, 2016. While the Department had estimated it had 1,600 to 1,800 untested Sexual Assault Evidence Kits (SAEK) in its possession, it determined roughly 472 were received after January 1, 2016 and before December 31, 2019 and required testing per Penal Code Section 680(c)(2)(B). **This means, on average, SDPD chose not to test about 118 SAEKs per year during this time frame, and were mandated to test them after SB 22's effective date of January 1, 2020. This increased workload contributed to the staffing decisions discussed later in this Test Claim.**

Year Received	SAEKs Outsourced
2020	19
2019	102
2018	119
2017	112
2016	140
Total	492

SDPD quickly determined it did not have the staffing and capacity necessary to test these backlogged kits within their own lab when SB 22 became effective on January 1, 2020. This prompted the Department to outsource testing and enter into an agreement with Bode Technology, a private lab capable of testing the SAEKs as required by the legislative mandate found in **Penal Code Section 680(c)(2)(B)**.

The contract was approved on January 30, 2020, in an amount not to exceed three million dollars during the duration of the 5 year contract, and the first SAEKs shipped to Bode on February 4, 2020. (See Exhibit 6)

SDPD has received and paid invoices to Bode for their work in the amounts below. (See Exhibit 7)

Upon review of the invoices, it appeared some of the SAEKs that were outsourced for testing were received before January 1, 2016 and not mandated when SB 22 amended sections of Penal Code 680. The outsourcing costs provided in the invoices were revised to reflect SB 22 costs only under **Penal Code Section 680(c)(2)(B)** for consideration in this test claim. Additionally, grant monies were located and used to partially offset outsourcing costs, which is explained in the discussion on funding sources.

Fiscal Years 2019-2020		Fiscal Years 2019-2020 (Revised to Reflect SB 22 SAEKs)	
Amount	Date	Amount	Date
\$13,845.00	5/31/2020	\$13,845.00	5/31/2020
\$38,825.00	6/30/2020	\$38,825.00	6/30/2020
\$52,670.00	Total	\$52,670.00	Total

Fiscal Years 2020-2021		Fiscal Years 2020-2021 (Revised to Reflect SB 22 SAEKs)	
Amount	Date	Amount	Date
\$48,810	7/31/20	\$48,810	7/31/2020
\$72,525	08/31/20	\$64,560	8/31/2020
\$74,035	11/30/20	\$38,060	11/30/2020

\$68,410	11/30/20	\$19,855	11/30/2020
\$73,660	11/30/20	\$43,570	11/30/2020
\$337,440	Total	\$214,855	Total

2) Increased Employee Costs from Outsourcing:

The DNA Technical Manager is responsible for the technical specifications of the outsourcing contract and functions as the person of contact between SDPD's laboratory, and the vendor laboratory. The DNA Technical Manager also is a technical expert for problem solving any issues that may arise.

SDPD used an Internal Order (IO) to track personnel costs, mandated when it outsourced SAEK evidence as mandated by Penal Code Section 680(c)(2)(B), and activities directly associated with the processing of outsourced SAEK kits by analysts within the Department's forensic biology unit and its DNA Technical Manager. This employee must fulfill new duties associated with receiving, analyzing data, filing, review of case work and reports from Bode Technology. New activities also include verifying accuracy and preparing any DNA profiles for upload into the FBI's Combined DNA Index System, also known as CODIS.

Chart 1: This chart shows the breakdown of hours spent complying with SB 22, specifically Penal Code Section 680(c)(2)(B), after transmitting, processing, and uploading qualifying DNA profiles into CODIS following Bode Technology's work, as well as initially reviewing the DNA evidence and its impact on ongoing and adjudicated criminal cases.

Receiver order	Acct assgnt text	Employee	Calendar Year 2020												Total*
			1	2	3	4	5	6	7	8	9	10	11	12	
11004445	PD-SART KIT OUTSOURCING	Blackwell							21.6	57.5	75.5	116	108	19.5	397.7
		Cherski										80			80
		Cornacchia							7						7
		Dutra							20						20
		Montpetit						7							7
PD-SART KIT OUTSOURCE Total							7	48.6	57.5	75.5	196	108	19.5	511.7	
11004445 Total							7	48.6	57.5	75.5	196	108	19.5	511.7	

Chart 2: Shows the hours spent in terms of direct and indirect personnel costs for the employees listed above, but not for the new created program manager position. As mentioned, SAEKs were initially sent to Bode in February 2020, and returned a few months later to the lab prompting their work. The personnel costs related to outsourcing lab testing under Penal Code 680 (c)(2)(B) is shown for both fiscal years FY2019-2020 and FY2020-2021 as \$985.75 and \$56,752.14 respectively.

					Fiscal Year		2020/2021 Combined Total
Internal Order		Cmmt Item Type	Cmmt Item Grp	Cmmt Item Subgrp	Actuals	Actuals	
11004445	PD - SART KIT OUTSOURCING	Expense	Personnel Cost	Salary / Add-On Pays	\$461.16	\$25,541.44	\$26,002.60
11004445	PD - SART KIT OUTSOURCING	Expense	Fringe Benefits	Fringe Benefits	\$524.59	\$31,210.70	\$31,735.29
11004445	PD - SART KIT OUTSOURCING	Expense	Personnel & Fringe	Subtotal	\$985.75	\$56,752.14	\$57,737.89

3) Police Investigative Service Officer (PISO) (Program Manager):

The evidence processing submission and testing timeframes legislatively mandated by Penal Code Section 680(c)(2)(A), required SDPD to create completely new workflows and processes to ensure compliance with alleged legislative mandates. SDPD created a new position within its Crime Laboratory for a Police Investigative Service Officer to proactively handle SAEK tracking, processing, and case management as a result of SB 22, specifically Penal Code 680(c)(2)(A) for processing tests within its own lab.

This position is administrative in nature, does not require technical expertise associated with DNA analysis and interpretation of data, and was necessary to address the additional workloads and strict timelines established by Penal Code 680(c)(2)(A). This position was not needed to process SAEKs prior to SB 22's effective date on January 1, 2020.

Chart 3: Shows the total hourly, or fully loaded, costs of the program manager in the lab to handle SB 22 activities.

Job Text	Straight Time Hourly Rate (Salary)	Straight Time Hourly Rate (Fringe)	Straight Time Hourly Rate (Direct Cost)	Straight Time Hourly Rate (Indirect Cost)	Straight Time Hourly Rate (Fully Loaded)
Police Invstgtv Serv Ofcr 2	\$ 25.17	\$ 16.34	\$ 41.51	\$ 18.57	\$ 60.08

Costs FY2019-FY2020 is \$62,483.20 (1/2 Year)

Fiscal Year 2020-2021 is \$124,966.40 (Full-Year)

60.08 per hour x 1,040 hours = \$62,483.20

60.08 per hour x 2,080 hrs. per year = 124,966.40

B) DETAILED DESCRIPTION OF THE EXISTING ACTIVITIES AND COSTS BEING MODIFIED BY THIS MANDATE:

4) Laboratory Staffing:

Senate Bill 22 became effective January 1, 2020, and the amendments it made to **California Penal Code sections 680(c)(2)(A) and 680(c)(2)(B)** requires all sexual assault evidence collected since January 1, 2016, be tested within certain time lines.

The Police Department is outsourcing the DNA analysis on 1,600 to 1,800 kits already in evidence, with close to 500 required to be tested as a direct result of Penal Code 680(c)(2)(B).

Since SB 22 took away discretionary decision regarding SAEK testing from local agencies, and mandates every SAEK received to be tested after January 1, 2016, claimant estimated it will be required to test approximately 118 new cases a year starting January 1, 2020 in its own lab per **Penal Code sections 680(c)(2)(A)**, in addition to the backlogged SAEKs being outsourced.

In order to meet the anticipated increase in volume in SAEKs received into the lab after January 1, 2020, claimant moved forward and modified its staffing model with the hiring of 4 new criminalist positions. Their hiring was approved by the City's Chief Operating Officer in April of 2020, and it was critical to hire this laboratory staff as quickly as possible since their training takes approximately 12 to 14 months. Once trained, their addition will lead to significant changes to existing activities and workload decisions throughout the crime lab. (See Exhibit 8)

Additionally, the four Criminalist positions were required, because the impact without this personnel would be a growing backlog of DNA requests. Specifically, the lab would not be able to provide law enforcement important investigative information in a timely manner that could prevent additional crimes; the city will risk not meeting the 120 day turn-around-time required by Penal Code Section 680(c)(2)(A) for SAEK analysis; the unit will be unable to meet all court deadlines for analysis; and overtime will be regularly needed just to do routine analysis.

Chart 4: Shows the total hourly, or fully loaded, costs Criminalists in the lab to handle SB 22 activities.

Job Text	Straight Time Hourly Rate (Salary)	Straight Time Hourly Rate (Fringe)	Straight Time Hourly Rate (Direct Cost)	Straight Time Hourly Rate (Indirect Cost)	Straight Time Hourly Rate (Fully Loaded)
Criminalist 2	\$ 51.22	\$ 18.81	\$ 70.03	\$ 35.34	\$ 105.37

Cost for four (4) Criminalist II positions for FY2020-2021, which is the fully loaded rate multiplied by their hours worked per year (2,080), results in a total cost of \$876,678.40.

$105.37 \times 2,080 \text{ annual hours} = \$219,169.60$ $4 \text{ Criminalists} \times \$219,169.90 \text{ (annually)} = 876,678.40$

5) Police Staffing:

San Diego Police Department's Sex Crimes Cold Case team is composed of one sergeant and two detectives, who had their investigative duties modified as a direct result of Penal Code 680(c)(2)(B) . The team's singular purpose is to conduct the follow-up investigations that are necessitated by new evidence being uncovered from the previously untested SAEKs outsourced to Bode Technology. Their activities, and costs associated with this team, began in Fiscal Year 2020-2021.

After SAEKs are tested by BODE Technology and returned to the San Diego Police Department, the cases with the presence of DNA are screened by the San Diego Police Department's laboratory personnel for upload qualifying DNA profiles into the FBI's Combined DNA Index System (CODIS). Those that are eligible are uploaded into CODIS and returned once a hit has been confirmed.

During the development of SB 22, legislators publicly discussed during the how requiring all SAEKs received by crime laboratories after January 1, 2016 may produce leads to identify criminal offenders. Their deliberations revealed their intent, specifically that SB 22 would directly lead law enforcement agencies to conduct follow-up after new evidence is received. Legislators are aware that law enforcement officers are required to take action after they receive new evidence related to criminal investigations.

However, a consequence not articulated by legislators in the development of SB 22 are the investigative requirements, and costs, placed on local law enforcement agencies when new evidence is developed that impacts criminal proceedings. Arguably, the entire point of SB 22 was to compel the testing of sexual assault evidence kits, **through amending the language of Penal Code Sections 680(c)(2)(A) and 680(c)(2)(B)**, to further the interests already expressed in 680 (b) (3) PC, "Victims of sexual assault have a strong interest in the investigation and prosecution of their cases."

When new evidence is discovered that reveals a suspect pending a criminal trial was at a crime scene, law enforcement must disclose it to prosecutor's to bolster their case. Prosecutors would also be required to

provide this new evidence to the suspect's attorney, so they may have an opportunity to review the evidence and prepare an adequate defense for their client. Next, if the evidence returned following a test of a SAEK as mandated by SB 22 is exculpatory, meaning it is evidence favorable to the defendant, it must also be provided to potentially clear an innocent person of criminal charges. Lastly, the newly tested SAEKs which produce legislatively mandated evidence, may show that DNA evidence already loaded into CODIS during a criminal investigation must be removed. This occurs when new evidence shows a person who had their DNA profile information loaded into CODIS when they were suspected of a crime is no longer a suspect, and law enforcement must remove their profile to conform to the FBI's rules governing CODIS.

Law enforcement agencies that do not abide by CODIS rules face consequences, and officers who withhold new evidence in criminal investigations, and deprive a defendant of their constitutional right to due process, jeopardize their careers and face civil penalties. All SDPD sworn personnel are familiar with the decision and impact stemming from the Supreme Court's decision in *Brady v. Maryland*, and endeavor to stay off the "Brady list." This is a term for officers who violate the rules of evidence from this case, and it effectively ends their career in law enforcement.

The chart below represents some of the follow-up classifications being done by investigators.

**SB22 SAEK PROJECT
CODIS HIT CASES**

	Total results returned from Bode	Potentially eligible CODIS profiles from Bode	CODIS profiles uploaded by SDPD Crime Lab	CODIS HITS
MAY 2020	15	5	5	2
JUNE 2020	37	17	17	8
JULY 2020	50	32	25	12
AUGUST 2020	70	29	29	16
SEPTEMBER 2020	73	21	21	5
OCTOBER 2020	71	33	30	11/13
NOVEMBER 2020	81	25	Pending	Pending

Final Disposition of CODIS HITS

Disposition Types:	
Named suspect, victim uncooperative/UTC	12
Unknown suspect/victim uncooperative/UTC	8
Named suspect, suspect arrested, case submitted for prosecution	12
Reviewed by DDA and not prosecutable at this time	1
Suspect is deceased	2
Named suspect/allegations unsubstantiated	1
Unfounded	1
Submitted to DA's office by CCU	0
Outside Agency	1

Under review at other unit (DV, Child Abuse, Area Command, etc)	2
CODIS HIT currently under review or not yet received from LAB:	0
DNA profiles EXPUNGED from CODIS:	
Consensual Partner (DNA profile expunged from CODIS)	2
Case Unfounded (DNA profile expunged from CODIS)	1

There are costs related to claimant performing follow-up investigative work related to new evidence produced from the amended language in **Penal Code Section 680(c)(2)(B)**, which was amended per SB 22. For the San Diego Police Department, these costs are for FY2020-2021, due to the team's creation at the start of this fiscal year.

Chart 5: Shows the total hourly, or fully loaded, costs of sworn officers to handle SB 22 activities.

Job Text	Average Straight Time Hourly Rate (Salary)	Average Straight Time Hourly Rate (Fringe)	Average Straight Time Hourly Rate (Direct Cost)	Average Straight Time Hourly Rate (Indirect Cost)	Average Straight Time Hourly Rate (Fully Loaded)
Police Detective	\$55.04	\$73.74	\$128.77	\$47.07	\$175.84
Police Sergeant*	\$67.01	\$101.82	\$168.83	\$59.35	\$228.18

Cost for two (2) Police Detectives for FY2020-2021, which is the fully loaded rate multiplied by their hours worked per year (2,080) results in a total cost of \$731,494.40.

$\$175.84 \times 2,080 \text{ hours annually} = \$365,747.20$ -----Two Detectives \$731,494.40.

Using the same methodology, the cost for a Police Sergeant is \$474,614.40 for the fiscal year.

Total Cost for this team is equal to \$1,206,108.80

6) **Consumables:** It is estimated that it costs approximately \$600/kit in consumables to process a SAEK by claimant's crime lab. It is further estimated the passage of SB22, specifically the requirements stemming from the amended language in **Penal Code Sections 680(c)(2)(A)**, will increase the number of kits that are tested per year by approximately 118. This will cause the SDPD to modify their lab budget for materials within the FY2020-FY2021 budget cycle, specifically 118 additional SAEK multiplied by \$600/kit is equal to \$70,800. (See Exhibit 9)

C. & D. ACTUAL AND/OR ESTIMATED INCREASED COSTS INCURRED BY THE CLAIMANT EXCEEDS ONE THOUSAND DOLLARS (\$1,000).

This alleged state-mandated local program imposed a cost to the City of San Diego in excess of \$1000.00.

The enactment of SB 22 produced a legislative mandate, which moved beyond encouraging local law enforcement agencies and labs to test sexual assault forensic evidence under Penal Code 680. SB 22 now requires local law enforcement agencies to submit every SAEK for specified sexual assault offenses to a crime lab, either its own or a contracted facility, and for the lab to test this evidence, in specified time frames.

SB 22 is retroactive, meaning it also requires crime labs to process the sexual assault kits they have received since January 1, 2016 for the presence of DNA, or transmit them to another lab for testing

The claimant, City of San Diego, implemented and began to incur costs related to SB 22 on January 2, 2020, when it began to test and process all SAEKs received within its crime lab after January 1, 2016 as required by the mandate created in this legislation when it amended California Penal Code sections 680(c)(2)(A) and 680(c)(2)(B). Compliance with these specific penal code sections require local agencies to provide a higher level of service.

Actual Costs for FY2019-FY2020 are \$116,138.95, and for FY2020-2021 estimated at \$2,335,305.74.

C) ACTUAL COSTS INCURRED BY THE CLAIMANT TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED

The claimant's costs for FY2019 – 2020 are described and detailed:

Activity	Date(s) Performed	Description	Cost
1) SAEK Outsourcing	1/01/2020-6/30/2020	Contract Lab Analysis	\$ 52,670.00
2) Lab/Police Personnel	1/01/2020-6/30/2020	Follow-Up Outsourcing	\$ 985.75
3) Program Manager	1/01/2020-6/30/2020	SAEK Evidence Management	\$ 62,483.20
Total			\$116,138.95

SB 22 became effective January 1, 2020, and the San Diego Police Department began to incur costs on January 2, 2020, when it began testing all sexual assault evidence kits received by the lab since January 1, 2016. As a result of large backlog of SAEKs, the Department contracted with Bode Technology and outsourced its SAEKs for testing pursuant to **Penal Code Section 680(c)(2)(B)**.

Invoices have been submitted to document outsourcing costs for FY2019-FY2020, which are \$52,670.00. Lab personnel, specifically criminalists, had minimal costs related to the review and analysis of Bode's outsourcing work for this fiscal year and was determined to be \$985.75 and required by **Penal Code Section 680(c)(2)(B)**. This limited cost was a result of the time it takes for a vendor to conduct their contracted work and provide the results to the San Diego Police Department, and costs grew substantially in the following fiscal year as more SAEKS were tested and results provided to SDPD.

The program manager costs in this fiscal year, \$62,483.20, were the result of a newly created position within the crime laboratory for a Police Investigative Service Officer. This employee proactively handles SAEK processing, and case management as a result of requirements **California Penal Code sections 680(c)(2)(A) and was not needed prior to the passage of SB 22.**

Actual costs incurred by the claimant to implement the alleged mandate during the fiscal year for which the claim was filed is \$116,138.95.

D) ACTUAL/AND OR ESTIMATED INCREASED COSTS INCURRED BY THE CLAIMANT TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED.

FY2020 –2021 is the fiscal year following implementation of the alleged mandate. These costs are estimated through the end of the fiscal year, based on costs incurred through the filing date of this test claim and there are adjustments as a result grant monies utilized to offset costs.

Activity	Date(s) Performed	Description	Cost
1) SAEK Outsourcing	7/01/2020-6/30/2021	Contract Lab Analysis	\$ 214,855.00
2) Lab Personnel	7/01/2020-6/30/2021	Outsourcing	\$ 56,752.14
3) Program Manager	7/01/2020-6/30/2021	SEAK Evidence Management	\$ 124,996.40
3) New Lab Hires	7/01/2020-6/30/2021	Need for increased work	\$ 876,678.40
5) Police Personnel	7/01/2020-6/30/2021	Follow-Up Evidence Results	\$1,206,108.80
6) Consumables	7/01/2020-6/30/2021	Increased # SAEKs	\$ 70,800.00
Total			\$2,550,160.74

Please note: The SAEK Outsourcing cost for FY2020-FY2021 is being paid with State COPS funds, and is not being presented as a reimbursable expense sought in this test claim. It is being highlighted to show that local agencies are incurring costs related to outsourcing sexual assault evidence kits, and it is believed some agencies will not be reimbursed using State COPS funds.

By removing \$214,855.00 from the total amount, \$2,550,160.74, the estimated cost incurred by the claimant to implement the alleged mandated activities in FY2020-FY2021 is \$2,335,305.74.

Alleged mandated activities for FY2020-2021 include three actions where actual costs were also incurred for the previous fiscal year including: SAEK Outsourcing and Lab Personnel receiving, reviewing, and potentially uploading applicable DNA profiles into CODIS from outsourced kits per **California Penal Code section 680(c)(2)(B)**. The Program Manager proactively handles SAEK processing, and increased case management as a result of SB 22 amending language in **California Penal Code sections 680(c)(2)(A)**.

Additional estimated costs for FY2020-2021 include hiring four new criminalists to perform the increased testing of approximately 118 additional sexual assault evidence kits annually per **California Penal Code sections 680(c)(2)(A)**. These costs are estimated at \$876,678.40.

Beyond hiring additional lab personnel, SDPD modified the duties of a Detective Sergeant and two Detective to assess and conduct follow-up investigations related to the new evidence produced by the previously untested SAEKs. These costs are estimated at \$1,206,108.40 and required as a result of **California Penal Code section 680(c)(2)(B)**.

Costs related to consumables, or materials related to testing the sexual evidence assault kits, are anticipated to increase as more testing is conducted per **Penal Code Section 680(c)(2)(A)** and are estimated at \$70,800.00.

E) STATEWIDE COST ESTIMATE OF INCREASED COSTS THAT ALL LOCAL AGENCIES WILL INCUR TO IMPLEMENT THE MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR THE CLAIM WAS FILED:

An estimate of increased costs that all local agencies will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed, required costs to be estimated for FY2020 through FY2021.

Local agencies would be required to perform some, if not all, of the new activities outlined by the San Diego Police Department in this test claim and incur similar costs. Those cost categories are as follows: cost of testing outsourced sexual assault evidence kits, conducting internal administrative reviews of SAEKs after receiving results from the outsourced lab analysis, increased annual consumable costs for SAEKs resulting from additional mandated testing, and increased costs for dedicated lab personnel and sworn police officer to perform the mandated activities produced by **California Penal Code sections 680(c)(2)(A) and 680(c)(2)(B)**.

In order to estimate those cost categories, claimant reviewed the comments made by the DOJ and the Los

Angeles County Sheriffs during legislative hearings on SB 22, and reached out directly to law enforcement agencies throughout the state and their labs. It was determined the estimated costs to implement the mandated new and modified activities associated with SB 22, after it amended the language in Penal Code 680, would be unique to each agency depending on their past practices related to handling sexual assault evidence kits, and whether they had largely tested all previously received SAEKs before SB 22 implemented mandated testing protocols.

For instance, the San Jose Police Department indicate their new costs related to SB 22 would be at least 100,000 in FY2020 through FY2021, while the San Diego County Sheriff's Department estimated their new costs to be in excess of \$300,000. However, in estimating their costs, these agencies did not consider the fiscal impact of having to dedicate sworn personnel to conduct follow-up investigations and make additional disclosures to prosecutors related to the production of new evidence from mandated testing of sexual assault evidence kits. This would produce significantly higher costs.

The San Diego Police Department has considered the full range of mandated activities resulting from SB 22 amending the language of Penal Code 680 in specific sections, and estimated FY2020 through 2021 costs to be \$2,335,305.74. Also, SDPD's reduced its cost estimate by \$214,855.00, because it utilized State COPS funds to offset its costs, otherwise costs would be estimated at \$2,550,160.74. It is unknown whether other agencies utilized State Cops funds in the same manner, since they are not solely dedicated to offsetting the costs from activities associated with SB 22.

Given the wide range of estimated cost resulting from SB 22, from \$100,000 to over \$2,000,000 for large police agencies and their labs, which may increase if additional staffing is needed or decrease if grant funding is available and utilized, a statewide cost estimate of \$8,000,000 to implement mandated activities from SB 22 in FY2020 – FY2021 is reasonable. This is significantly higher than the \$2,000,000 that was originally considered by the state legislature to facilitate compliance with SB 22.

F) AVAILABLE FUNDING SOURCES:

There are grants and funding sources that can partially offset costs pay for the mandated regulations associated with SB22, but they are not dedicated solely to it. The Bureau of Justice Assistance Capacity Enhancement and Backlog Grant has been utilized by the Department to assist with DNA testing and analysis, but an initial review did not reveal that it was utilized to address the activities mandated under SB 22 and their direct costs in this test claim.

Additionally, the Citizens Option for Public Safety, otherwise known as COPS grants monies, have been utilized to mitigate some of the costs incurred by SB 22 by SDPD. However, claimant, the City of San Diego, is not aware of any current State, Federal, or other non-local agency funds dedicated to pay for all of its substantial costs and ongoing activities already incurred and those anticipated going forward from the alleged statutory mandate arising from SB 22 after it amended the language in Penal Code 680.

The City of San Diego awarded a contract to a private firm using the State COPS allocation. The total cost awarded for services is not to exceed \$1,261,120.00 in FY2020-2021, of which \$190,880.00 has already been invoiced for lab outsourcing services provided and it estimates it will quickly rise to \$214,855.00. The total contract awarded to Bode Technology is for a period of five years and not to exceed \$3,000,000.

SDPD is also unaware if other similarly situated agencies were able to access these grants to assist with the alleged mandated activities and costs associated with SB 22 after it amended the language in Penal Code 680, and claimant was unable to use these funds to offset costs incurred in FY2019-FY2020.

G. PRIOR MANDATE DETERMINATIONS BY THE BOARD OF CONTROL OR COMMISSION ON STATE MANDATES:

The claimant, City of San Diego, is not aware of any prior determinations made by the Board of Control or the Commission on State Mandates related to the matter outlined in this narrative.

H. IDENTIFICATION OF A LEGISLATIVELY DETERMINED MANDATE PURSUANT TO GOVERNMENT CODE SECTION 17573 THAT IS ON THE SAME STATUTE OR EXECUTIVE ORDER:

The claimant is unaware of any applicable statute or executive order.

CONCLUSION:

The costs incurred by the City of San Diego, as a result of the alleged mandate created by Senate Bill 22, when it amended **California Penal Code sections 680(c)(2)(A) and 680(c)(2)(B)**, for which this test claim is based are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Government Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."
3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

MANDATE MEETS BOTH SUPREME COURT TESTS:

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate is Unique to Local Government:

The section of law alleged in this Test Claim are unique to governments as peace officer criminal investigative services are uniquely provided by local government agencies.

Mandate Carries out a State Policy:

The new state statute alleged in this Test Claim impose a higher level of service by requiring local law enforcement agencies to collect and submit sexual assault evidence kits for examination in a specific manner and time frame determined by the State, while removing decisions related to testing sexual assault evidence kits from the control of local agencies.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE:

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of "costs mandated by the State," as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the test claim herein stated by the City of San Diego.

The amendment to Penal Code 680, Statutes of 2019, Chapter 588 [SB 22], and effective 01/01/2020 imposed a new state mandated program that resulted in direct increased costs on claimant after **Penal Code sections 680(c)(2)(A) and 680(c)(2)(B)** were amended and imposed a higher level of service required of peace officers from the San Diego Police Department and its lab personnel, as well as the lab it has contracted with to perform alleged mandated activities.

DECLARATION OF JEFFREY JORDON

I, Jeffrey Jordon, declare under the penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1) I am a Captain for the City of San Diego (SDPD). I have been employed by the City in this capacity since 2019 and have been a law enforcement officer since 1995. As part of my duties in the Chief's Office, I am responsible for implementation of "special projects" as determined by the Chief of Police - David Nisleit. I am also responsible for assisting with the recovery of costs mandated by the State of California.

2) Penal Code 680, Statutes of 2019, Chapter 588 [SB 22], effective 1/1/2020, contains an alleged statutory mandates that requires local agencies that employ peace officers to provide a higher level of service by performing new activities related to the processing and testing of sexual assault evidence kits (SAEK), within their own labs or by transmitting forensic evidence to contract labs. As a result, local agencies were incur costs from mandated activities that will exceed \$1,000.00. The sections of the statue alleged to mandates these activities are **Penal Code Sections 680(c)(2)(A) and 680(c)(2)(B)**.

Specifically, claimant incurred costs from new and modified activities after SB 22 amended Penal Code Section 680(c)(2) to read, "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," and specified the required activities where claimant incurred costs under Penal Code sections 680(c)(2)(A) and 680(c)(2)(B).

Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as possible, but no later than 120 days after initially receiving the evidence.
(Ca. Penal Code Section 680 (c)(2)(A)

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."
(Ca. Penal Code Section 680 (c)(2)(B)
(See Exhibit 5)

The City of San Diego first incurred costs to comply with the requirements of this alleged mandated on January 2, 2020, when SDPD's lab personnel returned to work following the holiday and were compelled to test, or transmit for testing to another crime lab, every sexual assault evidence kit (SAEK) it had received since January 1, 2016 pursuant to **Penal Code Sections 680(c)(2)(A) and 680(c)(2)(B)**.

3) As just described, SB 22, and specific sections it amended in Penal Code 680, now requires local law enforcement agencies to submit every SAEK for specified sexual assault offenses to a crime lab, either its own or a contracted facility, and for the lab to test this evidence in specified time frames. SB 22 is retroactive, meaning it also requires crime labs to process the sexual assault kits they have received since January 1, 2016 for the presence of DNA, or transmit them to another labs for testing.

For claimant, the legislative mandate from Penal Code section 680(c)(2)(A) required our local agency to process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as possible, but no later than 120 days after initially receiving the evidence.

In response, claimant needed to employ a Program Manager tasked with new duties of overseeing the increased volume of SAEK tests being processed within the police department's lab, hire additional criminalists to process more tests, as well as to create and upload DNA profiles within mandated timelines, and budget for more "consumables" or materials needed to test the increased number sexual assault evidence kits coming into the lab.

Additionally, when claimant determined it would not be able to process SAEKs in the timeline mandated by Penal Code section 680(c)(2)(A), it outsourced this evidence to a contract lab for testing pursuant to the legislative requirements found in Penal Code section 680(c)(2)(B). This allows local agencies to 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. However, working with a contract lab produces additional external outsourcing costs associated with testing SAEKs, along with new internal costs for local agency criminalists that must process the evidence for DNA profiles after it is returned from the outside lab, and sworn investigators must review the newly tested evidence to determine if it impacts an ongoing or completed criminal investigation. It may be argued that **Penal Code Sections 680(c)(2)(A) and 680(c)(2)(B)** do not specifically mention the need to conduct follow-up investigations by detectives once they receive new evidence, but legislators have already made clear this intent with Penal Code 680(b)(3) that states, "Victims of sexual assault have a strong interest in the investigation and prosecution of their cases."

None of these new activities and modified duties described in this declaration were required, or produced costs for claimant, until SB 22 created a legislative mandates when it amended Penal Code sections 680(c)(2)(A) and 680(c)(2)(B).

Additionally, the costs of these new and modified activities are each detailed by the fiscal years in which they occurred FY2019-FY2020, as well as FY2020-2021, and summarized.

4) I have reviewed all new and modified activities, along with costs stemming from the alleged statutory mandate contained within SB 22 after it amended **Penal Code Sections 680(c)(2)(A) and 680(c)(2)(B)** on January 1, 2020. These costs and activities are accurately described in sections A, B, C, & D of the written narrative, as well as summarized here by fiscal year as follows:

FY2019 – 2020 is the fiscal year the alleged mandate in Penal Code Sections 680(c)(2)(A) and 680(c)(2)(B) was implemented and for which actual costs are being sought in this test claim.

Activity	Date(s) Performed	Description	Cost
A) SAEK Outsourcing Cost Incurred from new activities Penal Code Section 680(c)(2)(B).	1/1/2020-6/30/2020	Contract Lab Analysis	\$ 52,670.00
B) Lab Personnel Cost Incurred from new activities Penal Code Section 680(c)(2)(B).	1/01/2020-6/30/2020	Follow-Up Outsourcing	\$ 985.75
C) Program Manager Cost Incurred from new activities Penal Code Section 680(c)(2)(A).	1/01/2020-6/30/2020	SAEK Evidence Management	\$ 62,483.20
Total FY2019-2020			\$116,138.95

Costs Broken Down Per Legislative Mandate in FY2019-2020:

Penal Code Section 680(c)(2)(B) Activities and Costs: \$ 53,655.75

Penal Code Section 680(c)(2)(A) Activities and Costs: \$ 62,483.20

FY2020 –2021 is the fiscal year following implementation of the alleged mandate. These costs are estimated through the end of the fiscal year, based on costs incurred through the filing date of this test claim.

Activity	Date(s) Performed	Description	Cost
A) SAEK Outsourcing	7/01/2020-6/30/2021	Contract Lab Analysis	\$ 0.00
Cost Incurred from new activities Penal Code Section 680(c)(2)(B).			
B) Lab Personnel	7/01/2020-6/30/2021	Outsourcing	\$ 56,752.14
Cost Incurred from new activities Penal Code Section 680(c)(2)(B).			
C) Program Manager	7/01/2020-6/30/2021	SAEK Evidence Management	\$ 124,966.40
Cost Incurred from new activities Penal Code Section 680(c)(2)(A).			
D) New Lab Hires	7/01/2020-6/30/2021	Need for increased work	\$ 876,678.40
Cost Incurred from modified activities Penal Code Section 680(c)(2)(A).			
E) Police Personnel	7/01/2020-6/30/2021	Follow-Up Evidence Results	\$1,206,108.80
Cost Incurred from modified activities Penal Code Section 680(c)(2)(B).			
F) Consumables	7/01/2020-6/30/2021	Increased # SAEKs	\$ 70,800.00
Cost Incurred from modified activities Penal Code Section 680(c)(2)(A).			
Total FY2020-2021			\$2,335,305.74

Costs Broken Down Per Legislative Mandate in FY2020-2021:

Penal Code Section 680(c)(2)(B) Activities and Costs: \$ 1,262,860.94

Penal Code Section 680(c)(2)(A) Activities and Costs: \$ 1,072,444.80

Please note: The SAEK Outsourcing costs beginning 7/1/2020 were paid with State COPS funds, therefore it is not included as part of the claim.

5) The City of San Diego does not have fee authority to offset the increased costs it has incurred to implement Penal Code 680 after it was amended by SB 22, and has looked to use local, state, or federal funding to offset costs in the fiscal years impacted since SB 22 was enacted.

Mandated activities resulted in costs to claimant that totaled \$116,138.95 in FY2019-FY2020 and \$2,335,305.74 in FY2020-2021.

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However, as previously mentioned, the SAEK Outsourcing cost for FY2020-FY2021 is being paid with State COPS funds, and is not being presented as a reimbursable expense sought in this test claim. It is being highlighted to show that local agencies are incurring costs related to outsourcing sexual assault evidence kits, and it is believed some agencies will not be reimbursed using State COPS funds. Additionally, Claimant was also unable to offset costs using State COPS funds in FY2019-FY2020.

The costs in FY2020-FY2021 would have been \$214,855 higher if SAEK Outsourcing costs were not offset, which would have resulted in total costs being estimated at \$2,550,160.74.

6) In conversations with the City of San Diego's Department of Finance Director and City Comptroller and San Diego Police Department's Administrative Services Manager, I gained information and knowledge that "average fully loaded rates" include the average of all direct and indirect labor cost by job classification. Direct costs consist of costs that are incurred directly by providing the service, such as staff time spent on service-related activities in addition to salary and benefit expenses. Indirect costs consist of departmental load and overhead such as operating expenses and internal administrative costs, as well as citywide overhead costs. The use of "average fully loaded rates" allows the City of San Diego to accurately reflect the costs for its employees engaged in activities alleged to be mandated by Penal Code 680, after it was amended by SB 22, which is why they were used in this test claim.

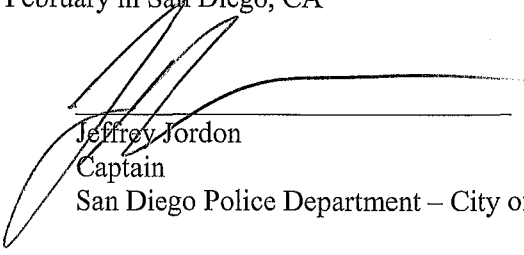
Additionally, a review of other Test Claims submitted to the Commission on State Mandates indicates the inclusion of direct, as well as indirect costs, is acceptable to determine actual costs imposed by state-mandated programs.

7) I have examined the SB 22 Sexual Assault Evidence Kits (SAEK) Test Claim prepared by the City of San Diego. Based on my personal knowledge, the costs described in this test claim were incurred to implement the mandated activities from **Penal Code Sections 680(c)(2)(A) and 680(c)(2)(B)**, after these code sections were amended by SB 22. Based on my information and belief, I find such costs to be correctly computed and are "costs mandated by the State", as defined in Government Code, Section 17514:

" 'Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

Except as otherwise indicated herein, I have personal knowledge of the foregoing facts and information presented in this Test Claim, and if so required, I could and would testify to the statements made herein.

Executed this 22nd day of February in San Diego, CA


Jeffrey Jordon
Captain

San Diego Police Department – City of San Diego

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Exhibit 1

000025

Date of Hearing: June 11, 2019
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 22 (Leyva) – As Amended May 17, 2019

SUMMARY: Requires law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure that a rapid turnaround DNA program is in place, and requires crime labs to either process the evidence for DNA profiles and upload them into the Combined DNA Index System (CODIS) or transmit the evidence to another crime lab for processing and uploading. Specifically, **this bill:**

- 1) States that a law enforcement agency in whose jurisdiction a specified sex offense 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; or
 - 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) States that a 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 the Combined DNA Index System (CODIS) as soon as practically possible, but no later than 120 days after initially receiving the evidence; or
 - 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.

EXISTING LAW:

- 1) Provides that in order to ensure that sexual assault forensic evidence is analyzed within the two-year timeframe required and to ensure the longest possible statute of limitations for sex offenses the following should occur:

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- a) A law enforcement agency in whose jurisdiction a specified sex offense occurred should do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - i) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence; and
 - ii) 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.
- b) The crime lab should do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016:
 - i) 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; or
 - ii) 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 should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified. (Pen. Code, § 680, subds. (b)(7)(A) and (B).)
- 2) Specifies that crime labs do not need to test all items of forensic evidence obtained in a sexual assault forensic evidence examination. (Pen. Code, § 680, subd. (b)(7)(C).)
- 3) Specifies that a DNA profile need not be uploaded into CODIS if it does not meet the federal guidelines. (Pen. Code, § 680, subd. (b)(7)(D).)
- 4) Encourages DNA analysis of rape kit evidence within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. (Pen. Code § 680 (b)(6).)
- 5) Encourages law enforcement agencies to submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Pen. Code § 680 (b)(7)(A)(i).)
- 6) Encourages the establishment of rapid turnaround DNA programs, where the rape kit is sent directly from the facility where it was collected to the lab for testing within five days. (Pen. Code § 680 (b)(7)(A)(ii) and (E).)
- 7) Defines "rapid turnaround DNA program" as a program for training of sexual assault team personnel in the selection of a 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. (Pen. Code, § 680, subd. (c)(2)(5).)

- 8) Encourages crime labs to do one of the following:
 - a) Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or
 - b) Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA. (Pen. Code § 680 (b)(7)(B).)
- 9) Provides that upon the request of a sexual assault victim, the law enforcement agency investigation of a specified sex offense 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. (Penal Code § 680 (c)(1))
- 10) Establishes the Sexual Assault Victims' DNA Bill of Rights which provides victims of sexual assault with the following rights:
 - a) The right to be informed 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) The right to be informed 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 (DOJ) Data Bank of case evidence; and,
 - c) The right to be informed whether or not there is a 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 DOJ Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation. (Pen. Code § 680 (c)(2).)
- 11) Requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out. (Pen. Code §§ 680 (e) and (f), 803.)
- 12) Provides that a criminal complaint for a registerable sex offense may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing as specified. (Pen. Code, § 803, subd. (g).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "Senate Bill 22 will help to ensure that survivors of rape have equal access to justice by promptly testing all rape kits collected after an assault. It is critically important that any DNA evidence left behind by the attacker is

processed quickly so that law enforcement authorities can identify and prosecute rapists and we can put them behind bars—where they belong. It is unacceptable for a rape kit to ever sit on a shelf somewhere untested, since that rape kit represents a person and testing that kit can also help keep potential victims safe.”

- 2) **Sexual Assault Kits:** After a sexual assault has occurred, victims of the crime may choose to be seen by a medical professional, who then conducts an examination to collect any possible biological evidence left by the perpetrator. To collect forensic evidence, many jurisdictions provide what is called a “sexual assault kit.” Sexual assault kits often contain a range of scientific instruments designed to collect forensic evidence such as swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers. (National Institute of Justice (NIJ), *Sexual Assault Kits: Using Science to Find Solutions*, Sept. 10, 2015, available at: <https://nij.gov/unsubmitted-kits/Pages/default.aspx> [as of June 6, 2019].)

The composition of sexual assault kits vary depending on jurisdiction. For example, according to a report from 2011, the police and sheriff's department in Los Angeles use identically arranged sexual assault kits, however, the rest of California does not. (NIJ, *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases*, May 2011, at page 2, available at: <https://www.ncjrs.gov/pdffiles1/nij/233279.pdf>, [as of June 6, 2019].)

- 3) **Combined DNA Index System (CODIS):** Analyzing forensic evidence from sexual assault kits assists in linking the perpetrator to the sexual assault. Generally, once a hospital or clinic has conducted a sexual assault kit examination, it transfers the kit to a local law enforcement agency. From here, the law enforcement agency may send the kit to a forensic laboratory. Evidence collected from a kit can be analyzed by crime laboratories and could provide the DNA profile of the offender. Once law enforcement authorities have that genetic profile, they could then upload the information onto CODIS.

Created by the FBI in 1990, CODIS is a national database that stores the genetic profiles of sexual assault offenders onto a software program. By exchanging, testing, and comparing genetic profiles through CODIS, law enforcement agencies can discover the name of an unknown suspect who was in the system or link together cases that still have an unknown offender. The efficacy of CODIS depends on the volume of genetic profiles that law enforcement agencies submit. (FBI website, *Combined DNA Index System (CODIS)*, available at: <https://www.fbi.gov/services/laboratory/biometric-analysis/codis>, [as of June 6, 2019].) At present, more than 190 law enforcement agencies use CODIS. (*Id.*)

- 4) **Unsubmitted Sexual Assault Kits:** California law currently encourages, but does not require any agency to send a sexual assault kit to a crime lab. Recently, however, legislation has been enacted that encourages such transfers. (Pen. Code, § 680, subd. (b)(7)(A).) There are a number of reasons why law enforcement authorities do not submit a kit to a crime lab. For example, identity of the suspect may never have been at issue. Often times, whether or not the victim consented to the sexual activity is the most important issue in the case, not the identity of the suspect. In other cases, charges may be dropped for a variety of reasons, or a guilty plea may be entered rendering further investigation moot. (USDOJ's National Institute of Justice, *supra*.)

A 2014 report by the State Auditor found that law enforcement rarely documents reasons for not analyzing sexual assault evidence kits. (State Auditor, *Sexual Assault Evidence Kits*, Oct. .

2014, at page 17, available at: <https://www.bsa.ca.gov/pdfs/reports/2014-109.pdf> [as of June 6, 2019].) Specifically, the report found that “[i]n 45 cases . . . reviewed in which investigators at the three agencies we visited did not request a kit analysis, the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed.” (*Id.* at 23.)

Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases. The “decisions not to request sexual assault evidence kit analysis in the individual cases we reviewed appeared reasonable because kit analysis would be unlikely to further the investigation of those cases. We reviewed specific cases at each agency in which investigators did not request analysis. Our review included 15 cases from each of the three agencies we visited with offenses that occurred from 2011 through 2013, for a total of 45 cases. In those cases, we did not identify any negative effects on the investigations as a result of decisions not to request analysis. We based our conclusions on the circumstances present in the individual cases we reviewed, as documented in the files for the 45 cases and as discussed with the investigative supervisors.” (*Id.*)

Although the audit found the explanations for not submitting the sexual assault kits to be reasonable, testing those kits may have identified offenders who had committed another crime for which they were never previously identified. The National Institute of Justice funded Detroit, Michigan and Houston, Texas to test their unsubmitted sexual assault kits. The results revealed that testing unsubmitted kits can lead to convicting hundreds to thousands of serial offenders; such testing identified over 400 serial rapists in Detroit alone. (NIJ, *National Sexual Assault Kit Initiative (SAKI): FY 2017 Competitive Grant Announcement*, Dec. 20, 2016, available at: <https://www.bja.gov/funding/SAKI17.pdf> [as of June 6, 2019].)

Testing unsubmitted kits may be particularly effective in California, which passed Proposition 69 in 2004, requiring all persons arrested or charged of a felony to submit DNA samples. (Pen. Code, § 296.) For example, a serial offender is currently “awaiting trial in Alameda County Superior Court for sexual assaults against five women ranging in age from 15 to 46, and for the 2015 killing of one rape victim, Randhir Kaur, who was a UCSF dental student. All of the cases are linked by DNA evidence.” In one of his earlier cases from 2008, the law enforcement agency did not get the sexual assault kit tested, which, if they had, could have identified him as he was in the national DNA database for a 2005 felony gun conviction. (Gutierrez and Veklerov, *San Francisco Chronicle*, *Efforts to Clear California's Rape Kit Testing Backlog Fall Short*, Mar. 17, 2018, available at: <https://www.sfgchronicle.com/news/article/Efforts-to-clear-California-s-rape-kit-testing-12760627.php> [as of June 6, 2019].)

- 5) **The Need for this Bill:** Existing law provides that law enforcement agencies *should* either submit sexual assault forensic evidence to a crime lab within 20 days after it is booked into evidence or insure that rapid turnaround DNA program is in place. This bill would *require* law enforcement to take one of these actions.

Existing law also *encourages* a crime lab that receives sexual assault forensic evidence to either process the evidence, create DNA profiles and upload qualifying DNA profiles into CODIS or transmit the sexual assault forensic evidence to another crime lab as soon as

practically possible but no later than 30 days after receiving the evidence. This bill instead provides that these actions *shall* be taken.

Although this bill will not undo the backlog of untested kits – estimated to be more than ten thousand by the sponsor of the bill (<http://www.endthebacklog.org/california>) – it should prevent additional backlog provided that law enforcement agencies and crime labs have the resource to keep up with the influx of new kits.

AB 3118 (Chiu) Chapter 950, Statutes of 2018 required each law enforcement agency, crime lab, medical facility, or other facility in possession of sexual assault kits to conduct an audit of all the kits in their possession and report specified information about them to the DOJ. In turn, the DOJ is required to compile the information and submit a report to the Legislature. The information to be audited includes the date when the kits were collected, whether they were tested by a crime lab, whether the information from the test was uploaded to CODIS, etc. DOJ's report is due to the Legislature in July, 2020.

- 6) **Governor Brown's Veto Message on SB 1449:** Last year the author introduced SB 1449, which was nearly identical to this bill. SB 1449 was vetoed by Governor Brown, who stated:

"I am returning Senate Bill 1449 without my signature.

"This bill would require the testing of all sexual assault forensic evidence kits within a specified period of time.

"The state budget that I signed this year includes a one-time total of \$7.5 million General Fund to test rape kits-\$1 million to begin conducting an audit of untested kits and \$6.5 million to help test the existing known backlog.

"While I fully support the goal of this bill, I believe that we should allow for the completion of the audit mandated by AB 3118 (Chiu)-which I am signing today-as well as for the Department of Justice to further reduce the existing backlog using the recently approved significant funding increase. I would like to allow time for this year's legislative actions to take effect so we can gauge the appropriate next steps and budget accordingly."

- 7) **Argument in Support:** According to the bill's co-sponsor, the *Joyful Heart Foundation*, "Every 98 seconds, someone is sexually assaulted in the United States. In the immediate aftermath of a sexual assault, a victim may choose to undergo a medical forensic examination to collect evidence left behind in the assault. A doctor or nurse will conduct the examination, which can last between four and six hours, and collect evidence in what is commonly called a rape kit. Survivors—and the public—expect that these kits will be used to apprehend offenders. Far too often, these kits are not submitted to crime labs for testing and are simply shelved in law enforcement storage.

"S.B. 22 amends language of existing California law, which merely encourages law enforcement agencies to submit kits for testing. The Sexual Assault Victims' DNA Bill of Rights states that sexual assault forensic evidence received after January 1, 2016 should be submitted for testing within 20 days, that laboratories should test the kit and submit DNA evidence as soon as possible but within 120 days, and a transferred kit's DNA evidence

should be uploaded as soon as possible but within 30 days.”

- 8) **Argument in Opposition:** According to the *California Public Defender's Association*, “How crime laboratories allocate their limited resources should not be micromanaged by the state legislature. While the testing of DNA evidence from sexual assault cases is important, it is not more important than DNA testing on items of evidence collected in the investigation of other types of violent crime such as homicides, kidnapping or assaults and not more important than other types of forensic testing such as firearms analysis, fingerprint comparison and trace evidence analysis. Moreover, because this bill would prioritize the testing of evidence from any sexual assault cases over testing from any other serious and violent crimes, regardless of the relative importance of those test results in prosecuting the charged offense, it might actually jeopardize successful prosecutions for serious crimes. Additionally, the need to meet the stringent and categorical time limits imposed by this bill will delay DNA testing which could lead to an incarcerated or imprisoned person’s exoneration and freedom.”

9) **Related Legislation:**

- a) AB 358 (Low), would require the creation of a statewide tracking system to allow a victim of a sexual assault crime to monitor the status of the processing and testing of a sexual assault forensic exam related to their case. AB 358 was held on the Assembly Appropriations Committee Suspense File.
- b) AB 1496 (Frazier), is nearly identical to this bill, but would only require the prompt testing of sexual assault kits as of 2020 and for kits collected prior to then would have a relaxed timeline for submission and testing. AB 1496 was held on the Assembly Appropriations Committee Suspense File.

10) **Prior Legislation:**

- a) AB 3118 (Chiu), Chapter 950, Statutes of 2018, required 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 DOJ, who is then required to submit a report to the Legislature.
- b) SB 1449 (Leyva), of the 2017 – 2018 Legislative Session, was nearly identical to this bill. SB 1449 was vetoed by Governor Brown.
- c) AB 41 (Chiu), Chapter 694, Statutes of 2017, required all local law enforcement agencies investigating a case involving sexual assault to input specified information relating to the administration of a sexual assault kit into the DOJ’s SAFE-T database within 120 days of collection. It also required public laboratories to input an explanation onto SAFE-T if they had not completed DNA testing of a sexual assault kit within 120 days of acquiring the kit.
- d) AB 1312 (Gonzalez Fletcher), Chapter 692, Statutes of 2017, required law enforcement and medical professionals to provide victims of sexual assault with written notification of their rights. Provides additional rights to sexual assault victims, and mandates law

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enforcement and crime labs to complete tasks related to rape kit evidence.

- e) AB 1848 (Chiu), of the 2015-2016 Legislative Session, would have required local law enforcement agencies to conduct an audit of sexual assault kits collected during a period of time, as specified by the DOJ, and to submit data regarding the total number of kits, the amount of kits submitted for DNA testing, the amount not submitted and other information, as specified. AB 1848 was held in the Senate Appropriations Committee.
- f) AB 2499 (Maienschein), Chapter 884, Statutes of 2016, required the DOJ to, in consultation with law enforcement agencies and crime victims groups, establish a process giving location and other information to victims of sexual assault upon inquiry.
- g) SB 1079 (Glazer), of the 2015-2016 Legislative Session, would have required the DOJ to maintain a restricted access repository for tracking DNA database hits that local law enforcement agencies could use to share investigative information. SB 1079 was held in the Senate Appropriations Committee.
- h) AB 1517 (Skinner), Chapter 874, Statutes of 2014, provided preferred timelines that law enforcement agencies and crime labs should follow when dealing with sexual assault forensic evidence.
- i) AB 322 (Portantino), of the 2011-2012 Legislative Session, would have established a pilot project administered by the DOJ. The project would have required ten counties to open and test all rape kits collected from July 1, 2012, to December 31, 2014. AB 322 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office (Co-Sponsor)
Joyful Heart Foundation (Co-Sponsor)
Natasha's Justice Project (Co-Sponsor)
Santa Barbara Women's Political Committee (Co-Sponsor)
California District Attorneys Association
California Police Chiefs Association
Change for Justice
National Association of Social Workers, California Chapter
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Stonewall Democratic Club
Students Against Sexual Assault
UCSB Lobby Corps

Oppose

California Public Defenders Association

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Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

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Exhibit 2

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SB-22 Rape kits: testing. (2019-2020)

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Date Published: 10/09/2019 09:00 PM

Senate Bill No. 22

CHAPTER 588

An act to amend Sections 680, 680.3, and 13823.14 of the Penal Code, relating to evidence.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 22, Leyva. Rape kits: testing.

Existing law declares that timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. Existing law finds and declares that law enforcement agencies should either submit sexual assault forensic evidence received on or after January 1, 2016, to a crime lab within 20 days after it is booked into evidence or to ensure that a rapid turnaround DNA program is in place, as specified. Existing law also finds and declares that a crime lab that receives sexual assault forensic evidence on or after January 1, 2016, should either process the evidence, create DNA profiles when able, and upload qualifying DNA profiles into the Combined DNA Index System, as specified, or transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after receiving the evidence, for processing of the evidence for the presence of DNA.

This bill would instead require a law enforcement agency to either submit sexual assault forensic evidence to a crime lab or ensure that a rapid turnaround DNA program is in place, as specified, and require a crime lab to either process the evidence or transmit the evidence to another crime lab for processing, as specified. Because this bill would impose a higher level of service on local law enforcement agencies in processing that evidence, it 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 Local Program: yes

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

SECTION 1. Section 680 of the Penal Code, as amended by Section 75 of Chapter 423 of the Statutes of 2018, 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."

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(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, 262, 286, 287, or 289 or former Section 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.

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(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, 262, 286, 287, or 289 or of former Section 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. Nothing in this subdivision requires 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) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims have the following rights:

(A) The right to be informed 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) The right to be informed 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 of case evidence.

(C) The right to be informed whether or not there is a 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.

(3) This subdivision is intended to encourage law enforcement agencies to notify victims of information which 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, 262, 286, 287, or 289 or former Section 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, 262, 286, 287, or 289 or former Section 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).

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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 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 (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.

(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.

SEC. 3. Section 13823.14 of the Penal Code is amended to read:

13823.14. (a) The Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists shall provide leadership and work collaboratively with public crime laboratories to develop a standardized sexual assault forensic medical evidence kit for use by all California jurisdictions. The packaging and appearance of the kit may vary, but the kit shall contain a minimum number of basic components and also clearly permit swabs or representative evidence samples to be earmarked for a rapid turnaround DNA program, as defined in paragraph (5) of subdivision (c) of Section 680, when applicable.

(b) The collaboration to establish the basic components for a standardized sexual assault forensic medical evidence kit should be completed by January 30, 2018, and shall be conducted in conjunction with the California Clinical Forensic Medical Training Center, authorized by Section 13823.93, that is responsible for the development of sexual assault forensic medical examination procedures and sexual assault standardized forensic medical report forms and for providing training programs.

(c) On or before May 30, 2019, the California Clinical Forensic Medical Training Center, in coordination with the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors,

and the California Association of Criminalists, shall issue guidelines pertaining to the use of the standardized sexual assault kit components throughout the state.

(d) Every local and state agency shall remain responsible for its own costs in purchasing a standardized sexual assault forensic medical evidence kit.

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.

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Exhibit 3

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SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 22 (Leyva) - Rape kits: testing

Version: December 3, 2018

Policy Vote: PUB. S. 7 - 0

Urgency: No

Mandate: Yes

Hearing Date: April 8, 2019

Consultant: Shaun Naidu

Bill Summary: SB 22 would require a law enforcement agency to submit sexual assault forensic evidence to a crime lab, as specified, and would require the lab to process the evidence and upload DNA profiles into a national DNA database, as specified. Additionally, it would directly appropriate \$2 million to assist local law enforcement agencies to comply with the requirements of this bill.

Fiscal Impact:

- Crime labs: The Department of Justice (DOJ) reports ongoing annual costs of \$854,000 for personnel with attendant operating expenses and equipment. (special fund*, General Fund)

The Los Angeles County Sheriff's Department anticipates additional personnel costs of about \$450,000 to process the evidence within the timeframe required. Local costs to comply with this measure likely would be subject to reimbursement from the General Fund as a state-mandated local program, the extent of which would be determined by the Commission on State Mandates. (General Fund, local funds)

- Local law enforcement agencies: Costs to local law enforcement agencies to comply with this measure vary depending on each agency's current practice. For agencies that already submit the evidence within the currently-encouraged timeframe, no new costs are anticipated from SB 22. Other agencies anticipate costs of around \$1,000 annually. (General Fund, local funds)
- Appropriation: This bill includes a direct appropriation of \$2 million from the General Fund to DOJ to allocate to local law enforcement agencies for assistance to comply with this measure.

*DNA Identification Fund—structurally imbalanced

Background: California established the Sexual Assault Victims' Bill of Rights in 2003. In passing that law, the Legislature found and declared that "[l]aw 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." Upon the request of the survivor, law enforcement agencies investigating the sexual assault allegation may inform the survivor of the status of the DNA testing. Specifically, the California DNA Bill of Rights provides that subject to sufficient resources to respond to requests, survivors have a right to be informed whether the assailant's DNA profile was developed from the evidence, whether that profile was uploaded to the DNA database, and whether

a hit resulted from the upload.

The Sexual Assault Victims' Bill of Rights was amended in 2014. Those amendments encouraged law enforcement agencies and crime labs to handle and process sexual assault forensic evidence within specific time frame. Specifically, law enforcement agencies "should" either submit sexual assault forensic evidence to a crime lab within 20 days after it is booked into evidence or insure that a rapid turnaround DNA program is in place.

Existing law also encourages a crime lab that receives sexual assault forensic evidence to either (1) process the evidence, create DNA profiles, and upload qualifying DNA profiles into the national database or (2) transmit the sexual assault forensic evidence to another crime lab as soon as practically possible but no later than 30 days after receiving the evidence.

Proposed Law: This bill would:

- Require a law enforcement agency to either
 - Submit sexual assault forensic evidence to a crime lab, or
 - Ensure that a rapid turnaround DNA program is in place, as specified.
- Require a crime lab to either
 - Process the evidence or
 - Transmit the evidence to another crime lab for processing, as specified.
- Appropriate \$2 million from the General Fund to DOJ to allocate to local law enforcement agencies for assistance with complying with the requirements of this measure.

Related Legislation: SB 1449 (Leyva, 2018), when heard by this Committee, was substantially similar to this measure and was vetoed by the Governor.

AB 3118 (Chiu, Gonzalez Fletcher, Ch. 950, Stats. 2018) required each law enforcement agency, crime lab, medical facility, or any other facility that possesses sexual assault evidence kits to conduct an audit of all untested kits in their possession and report the findings to DOJ, as specified.

AB 41 (Chiu, Ch. 694, Stats. 2017) required law enforcement agencies to report specified information, and update such information, regarding the collection and processing of sexual assault forensic evidence, as specified.

AB 1848 (Chiu, 2016) was substantially similar to AB 41 (Chiu, 2017). AB 1848 was held on the Suspense File of this Committee.

AB 1517 (Skinner, Ch. 874, Stats. 2014) set the recommended timelines, that are the subject of this bill, within which both law enforcement agencies and crime laboratories are to perform DNA testing of sexual assault forensic evidence, as specified.

Staff Comments: The Department of Justice anticipates receiving about 121 additional kits annually if this measure is enacted. To accommodate the increased workload within the timeframe required, DOJ reports that it would need 3.0 new Criminalists and 1.0 Criminalist Supervisor. The new personnel would be funded from the DNA

Identification Fund, which has experienced significant revenue decreases in recent years to the extent that it is structurally imbalanced. From 2013-14 to 2016-17, revenue has decreased by approximately 23 percent. The FY 2019-20 proposed budget anticipates a beginning balance of \$5.1 million, revenue of \$51.1 million, expenditures of \$56 million, and an ending reserve of almost \$300,000. Given the operational deficit of the DNA Identification Fund, the added expense to comply SB 22 would create cost pressure on the General Fund to backfill any shortage.

The Los Angeles County Sheriff's Department, which processes forensic evidence for its own cases and from those of other law enforcement agencies, anticipates processing 15 to 25 additional kits a month because of SB 22. It expects the need of 3.0 additional analysts to process the workload anticipated from other agencies sending in all of their forensic evidence for processing. Additionally, the department uses contract labs on occasion to process sexual assault forensic evidence and would contract out the processing of more evidence than it does currently. Once the evidence is processed by the contract lab, it is returned to the Sheriff's Department to upload the DNA profile into the national database, which requires the use of additional department resources.

In his veto message of SB 1449 (Leyva, 2018), the Governor stated that while he supported the goal of the bill, he "believe[d] that we should allow for the completion of the audit mandated by AB 3118 (Chiu) ... as well as for the Department of Justice to further reduce existing backlog using the recently approved significant funding increase." He also stated his preference for allowing additional time for last year's legislative actions to take effect in order to gauge the appropriate next steps and budget accordingly. The Department of Justice is required to submit a report to the Legislature of law enforcement agencies' audits required by AB 3118 no later than July 1, 2020.

-- END --

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Exhibit 4

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SB-22 Rape kits: testing. (2019-2020)

Current Version: 10/08/19 - Chaptered Compared to Version: 12/03/18 - Introduced

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SEC. 2. SECTION 1. Section 680 of the Penal Code, as amended by Section 75 of Chapter 423 of the Statutes of 2018, 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, 262, 286, 287, or 289 or former Section 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.

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(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, 262, 286, 287, or 289 or of former Section 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. Nothing in this subdivision requires 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) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims have the following rights:

(A) The right to be informed 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) The right to be informed 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 of case evidence.

(C) The right to be informed whether or not there is a 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.

(3) This subdivision is intended to encourage law enforcement agencies to notify victims of information which 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, 262, 286, 287, or 289 or former Section 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, 262, 286, 287, or 289 or former Section 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.

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(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. 3- 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 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 (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.

(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.

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

SEC. 4. 3. Section 13823.14 of the Penal Code is amended to read:

13823.14. (a) The Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists shall provide leadership and work collaboratively with public crime laboratories to develop a standardized sexual assault forensic medical evidence kit for use by all California jurisdictions. The packaging and appearance of the kit may vary, but the kit shall contain a minimum number of basic components and also clearly permit swabs or representative evidence samples to be earmarked for a rapid turnaround DNA program, as defined in paragraph (5) of subdivision (c) of Section 680, when applicable.

(b) The collaboration to establish the basic components for a standardized sexual assault forensic medical evidence kit should be completed by January 30, 2018, and shall be conducted in conjunction with the California Clinical Forensic Medical Training Center, authorized by Section 13823.93, that is responsible for the development of sexual assault forensic medical examination procedures and sexual assault standardized forensic medical report forms and for providing training programs.

(c) On or before May 30, 2019, the California Clinical Forensic Medical Training Center, in coordination with the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists, shall issue guidelines pertaining to the use of the standardized sexual assault kit components throughout the state.

(d) Every local and state agency shall remain responsible for its own costs in purchasing a standardized sexual assault forensic medical evidence kit.

~~SECTION 1. SEC. 4. The sum of two million dollars (\$2,000,000) is hereby appropriated from the General Fund to the Department of Justice to allocate to local law enforcement agencies to assist them with complying with the amendments to Section 680 of the Penal Code made by this act. 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.~~

~~SEC. 5. 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.~~

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Exhibit 5

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Code: PEN



Section: 680.


[the law as amended](#) [return back to code](#)

Code Section:

PENAL CODE - PEN

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)

Bill Section:

20172018 SB1494 Sec. 75. (Amends) - Chaptered (Stats.2018 Ch.423)

SEC. 75. 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) 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, 262, 286, 287, or 289 or former Section 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

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 should occur:

(A) A law enforcement agency in whose jurisdiction a sex offense specified in Section 261, 261.5, 262, 286, 287, or 289 or former Section 288a occurred should do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:

(i) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.

(ii) 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.

(B) The crime lab should do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016.

(i) 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.

(ii) 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 should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA.

(C) 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.

(D) 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.

(E) 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

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, 262, 286, 287, or 289 or of former Section 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. Nothing in this subdivision requires 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) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims have the following rights:

(A) The right to be informed 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) The right to be informed 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 of case evidence.

(C) The right to be informed whether or not there is a 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.

(3) This subdivision is intended to encourage law enforcement agencies to notify victims of information which 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.

between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is based.

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

(c) (1) Upon the request of a sexual assault victim, the law enforcement agency investigating a violation of Section 261, 261.5, 262, 286, 287, or 289 or of former Section 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. Nothing in this subdivision requires 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) Subject to the commitment of sufficient resources to respond to requests for information, sexual assault victims have the following rights:

(A) The right to be informed 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) The right to be informed 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 of case evidence.

(C) The right to be informed whether or not there is a 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.

(3) This subdivision is intended to encourage law enforcement agencies to notify victims of information which 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.

(d) 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, 262, 286, 287, or 289 or former Section 288a shall be

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(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, 262, 286, 287, or 289 or former Section 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, 262, 286, 287, or 289 or former Section 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

informed, either orally or in writing, of that fact by the law enforcement agency.

(e) (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, 262, 286, 287, or 289 or former Section 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.

(f) Written notification under subdivision (d) or (e) 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.

(g) 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.

(h) It is the intent of the Legislature that a law enforcement agency responsible for providing information under subdivision (c) 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.

(i) 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.

(j) 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 (d) or (e).

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failure to fulfill its responsibilities under this section is standing to file a writ of mandamus to require compliance with subdivision (e) or (f).

(Amended (as amended by Stats. 2018, Ch. 423, Sec. 75) by Stats. 2019, Ch. 588, Sec. 1. (SB 22) Effective January 1, 2020.)

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Exhibit 6

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**CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10089612-20-K, DNA
TESTING OF SEXUAL ASSAULT EVIDENCE KITS (SAEK's)**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10089612-20-K, DNA TESTING OF SEXUAL ASSAULT EVIDENCE KITS (SAEK's) (Contractor).

RECITALS

On or about 10/18/2019, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibits thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the testing of sexual assault evidence kits.

City wishes to retain Contractor to testing of sexual assault evidence kits as further described in the Scope of Work, attached hereto as Exhibit B. (services).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

**ARTICLE I
CONTRACTOR SERVICES**

1.1 Scope of Work. Contractor shall provide the services to City as described in Exhibit B which is incorporated herein by reference. Contractor will submit all required forms and information described in Exhibit A to the Purchasing Agent before providing services.

1.2 General Contract Terms and Provisions. This Contract incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

**ARTICLE II
DURATION OF CONTRACT**

2.1 Term. This Contract shall be for a period of five (5) years beginning on the Effective Date. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Contract shall be effective on the date it is executed by the last Party to sign the Contract, and approved by the City Attorney in accordance with San Diego Charter Section 40 (Effective Date).

ARTICLE III COMPENSATION

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$3,000,000.00. (the not to exceed amount will be added in this final Contract prior to the final execution of the Contract by the City, with the Contractor's initials indicating acceptance.)

MC 12/18/19
Contractor Initials Date

ARTICLE IV WAGE REQUIREMENTS

4.1 Reserved.

ARTICLE V CONTRACT DOCUMENTS

5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; the Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the RFP, if any.

5.2 Contract Interpretation. The Contract Documents completely describe the services to be provided. Contractor will provide any services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents.

5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1st document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1st Any properly executed written amendment to the Contract
- 2nd The Contract
- 3rd The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any
- 4th Contractor's Pricing

5.4 Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all Parties had executed the same page.

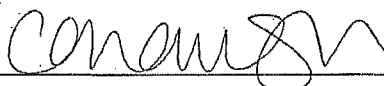
5.5 **Public Agencies.** Other public agencies, as defined by California Government Code section 6500, may choose to use the terms of this Contract, subject to Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent Contract between Contractor and another public agency.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

CONTRACTOR

CITY OF SAN DIEGO
A Municipal Corporation

Bode Technology
Proposer

BY: 

10430 Furnace Road, Suite 107
Street Address

Print Name:

Lorton, VA
City

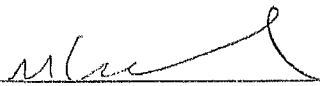
CHRISTIANA GAUGER
Deputy Director, Purchasing & Contracting
Department

703-646-9875
Telephone No.

1/13/2020
Date Signed

contracts@bodetech.com
E-Mail

BY:


Signature of
Proposer's Authorized
Representative

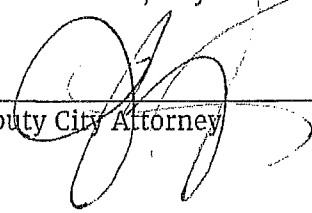
Michael Cariola
Print Name

CEO & President
Title

11/13/2019
Date

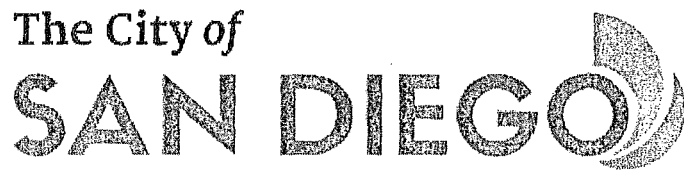
Approved as to form this 30 day of

January, 2020.
MARA W. ELLIOTT, City Attorney

BY: 
Deputy City Attorney

RFP Documents
Including Addenda

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**Request for Proposal (RFP) for
DNA Testing of Sexual Assault Evidence Kits (SAEK's)**

Solicitation Number: 10089612-20-K

Solicitation Issue Date: October 18, 2019

Questions and Comments Due: 12:00 p.m., October 29, 2019

Proposal Due Date and Time (Closing Date): 2:00 p.m., November 15, 2019

Contract Terms: Until completion of the Scope of Services or five (5) years, whichever is earliest, as defined in Article I, Section 1.2 of the City's General Contract Terms and Conditions.

City Contact: Brent Krohn, Program Coordinator, 1200 Third Avenue, Suite 200, San Diego, CA 92101
BKrohn@sandiego.gov, (619) 236-6044

Submissions: Respondent is required to provide four (4) original and one (1) electronic copy (e.g. thumb drive or CD) of their response as described herein.

Completed and signed RFP signature page is required, with most recent addendum listed as acknowledgement of all addenda issued.

Note: Emailed submissions will not be accepted.

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**CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10089612-20-K, DNA
TESTING OF SEXUAL ASSAULT EVIDENCE KITS (SAEK's)**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10089612-20-K, DNA TESTING OF SEXUAL ASSAULT EVIDENCE KITS (SAEK's) (Contractor).

RECITALS

On or about 10/18/2019, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibits thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the testing of sexual assault evidence kits.

City wishes to retain Contractor to testing of sexual assault evidence kits as further described in the Scope of Work, attached hereto as Exhibit B. (services).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

**ARTICLE I
CONTRACTOR SERVICES**

1.1 Scope of Work. Contractor shall provide the services to City as described in Exhibit B which is incorporated herein by reference. Contractor will submit all required forms and information described in Exhibit A to the Purchasing Agent before providing services.

1.2 General Contract Terms and Provisions. This Contract incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

**ARTICLE II
DURATION OF CONTRACT**

2.1 Term. This Contract shall be for a period of five (5) years beginning on the Effective Date. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Contract shall be effective on the date it is executed by the last Party to sign the Contract, and approved by the City Attorney in accordance with San Diego Charter Section 40 (Effective Date).

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ARTICLE III COMPENSATION

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$ _____ (the not to exceed amount will be added in this final Contract prior to the final execution of the Contract by the City, with the Contractor's initials indicating acceptance.)

ARTICLE IV WAGE REQUIREMENTS

4.1 Reserved.

ARTICLE V CONTRACT DOCUMENTS

5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; the Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the RFP, if any.

5.2 Contract Interpretation. The Contract Documents completely describe the services to be provided. Contractor will provide any services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents.

5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1st document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

- 1st Any properly executed written amendment to the Contract
- 2nd The Contract
- 3rd The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any
- 4th Contractor's Pricing

5.4 Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all Parties had executed the same page.

5.5 Public Agencies. Other public agencies, as defined by California Government Code section 6500, may choose to use the terms of this Contract, subject to Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent Contract between Contractor and another public agency.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

CONTRACTOR

CITY OF SAN DIEGO
A Municipal Corporation

Proposer

BY: _____

Street Address

Print Name: _____

City

Director, Purchasing & Contracting
Department

Telephone No.

Date Signed

E-Mail

BY: _____

Signature of
Proposer's Authorized
Representative

Print Name

Title

Date

Approved as to form this ____ day of

_____, 20____.
MARA W. ELLIOTT, City Attorney

BY: _____
Deputy City Attorney

EXHIBIT A
PROPOSAL SUBMISSION AND REQUIREMENTS

A. PROPOSAL SUBMISSION

1. Timely Proposal Submittal. Proposals must be submitted as described herein to the Purchasing & Contracting Department (P&C).

1.1 Reserved.

1.2 Paper Proposals. The City will accept paper proposals in lieu of eProposals. Paper proposals must be submitted in a sealed envelope to the Purchasing & Contracting Department (P&C) located at 1200 Third Avenue, Suite 200, San Diego, CA 92101. The Solicitation Number and Closing Date must be referenced in the lower left-hand corner of the outside of the envelope. Faxed proposals will not be accepted.

1.3 Proposal Due Date. Proposals must be submitted prior to the Closing Date indicated on the eBidding System. E-mailed and/or faxed proposals will not be accepted.

1.4 Pre-Proposal Conference. No pre-proposal conference will be held for RFP.

1.4.1 Reserved.

1.5 Questions and Comments. Written questions and comments must be submitted electronically via the eBidding System no later than the date specified on the eBidding System. Only written communications relative to the procurement shall be considered. The City's eBidding System is the only acceptable method for submission of questions. All questions will be answered in writing. The City will distribute questions and answers without identification of the inquirer(s) to all proposers who are on record as having received this RFP, via its eBidding System. No oral communications can be relied upon for this RFP. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP.

1.6 Contact with City Staff. Unless otherwise authorized herein, proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff about this RFP from the date this RFP is issued until a contract is awarded.

2. Proposal Format and Organization. Unless electronically submitted, all proposals should be securely bound and must include the following completed and executed forms and information presented in the manner indicated below:

Tab A - Submission of Information and Forms.

2.1 Completed and signed Contract Signature Page. If any addenda are issued, the latest Addendum Contract Signature Page is required.

2.1 Exceptions requested by proposer, if any. The proposer must present written factual or legal justification for any exception requested to the Scope of Work, the Contract, or the Exhibits thereto. Any exceptions to the Contract that have not been accepted

by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer's exceptions, reject proposer's exceptions, and deem the proposal non-responsive, or award the Contract without proposer's proposed exceptions. The City will not consider exceptions addressed elsewhere in the proposal.

2.2 The Contractor Standards Pledge of Compliance Form.

2.3 Equal Opportunity Contracting forms including the Work Force Report and Contractors Certification of Pending Actions.

2.4 Reserved.

2.5 Licenses as required in Exhibit B.

2.6 Reserved.

2.6 Additional Information as required in Exhibit B.

2.7 Reserved.

2.8 Reserved.

2.9 Reserved.

Tab B - Executive Summary and Responses to Specifications.

2.10 A title page.

2.11 A table of contents.

2.12 An executive summary, limited to one typewritten page, that provides a high-level description of the proposer's ability to meet the requirements of the RFP and the reasons the proposer believes itself to be best qualified to provide the identified services.

2.13 Proposer's response to the RFP.

Tab C - Cost/Price Proposal (if applicable). Proposers shall submit a cost proposal in the form and format described herein. Failure to provide cost(s) in the form and format requested may result in proposal being declared non-responsive and rejected.

3. Proposal Review. Proposers are responsible for carefully examining the RFP, the Specifications, this Contract, and all documents incorporated into the Contract by reference before submitting a proposal. If selected for award of contract, proposer shall be bound by same unless the City has accepted proposer's exceptions, if any, in writing.

4. Addenda. The City may issue addenda to this RFP as necessary. All addenda are incorporated into the Contract. The proposer is responsible for determining whether addenda were issued prior to a proposal submission. Failure to respond to or properly address addenda may result in rejection of a proposal.

5. Quantities. The estimated quantities provided by the City are not guaranteed. These quantities are listed for informational purposes only. Quantities vary depending on the demands of the City. Any variations from the estimated quantities shall not entitle the proposer to an adjustment in the unit price or any additional compensation.

6. Quality. Unless otherwise required, all goods furnished shall be new and the best of their kind.

6.1 Items Offered. Proposer shall state the applicable trade name, brand, catalog, manufacturer, and/or product number of the required good, if any, in the proposal.

6.2 Brand Names. Any reference to a specific brand name in a solicitation is illustrative only and describes a component best meeting the specific operational, design, performance, maintenance, quality, or reliability standards and requirements of the City. Proposer may offer an equivalent or equal in response to a brand name referenced (Proposed Equivalent). The City may consider the Proposed Equivalent after it is subjected to testing and evaluation which must be completed prior to the award of contract. If the proposer offers an item of a manufacturer or vendor other than that specified, the proposer must identify the maker, brand, quality, manufacturer number, product number, catalog number, or other trade designation. The City has complete discretion in determining if a Proposed Equivalent will satisfy its requirements. It is the proposer's responsibility to provide, at their expense, any product information, test data, or other information or documents the City requests to properly evaluate or demonstrate the acceptability of the Proposed Equivalent, including independent testing, evaluation at qualified test facilities, or destructive testing.

7. Modifications, Withdrawals, or Mistakes. Proposer is responsible for verifying all prices and extensions before submitting a proposal.

7.1 Modification or Withdrawal of Proposal Before Proposal Opening. Prior to the Closing Date, the proposer or proposer's authorized representative may modify or withdraw the proposal by providing written notice of the proposal modification or withdrawal to the City Contact via the eBidding System. E-mail or telephonic withdrawals or modifications are not permissible.

7.2 Proposal Modification or Withdrawal of Proposal After Proposal Opening. Any proposer who seeks to modify or withdraw a proposal because of the proposer's inadvertent computational error affecting the proposal price shall notify the City Contact identified on the eBidding System no later than three working days following the Closing Date. The proposer shall provide worksheets and such other information as may be required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the proposer to prove the inadvertent error. If, as a result of a proposal modification, the proposer is no longer the apparent successful proposer, the City will award to the newly established apparent successful proposer. The City's decision is final.

8. Incurred Expenses. The City is not responsible for any expenses incurred by proposers in participating in this solicitation process.

9. Public Records. By submitting a proposal, the proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA)

applies. If the proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the proposer must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the proposer does not provide a specific and detailed legal basis for requesting the City to withhold proposer's confidential or proprietary information at the time of proposal submittal, City will release the information as required by the CPRA and proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the proposer's obligation to defend, at proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the proposer's request. Furthermore, the proposer shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at proposer's request. Nothing in the Contract resulting from this proposal creates any obligation on the part of the City to notify the proposer or obtain the proposer's approval or consent before releasing information subject to disclosure under the CPRA.

10. Right to Audit. The City Auditor may access proposer's records as described in San Diego Charter section 39.2 to confirm contract compliance.

B. PRICING

1. Fixed Price. All prices shall be firm, fixed, fully burdened, FOB destination, and include any applicable delivery or freight charges, and any other costs required to provide the requirements as specified in this RFP. The lowest total estimated contract price of all the proposals that meet the requirements of this RFP will receive the maximum assigned points to this category as set forth in this RFP. The other price schedules will be scored based on how much higher their total estimated contract prices compare with the lowest:

$$(1 - \frac{(\text{contract price} - \text{lowest price})}{\text{lowest price}}) \times \text{maximum points} = \text{points received}$$

For example, if the lowest total estimated contract price of all proposals is \$100, that proposal would receive the maximum allowable points for the price category. If the total estimated contract price of another proposal is \$105 and the maximum allowable points is 60 points, then that proposal would receive $(1 - ((105 - 100) / 100) \times 60 = 57$ points, or 95% of the maximum points. The lowest score a proposal can receive for this category is zero points (the score cannot be a negative number). The City will perform this calculation for each Proposal.

2. Taxes and Fees. Taxes and applicable local, state, and federal regulatory fees should not be included in the price proposal. Applicable taxes and regulatory fees will be added to the net amount invoiced. The City is liable for state, city, and county sales taxes but is exempt from Federal Excise Tax and will furnish exemption certificates upon request. All

or any portion of the City sales tax returned to the City will be considered in the evaluation of proposals.

3. Escalation. An escalation factor is not allowed unless called for in this RFP. If escalation is allowed, proposer must notify the City in writing in the event of a decline in market price(s) below the proposal price. At that time, the City will make an adjustment in the Contract or may elect to re-solicit.

4. Unit Price. Unless the proposer clearly indicates that the price is based on consideration of being awarded the entire lot and that an adjustment to the price was made based on receiving the entire proposal, any difference between the unit price correctly extended and the total price shown for all items shall be offered shall be resolved in favor of the unit price.

C. EVALUATION OF PROPOSALS

1. Award. The City shall evaluate each responsive proposal to determine which proposal offers the City the best value consistent with the evaluation criteria set forth herein. The proposer offering the lowest overall price will not necessarily be awarded a contract.

2. Sustainable Materials. Consistent with Council Policy 100-14, the City encourages use of readily recyclable submittal materials that contain post-consumer recycled content.

3. Evaluation Process.

3.1 Process for Award. A City-designated evaluation committee (Evaluation Committee) will evaluate and score all responsive proposals. The Evaluation Committee may require proposer to provide additional written or oral information to clarify responses. Upon completion of the evaluation process, the Evaluation Committee will recommend to the Purchasing Agent that award be made to the proposer with the highest scoring proposal.

3.2 Optional Interview/Oral Presentation. The City may require proposers to interview and/or make an oral presentation.

3.3 Reserved.

3.4 Discussions/Negotiations. The City has the right to accept the proposal that serves the best interest of the City, as submitted, without discussion or negotiation. Contractors should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of a contract with the winning proposer based on the RFP and the proposer's proposal, or award the contract without further negotiation.

3.5 Inspection. The City reserves the right to inspect the proposer's equipment and facilities to determine if the proposer is capable of fulfilling this Contract. Inspection will include, but not limited to, survey of proposer's physical assets and financial capability. Proposer, by signing the proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining proposer's capability to perform the Contract. Should the City conduct this inspection, the City reserves the right to disqualify a proposer who does not, in the City's judgment, exhibit the sufficient physical and financial resources to perform this Contract.

3.6 Evaluation Criteria. The following elements represent the evaluation criteria that will be considered during the evaluation process:

	MAXIMUM EVALUATION POINTS
A. Responsiveness to the RFP.	25
1. Requested information regarding proof and scope of accreditation, audit documents, chain of custody policy, and any participation in the FBI's OVP program have been provided.	
2. An understanding of the project and thorough description of the ability to deliver the requested services has been outlined in the response to the RFP.	
3. Documentation has been provided to ensure that the technical aspects of the scope of work are able to be met by the respondent.	
B. Staffing Plan.	10
1. Information has been provided to demonstrate the qualifications of personnel are adequate for the RFP requirements.	
2. Sufficient personnel are available to meet the proposed scale of work.	
C. Firm's Capability to provide the services and expertise and Past Performance.	45
1. The responding laboratory has provided documentation of their years of experience providing STR DNA analysis.	
2. The responding laboratory has provided documentation of their ability to manage the project.	
3. The responding laboratory has provided the proposed batch size and turnaround time for analysis of each batch of cases.	
4. References have been provided to demonstrate the responding laboratory's ability to meet the scale of this project.	
D. Price.	20
SUB TOTAL MAXIMUM EVALUATION POINTS:	100
F. Participation by Small Local Business Enterprise (SLBE) or Emerging Local Business Enterprise (ELBE) Firms*	12
FINAL MAXIMUM EVALUATION POINTS INCLUDING SLBE/ELBE:	112

*The City shall apply a maximum of an additional 12 percentage points to the proposer's final score for SLBE OR ELBE participation. Refer to Equal Opportunity Contracting Form, Section V.

D. ANNOUNCEMENT OF AWARD

1. Award of Contract. The City will inform all proposers of its intent to award a Contract in writing.

2. Obtaining Proposal Results. No solicitation results can be obtained until the City announces the proposal or proposals best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the eBidding System or (2) visiting the P&C eBidding System to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number. Proposal results will not be released over the phone.

3. Multiple Awards. City may award more than one contract by awarding separate items or groups of items to various proposers. Awards will be made for items, or combinations of items, which result in the lowest aggregate price and/or best meet the City's requirements. The additional administrative costs associated with awarding more than one Contract will be considered in the determination.

E. PROTESTS. The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC). These procedures provide unsuccessful proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

F. REJECTION OF PROPOSALS. The City may reject any and all proposals when to do so is in the best interests of the City, and may re-advertise for proposals.

G. SUBMITTALS REQUIRED UPON NOTICE OF INTENT TO AWARD. The successful proposer is required to submit the following documents to P&C within ten (10) business days from the date on the Notice of Intent to Award letter:

1. Insurance Documents. Evidence of all required insurance, including all required endorsements, as specified in Article VII of the General Contract Terms and Provisions.

2. Taxpayer Identification Number. Internal Revenue Service (IRS) regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide goods or services to the City. This information is necessary to complete Form 1099 at the end of each tax year. To comply with IRS regulations, the City requires each Contractor to provide a Form W-9 prior to the award of a Contract.

3. Business Tax Certificate. Unless the City Treasurer determines a business is exempt, all businesses that contract with the City must have a current business tax certificate.

4. Reserved.

5. DNA Technical Manager document. The Contractor must sign a separate document on the technical specification of the agreement.

The City may find the proposer to be non-responsive and award the Contract to the next highest scoring responsible and responsive proposer if the apparent successful proposer fails to timely provide the required information or documents.

EXHIBIT B
SCOPE OF WORK

1. OVERVIEW

The City of San Diego (City) seeks proposals from private vendor laboratories with a history of competence in DNA testing of material from sexual assault evidence kits (SAEKs). The City has approximately 1600 SAEKs associated with the investigations of alleged sexual assaults that require immediate testing. The cost testing of these SAEK samples will include shipping of the evidence to, and from, the vendor laboratory, examination of the evidence samples by qualified personnel, and reporting of the results of testing. Generally, this will include the Deoxyribonucleic Acid (DNA) testing of evidentiary material for the purpose of providing results which can be uploaded into the Combined DNA Index System (CODIS). Testing of the SAEKs will proceed based on analysis batch sizes determined by the vendor laboratory's proposals and the turn-around times outlined therein. The goal of this proposal is to efficiently and effectively provide testing on the SAEKs to potentially assist in investigations.

2. QUALIFICATIONS

- i. The vendor laboratory must be, at the time of proposal submission, accredited by an ILAC-signatory inspection organization (e.g., ANAB or A2LA) audited against the ISO/IEC 17025 (2005 or 2017) *General requirements for the competence of testing and calibration laboratories* standards as well as the FBI Director's *Quality Assurance Standards for Forensic DNA Testing Laboratories (QAS)*. *Vendors must provide complete copies of accreditation and audit documents with its response.*
 - a. The scope of accreditation of the vendor laboratory must include DNA testing using Short Tandem Repeat (STR) Deoxyribonucleic Acid (DNA) testing on a minimum of blood, saliva, semen/seminal fluid, and epithelial cells.
 - b. Complete copies of accreditation and audit information must include all non-conformances, or audit findings, as well as the vendor laboratory's responses to the non-conformances and findings.
 - c. The vendor laboratory must maintain the above accreditation during the duration of the agreement.
- ii. The vendor laboratory must have provided autosomal STR DNA analysis services to the forensic community for at least five years.
- iii. The vendor laboratory must have the ability to perform Y-DNA screening to determine if male DNA is present in a sample.
- iv. The vendor laboratory must have had, at the time of proposal submission, an on-site visit by a National DNA Index System (NDIS) participating laboratory within the past year available for review as part of the Federal Bureau of Investigation's On-Site Visit Program (OVP).
 - a. If no on-site visit by an NDIS-participating laboratory is available for review through the FBI's OVP, the vendor laboratory must submit to an on-site visit by a representative of the San Diego Police Department (SDPD) Crime Laboratory.

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- v. Prior to any analysis conducted by a vendor laboratory, the SDPD Crime Laboratory must have a signed agreement between the vendor laboratory and the DNA Technical Manager of the SDPD on the technical specifications of the agreement.
 - a. The vendor laboratory must submit a copy of all current protocols relevant to the fulfillment of the agreement.
 - b. The vendor laboratory must perform all testing using internally validated procedures fit-for-purpose for the analysis of samples obtained from SAEKs.
 - c. The vendor laboratory must not sub-contract any SDPD case analysis to another vendor laboratory for testing.
 - d. The vendor laboratory must provide written notification at least one-month prior to any changes in the procedures outlined in the technical specifications agreement.
 - i. If any changes to the technical specifications require the vendor laboratory to perform validation studies, those studies must be submitted to the SDPD Crime Laboratory DNA Technical Manager prior to being used on testing of SDPD samples.
- vi. The vendor laboratory must maintain the confidentiality of all SDPD case information associated with the evidence analyzed as part of the agreement. This information is considered confidential and shall not be made available to any individual or organization by the vendor laboratory without the prior written approval of the City.
- vii. The vendor laboratory must maintain a chain of custody record on each sample submitted for analysis. Documentation of chain of custody must comply with the published standards of the accrediting organization to protect the samples from deleterious change or loss. *The vendor laboratories submitting a proposal must provide a copy of their policy for maintaining Chain of Custody with its response.*
- viii. The vendor laboratory must issue a report of analysis to the SDPD Crime Laboratory for each case worked.
- ix. The vendor laboratory must issue a report of analysis, to be reviewed by the SDPD Crime Laboratory, if any unknown DNA profile suitable for CODIS upload is generated.
- x. **Vendor laboratory analysts and court proceedings.** If testimony is required for any criminal proceeding, the City will pay the vendor laboratory the daily or hourly rate as specified in the cost proposal in Exhibit B. *All proposals submitted for this RFP from vendor laboratories must contain a statement of expert testimony daily or hourly charges.*

3. SCOPE OF WORK

Sample shipping and chain of custody

- 1) The vendor laboratory will provide pre-paid overnight shipping labels to the SDPD to mediate sending of SAEKs to the vendor laboratory's facility.
- 2) The vendor laboratory will notify the SDPD, within one business day, each time a shipment of evidence from the SDPD is received. The vendor laboratory will examine the shipping container and contents and notify the City of San Diego, immediately, upon

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discovery of any damage to the shipping container or contents of the container that would compromise the integrity of the evidence.

- 3) The vendor laboratory will compare the shipping manifest with the items received and notify the SDPD immediately upon discovery of any discrepancy. Sample seals must be checked for evidence seal integrity. The vendor laboratory will notify the SDPD immediately upon discovery of any sample received without a seal or unsealed.
- 4) The vendor laboratory will maintain chain of custody records for all SDPD samples received. Sub-samples and DNA extracts will be considered evidence and a chain of custody will be maintained on all sub-samples and DNA extracts starting at the time that they are generated by vendor laboratory.
- 5) The vendor laboratory will store samples in a secure facility in a manner to minimize loss, contamination and/or deleterious change until analysis is begun.

General Requirements for Analysis of SAEKs

- 6) The vendor laboratory will comply with all forensic DNA casework testing requirements as outlined in the QAS.
- 7) The vendor laboratory will only conduct testing of SDPD evidence at the laboratory location approved by the City.
- 8) The vendor laboratory will only use qualified analysts to perform work on any SDPD evidence.
 - a) Qualified analysts will be defined as in the FBI's QAS.
 - b) Analysts used for testing of SDPD evidence must have had their qualifications memorialized under Appendix D of the FBI's QAS for DNA Testing Laboratories for at least one external audit.
 - c) The vendor laboratory must submit proof of qualifications (i.e., education, experience, and training) to the SDPD DNA Technical Manager for any analyst to be used for testing of SDPD evidence that has not had their qualifications memorialized in an external audit.
- 9) The vendor laboratory will not place samples from any other contract on a testing plate containing samples from any agency other than the SDPD.

Evidence Sampling

- 10) The vendor laboratory will not consume more than 50% of any evidence item within a SAEK for initial analysis.
 - a) If the vendor laboratory determines that more than 50% of the original evidence is required to provide sufficient amount of male DNA to establish a potential DNA profile for searching CODIS, permission must be sought from the SDPD prior to proceeding with that testing.
- 11) The vendor laboratory will select SAEK samples for analysis based on the information available in the medical report, or as specified in 12d.

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- 12) The vendor lab will use the following guidelines for testing SAEK samples:
- a) Screen 6 swabs (if present) in each SAEK.
 - b) If less than 6 swabs are present in the SAEK, the vendor lab will test all swabs present in the kit.
 - c) On SAEKs collected from females with a single male perpetrator, the vendor laboratory will screen for the presence of male DNA using a PCR-based quantification assay.
 - d) On SAEKs collected from males with a single male perpetrator, the vendor laboratory will screen for the presence of the probative body fluid.
 - i) Any microscope slides created during screening of SAEK samples must be placed inside the original item packaging to be returned to the SDPD. The outside of the outermost evidence packaging (e.g., SEAK) must be marked to designate the inclusion of additional slide(s).
 - e) On SAEKs that do not fall within the categories listed in c) or d), the vendor laboratory will screen for the presence of the probative body fluid.
 - i) Any microscope slides created during screening of SAEK samples must be placed inside the original item packaging to be returned to the SDPD. The outside of the outermost evidence packaging (e.g., SEAK) must be marked to designate the inclusion of additional slide(s).
- 13) The vendor laboratory will seek approval from the SDPD to test any swabs in addition to the number prescribed above, if the circumstances of the case would seem to warrant that additional testing.

Mode of Testing

- 14) The vendor laboratory will test SAEKs using a direct-to-DNA method (i.e., no serological analysis) and screening of the samples for male DNA, where applicable. Where the presence of male DNA alone will not help to identify potentially probative samples, the vendor lab will use traditional serological approaches to identify samples for further testing.
- 15) DNA testing will not proceed on samples that:
- a) Are negative for the probative body fluid;
 - b) Are negative or inconclusive for the presence of male DNA;
 - c) Have insufficient male DNA to obtain an autosomal DNA STR profile;
 - d) Have a ratio of total human to male DNA below the level for obtaining a useful autosomal male DNA result.
- 16) The vendor laboratory will perform DNA testing on:
- a) The single most probative positive sample and the victim's reference sample (2 total samples) in single perpetrator cases.
 - b) Upon consultation and approval of the SDPD, up to 3 positive samples (deemed most probative) and the victim's reference sample (up to 4 total samples) in cases as outlined below:
 - i) Multiple perpetrators are indicated;
 - ii) Consensual intercourse within 120 hours of the alleged incident;

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- iii) The victim experienced a loss of consciousness;
- iv) The victim is younger than 12 years;
- v) Mentally challenged adults; or
- vi) Where no medical report is available for review.

DNA Extraction/Purification

- 17) The vendor laboratory will use the following parameters for extracting and purifying SAEK samples:
 - a) A differential extraction technique is required on all items determined to or suspected of containing sperm cells. The differential extraction will be performed using a method validated by vendor laboratory and approved by the SDPD Crime Laboratory Technical Manager.
 - b) All SAEK evidence samples will be tested using a silica-based purification method.
 - c) Any victim, suspect, or consensual partner reference samples may be tested with any properly validated method that can reliably yield full DNA profiles as described in 9.
 - d) Once extracted for DNA, any substrates used for testing do not need to be retained.

DNA Quantification

- 18) The vendor laboratory will use a quantitative polymerase chain reaction (qPCR) DNA quantification process that detects both total human as well as Y-chromosome DNA targets.

DNA Amplification

- 19) The vendor lab may consume purified DNA extracts if required to obtain a DNA typing result.
- 20) The vendor laboratory will use the GlobalFiler™ amplification kit in association with the Applied Biosystems 3500 (or 3500XL) Genetic Analyzer for testing of all SDPD case samples.
 - a) The vendor laboratory must obtain a complete GlobalFiler™ profile for victim and/or elimination standards for recent cases (i.e., 2010 or more recent). On samples from cases prior to 2010 (i.e., 2009 or prior), if the sample sent yields insufficient results, the vendor laboratory must attempt to obtain a complete GlobalFiler™ profile. If the vendor laboratory cannot obtain a complete GlobalFiler™ profile after additional analysis, the report must contain notification that only a partial result was obtained. If only a portion of the known sample is extracted and is found to yield insufficient DNA for complete results, it is the responsibility of the testing laboratory to re-extract the remainder of the sample at no additional cost.
 - b) The vendor laboratory must attempt to obtain a complete GlobalFiler™ profile for amplified SAEK questioned samples. If less than 13 loci of information are obtained, the vendor laboratory must attempt to obtain additional information either through re-amplification or re-injection of the sample using more sensitive parameters.
- 21) The vendor laboratory will confirm all variant alleles through re-injection or re-amplification to confirm the allele designations.

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- a) Microvariant alleles (e.g., actual alleles that do not fall in a pre-determined allelic bin location in the analysis software) will be confirmed through re-injection of the samples to confirm allele sizing.
- b) Potential tri-allelic genotypes (i.e., genotypes with more than two alleles) will be confirmed through re-amplification of the sample.

Interpretation of DNA Results

- 22) The vendor laboratory will perform interpretation of any potentially probative DNA profiles using an internally validated fully continuous probabilistic genotyping software (e.g., STRmix).
 - a) Where appropriate, likelihood ratio calculations will be performed to provide statistical weight to any potential associations to evidence profiles.
 - b) Likelihood ratio results will be reported in accordance with the Recommendations of the Scientific Working Group on DNA Analysis Methods (SWGDM) Ad Hoc Working Group on Genotyping Results Reported as Likelihood Ratios.
 - c) At a minimum, likelihood results will be reported for the lowest value obtained between the various population groups calculated.
- 23) The vendor laboratory will perform a quality control evaluation on all DNA profiles developed from SDPD SAEs by comparing the generated data against staff elimination DNA profiles from the vendor laboratory.
 - a) The elimination database must contain DNA profiles from any employee handling the SDPD SAEs, performing work on SDPD SAEs, or that have access to areas where the SDPD SAEs are stored or tested.
- 24) The vendor laboratory will pursue re-analysis at no additional cost when testing of any SDPD samples has been deemed affected by contamination, or otherwise fails due to a vendor laboratory event (e.g., failed positive controls).

Reporting of Results

- 25) The vendor laboratory will clearly indicate in the technical record what DNA profile information is potentially suitable for upload to the CODIS databases.
- 26) The vendor laboratory will notify the SDPD of any testing or technical irregularities, unexpected results (e.g., failed amplification positive or DNA in a reagent blank), or corrective action regarding SDPD samples.
 - a) Notification will be done within five business days of becoming aware of the issue.
 - b) The vendor laboratory will demonstrate the extent of the technical issue and identify all affected samples/profiles for any corrective action.
 - c) The vendor laboratory will include corrective action reports within the technical record of any SDPD cases.
- 27) The vendor laboratory will report the results of each SDPD case tested. The written reports will contain:
 - a) The name and address of the vendor laboratory;

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- b) The SDPD case identifier information (e.g., case number or incident number);
 - c) Victim and suspect names (if available);
 - d) A list of the evidence examined;
 - e) Results of any biological screening performed;
 - f) Results of the evaluation for male DNA;
 - g) Interpretative statements for any DNA results developed;
 - h) Results of any comparisons performed to the DNA results;
 - i) Appropriate statistical statement as applicable;
 - j) Whether any DNA profile information foreign to the victim is available for potential search in CODIS;
 - k) Any reasons why samples or results have been determined to be inconclusive, or not suitable for comparisons;
 - l) Disposition of evidence;
 - m) The name of the person authorizing the report;
 - n) Documentation of the reviews conducted on the technical record.
- 28) The vendor laboratory will perform both technical and administrative reviews as outlined in the QAS.
- 29) The vendor laboratory will provide the complete technical record in electronic form (e.g., .pdf files) to the SDPD. The technical record must contain:
- a) A written report of the analysis;
 - b) An electronic copy of any medical reports contained within the SAEKs Original documentation will be returned to the SAEK.
 - c) Chain of custody information;
 - d) Any communications relevant to the testing conducted in the case;
 - e) Evidence inventory information including information on the condition of the evidence seals;
 - f) Technical worksheets related to extraction, quantification, amplification, capillary electrophoresis, and genotyping analysis;
 - g) Documentation that all controls produced expected results;
 - h) Electropherograms of amplified SAEK or reference samples with detected alleles indicated;
 - i) Any information relevant to the interpretation of the samples;
 - j) Summaries of probabilistic genotyping analyses;
 - k) Records of any re-analyses performed;
 - l) Any statistical calculations performed;

Data and Sample Retention

- 30) The vendor laboratory must retain all documentation relevant to the analysis, including supporting information of the analyses (e.g., raw quantification files, GeneMapper ID-X analysis files, STRmix MCMC or likelihood ratio files). These files must be available for review by the SDPD Crime Laboratory upon request.
- 31) The vendor laboratory will return the original evidence to the SDPD. Any remaining DNA extracts including extraction reagent blanks will also be returned to the SDPD.
- 32) The vendor laboratory will ensure the privacy of any DNA profiles generated from SDPD samples. DNA profiles from SDPD samples may only be entered into a database such as a

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Laboratory Information Management System for quality-control purposes. At no time will DNA profiles generated from SDPD samples be entered into internal or external databases for any other purpose than that outline above.

- 33) The vendor laboratory will strive to meet an agreed to (average) turnaround time from the time they receive the SDPD evidence to the time a final report is issued for the analysis of evidence.
- 34) The vendor laboratory will return all evidence submitted by the SDPD at no additional cost.
 - a) Each sample must be returned in the properly sealed package in which it was provided.
 - b) Evidence will be returned via overnight carrier (e.g., Federal Express, UPS or another appropriate way approved by the SDPD) to maintain the integrity of the samples.
 - c) Extracted DNA tubes (or plates) must be dried down and returned to the SDPD in a container separate from the original evidence.
 - d) The vendor laboratory will notify SDPD in writing when cases/samples are returned.
- 35) The vendor laboratory will retain all records, including the supporting documentation for the testing of the forensic samples for a minimum of five years after the completion of the contract. Supporting documentation includes all records associated with the testing (e.g., worksheets or notes), chain of custody of the samples, quality control records, and administrative records.
 - a) Prior to the destruction of the documentation, the vendor must give the SDPD the opportunity to receive this documentation at no additional cost.
- 36) The vendor laboratory will destroy any remaining amplified product at the end of the contract and provide a certificate of destruction to the SDPD.
- 37) The vendor laboratory will perform any testing on any additional samples required to assist the investigation of any SDPD cases analyzed under the contract, as directed by SDPD.

4. DEPARTMENT REPRESENTATIVE. The Department Representative for this Contract is identified in the notice of award and is responsible for overseeing and monitoring this Contract.

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PRICING SCHEDULE

City's Estimated Need. The quantities of kits may vary depending on the demands of the City. Any variations from the estimated quantities shall not entitle the proposer to an adjustment in the unit price or any additional compensation.

Table 1: Pricing List

Item No.	Unit of Measure	Service and Description	Price
1	Per Kit	SAEK screening of 6 swabs for the presence of male DNA and testing 2 (one evidence and one reference sample) for DNA using STR technology. Price will include shipping, analysis, interpretation, and reporting.	\$
2	Per Kit	SAEK screening of 6 swabs using traditional serology and testing 2 (one evidence and one reference sample) for DNA using STR technology. Price will include shipping, analysis, interpretation, and reporting.	\$
3	Per Sample	SAEK screening of single SAEK swabs for the presence of male DNA. Price is per swab in the event there are less than 6 swabs in a SAEK.	\$
4	Per Sample	SAEK screening of single SAEK swabs using traditional serology. Price is per additional swab in the event there are less than 6 swabs in a SAEK.	\$
5	Per Sample	STR DNA testing of additional SAEK swabs. Price will include analysis, interpretation, and reporting.	\$
6	Per Case	STR DNA testing of additional known reference samples. Price will include shipping, analysis, any reinterpretation, and reporting.	\$
7	Per Kit	Cost to inventory SAEKs where it is determined that NO testing can be performed.	\$

*Please note that the sum of Items 1-7 in Table 1 will be used as the "contract price" referenced in Exhibit A, Section B. Pricing, when calculating points for Price in the evaluation criteria.

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Table 2: Additional Services

Item No.	Unit of Measure	Service and Description	Price
1	Per Hour, Per Analyst	Expert Witness Testimony Fees. Price provided will be per analyst, per hour. Travel related expenses will be determined on an as needed basis and should not be included in the price.	\$ /Hour
2	Per packet	Discovery packet preparation fees. Price will be provided for preparing and delivering a complete electronic discovery packet for any legal proceedings.	\$ /per Packet

Table 3: Vendor Laboratory Proposed Scale of Work

Item No.	Specification	Unit of Measure	Response
1	Proposed SAEK batch size: Proposed number of kits to be tested as a batch by the vendor laboratory.	# of kits per batch	/Kits per Batch
2	Proposed batch turnaround time.	Business Days	/Days
3	Proposed turnaround time for additional known reference samples submitted to vendor laboratory after SAEK processing.	Business Days	/Days

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Exhibit 7

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TECHNOLOGY 2020 JUN 26 11:37

INVOICE

San Diego Police Department
 Attn: Accounts Payable
 1401 Broadway, MS-715
 San Diego, CA 92101


Invoice Date: 5/31/2020
 Invoice #: 32714
 Net Terms: 30 Days
 Shipment #: SDP2001

PO 4000072835

Line Item Number	Quantity	Description	Unit Price	Sales Amount
0001	1	Work on 15 Cases Shipment: SDP2001	\$ 13,845.00	\$ 13,845.00
TOTAL AMOUNT DUE				\$ 13,845.00

Make checks payable to:
 Bode Cellmark Forensics
 Attn: Accounts Receivable
 10430 Furnace Road, Suite 107
 Lorton, VA 22079

Tax ID: 54-1750293

Approved OK To Pay

 Date 7.8.2020

5-1060666

10430 Furnace Road, Suite 107
 Lorton, VA 22079

1.866.BODE.4.ID
 www.bode-labs.com

tel. 703-646-9829
 fax. 703-852-2740

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Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost
SDP2001						
SDP2001-0001	19010015179	7	0	0	1	\$885.00
SDP2001-0002	19010020896	6	0	0	1	\$885.00
SDP2001-0003	19010045966	13	0	0	1	\$885.00
SDP2001-0010	19030038860	15	0	0	1	\$885.00
SDP2001-0011	19030044363	11	1	0	1	\$885.00
SDP2001-0012	19030046569	13	1	0	1	\$885.00
SDP2001-0013	19040006397	3	0	0	1	\$885.00
SDP2001-0017	19050024173	16	0	0	1	\$885.00
SDP2001-0018	19050043901	5	0	0	1	\$885.00
SDP2001-0020	19060000228	13	3	2	1	\$1,265.00
SDP2001-0024	19060026624	16	2	1	1	\$1,075.00
SDP2001-0026	19060029695	11	0	0	1	\$885.00
SDP2001-0028	19060048214	13	0	0	1	\$885.00
SDP2001-0031	19070020129	4	1	0	1	\$885.00
SDP2001-0032	19070030164	3	0	0	1	\$885.00
SDP SAK May Total					15	\$13,845.00

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INVOICE

San Diego Police Department
Attn: Accounts Payable
1401 Broadway, MS-715
San Diego, CA 92101

Invoice Date: 6/30/2020
Invoice #: 32809
Net Terms: 30 Days
Shipment #: SDP2001/SDP2002

Line Item Number	Quantity	Description	Unit Price	Sales Amount
0001	1	Work on <u>37</u> Cases Shipment: SDP2001/SDP2002	\$ 38,825.00	\$ 38,825.00
TOTAL AMOUNT DUE				\$ 38,825.00
<p>Make checks payable to: Bode Cellmark Forensics Attn: Accounts Receivable 10430 Furnace Road, Suite 107 Lorton, VA 22079</p> <p>Tax ID: 54-1750293</p>				

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10430 Furnace Road, Suite 107
Lorton, VA 22079

1.866.BODE.4.ID
www.bode-labs.com

tel. 703-646-9829
fax. 703-852-2740

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost
SDP2001						
SDP2001-0004	19020028034	12	3	2	1	\$ 1,265.00
SDP2001-0005	19020034423	11	3	2	1	\$ 1,265.00
SDP2001-0007	19020036323	16	3	2	1	\$ 1,265.00
SDP2001-0009	19030015837	15	1	0	1	\$ 885.00
SDP2001-0014	19040025116	11	3	2	1	\$ 1,265.00
SDP2001-0016	19050001112	8	3	2	1	\$ 1,265.00
SDP2001-0030	19070014378	11	2	1	1	\$ 1,075.00
SDP2001-0033	19070035985	14	0	0	1	\$ 885.00
SDP2001-0040	18110007421	4	0	0	1	\$ 885.00
SDP2001-0041	18110008093	14	3	2	1	\$ 1,265.00
SDP2001-0043	18110034422	13	0	0	1	\$ 885.00
SDP2001-0045	18110039152	12	0	0	1	\$ 885.00
SDP2001-0046	18120007904	11	0	0	1	\$ 885.00
SDP2001-0048	18120031429	11	3	2	1	\$ 1,265.00
SDP2001-0050	18120034192	10	3	2	1	\$ 1,265.00
SDP2001-0051	19080021287	10	1	0	1	\$ 885.00
SDP2001-0055	19080052453	4	0	0	1	\$ 885.00
SDP2001-0056	19080053049	17	3	2	1	\$ 1,265.00
SDP2001-0062	19090026829	11	3	2	1	\$ 1,265.00
SDP2001-0072	19110040888	5	0	0	1	\$ 885.00
SDP2001-0076	18050015910	13	3	2	1	\$ 1,265.00
SDP2001-0078	18050049017	5	2	1	1	\$ 1,075.00
SDP2001-0079	18050050270	3	3	2	1	\$ 1,265.00
SDP2001-0080	18060002166	7	0	0	1	\$ 885.00
SDP2001-0082	18060016525	13	3	2	1	\$ 1,265.00
SDP2001-0083	18060021236	6	0	0	1	\$ 885.00
SDP2001-0084	18060032469	12	3	2	1	\$ 1,265.00
SDP2001-0086	18070000292	15	3	2	1	\$ 1,265.00
SDP2001-0088	18070023655	14	0	0	1	\$ 885.00

000008

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost
SDP2001-0094	18080027825	11	0	0	1	\$ 885.00
SDP2001-0096	18080036349	5	0	0	1	\$ 885.00
SDP2001-0101	18090005348	17	0	0	1	\$ 885.00
SDP2001-0106	18090050707	9	0	0	1	\$ 885.00
SDP2002						
SDP2002-0110	18010000859	8	0	0	1	\$ 885.00
SDP2002-0116	18020028515	8	0	0	1	\$ 885.00
SDP2002-0123	18030014163	10	0	0	1	\$ 885.00
SDP2002-0126	18030023550	12	0	0	1	\$ 885.00
SDP SAK June Total					37	\$ 38,825.00



2020 AUG 27 14:01:47

INVOICE

OK
9.14.2020

San Diego Police Department
Attn: Accounts Payable
1401 Broadway, MS-715
San Diego, CA 92101

Invoice Date: 7/31/2020
Invoice #: 33002
Net Terms: 30 Days
Shipment #: SDP2001, SDP2002,
SDP2003

PO #400008822

Line Item Number	Quantity	Description	Unit Price	Sales Amount
0001	1	Work on 50 Cases Shipment: SDP2001, SDP2002, SDP2003	\$ 48,810.00	\$ 48,810.00
TOTAL AMOUNT DUE \$ 48,810.00				
<p>Make checks payable to: Bode Cellmark Forensics Attn: Accounts Receivable 10430 Furnace Road, Suite 107 Lorton, VA 22079</p> <p>Tax ID: 54-1750293</p> <p>Approved OK To Pay Name <u>[Signature]</u> Date <u>9.14.2020</u></p>				

10430 Furnace Road, Suite 107
Lorton, VA. 22079

1.866.BODE.4.ID
www.bode-labs.com

tel. 703-646-9829
fax. 703-852-2740

000089

Boide Technology Case #	Lab #	Number of Samples in Kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost
SDP2001						
SDP2001-0009	18070040772	18	4 ✓	8	1	\$ 1,455.00
SDP2001-0090	18070042138	8	8 4	2	1	\$ 1,265.00
SDP2001-0091	18080000641	9	0 3	0	1	\$ 885.00
SDP2002						
SDP2002-0121	18080012589	10	2 3	1	1	\$ 1,075.00
SDP2002-0124	18080020021	8	1 2	0	1	\$ 885.00
SDP2002-0125	18080021848	20	2 3	1	1	\$ 1,075.00
SDP2002-0132	18040002518	12	1 3	0	1	\$ 885.00
SDP2002-0139	18040043287	8	3 3	2	1	\$ 1,265.00
SDP2002-0141	18080004634	7	1 2	0	1	\$ 885.00
SDP2002-0143	18050012898	18	8 4	2	1	\$ 1,265.00
SDP2002-0146	18040047058	8	1 2	0	1	\$ 885.00
SDP2002-0148	17070042784	7	2 2	1	1	\$ 1,075.00
SDP2002-0158	17080034359	14	2 3	1	1	\$ 1,075.00
SDP2002-0168	17080007408	8	1 2	0	1	\$ 885.00
SDP2002-0168	17080047942	8	1 2	0	1	\$ 885.00
SDP2002-0168	17100001688	7	3 3	2	1	\$ 1,265.00
SDP2002-0167	17100003711	9	1 2	0	1	\$ 885.00
SDP2002-0175	17120030788	10	1 2	0	1	\$ 885.00
SDP2002-0180	17100003711	4	2 2	1	1	\$ 1,075.00
SDP2002-0182	17080008897	10	1 2	0	1	\$ 885.00
SDP2002-0183	17080024173	4	1 2	0	1	\$ 885.00
SDP2002-0186	17040031137	7	1 2	0	1	\$ 885.00
SDP2002-0188	17040040718	4	1 2	0	1	\$ 885.00
SDP2002-0182	17080020870	11	8 4	2	1	\$ 1,265.00
SDP2002-0187	17080044880	10	1 2	0	1	\$ 885.00
SDP2002-0201	17080013138	8	2 3	1	1	\$ 1,075.00
SDP2002-0208	17080028564	8	1 2	0	1	\$ 885.00
SDP2002-0210	17080038911	8	1 2	0	1	\$ 885.00
SDP2002-0211	17080042471	11	3 4	2	1	\$ 1,265.00
SDP2003						
SDP2003-0228	18080033408	2	1 1	0	1	\$ 885.00
SDP2003-0225	18080046545	11	1 2	0	1	\$ 885.00
SDP2003-0229	18090018002	8	1 2	0	1	\$ 885.00
SDP2003-0230	18090031481	8	0	0	1	\$ 885.00
SDP2003-0231	18080033232	8	0	0	1	\$ 885.00
SDP2003-0239	18100041420	8	0	0	1	\$ 885.00
SDP2003-0241	18110000088	10	0	0	1	\$ 885.00
SDP2003-0259	17020013478	18	0	0	1	\$ 885.00
SDP2003-0265	18080038208	9	0	0	1	\$ 885.00
SDP2003-0269	18040004131	1	0	0	1	\$ 885.00
SDP2003-0279	18080014828	8	0	0	1	\$ 885.00
SDP2003-0284	18070003282	10	2 3	1	1	\$ 1,075.00
SDP2003-0287	18070008024	4	3 3	2	1	\$ 1,265.00
SDP2003-0292	18070044715	3	0	0	1	\$ 885.00
SDP2003-0294	18070049101	9	0	0	1	\$ 885.00
SDP2003-0299	18080013089	8	0	0	1	\$ 885.00
SDP2003-0300	18080014418	12	2 3	0	1	\$ 885.00
SDP2003-0306	18010020995	9	0	0	1	\$ 885.00
SDP2003-0307	18010021828	10	2 3	0	1	\$ 885.00
SDP2003-0310	18010060289	8	1 2	0	1	\$ 885.00
SDP2003-0318	18030023008	9	2 3	0	1	\$ 885.00
SDP SAK July Total					60	\$ 48,610.00

000090



2020 SEP 15 PM 2:56

INVOICE

San Diego Police Department
Attn: Accounts Payable
1401 Broadway, MS-715
San Diego, CA 92101

Invoice Date: 8/31/2020
Invoice #: 33161
Net Terms: 30 Days
Shipment #: SDP2001, SDP2002,
SDP2003, SDP2004,
SDP2005

Line Item Number	Quantity	Description	Unit Price	Sales Amount
0001	1	Work on 70 Cases Shipment: SDP2001, SDP2002, SDP2003, SDP2004, SDP2005	\$ 72,525.00	\$ 72,525.00
TOTAL AMOUNT DUE				\$ 72,525.00
<p>Make checks payable to: Bode Cellmark Forensics Attn: Accounts Receivable 10430 Furnace Road, Suite 107 Lorton, VA 22079</p> <p>Tax ID: 54-1750293</p> <p>Approved OK To Pay</p> <p>Name _____ Date _____</p>				

10430 Furnace Road, Suite 107
Lorton, VA 22079

1.866.BODE.4.ID
www.bode-labs.com

tel. 703-646-9829
fax. 703-852-2740

000091

000092

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost	Comments
SDP2001							
SDP2001-0019	19050046399	13	2	1	1	\$ 1,075.00	
SDP2001-0021	19060005805	9	2	1	1	\$ 1,075.00	
SDP2001-0029	19070013770	3	0	0	1	\$ 885.00	
SDP2001-0035	19070042282	12	2	1	1	\$ 1,075.00	
SDP2001-0039	18110005165	12	0	0	1	\$ 885.00	
SDP2001-0042	18110031188	11	3	2	1	\$ 1,265.00	
SDP2001-0044	18110035297	10	2	1	1	\$ 1,075.00	
SDP2001-0049	18120033786	6	1	0	1	\$ 885.00	
SDP2001-0069	19110002923	4	0	0	1	\$ 885.00	
SDP2001-0075	19120016173	6	1	0	2	\$ 1,770.00	2 Victim Kits Processed
SDP2001-0077	18050048441	14	1	0	1	\$ 885.00	
SDP2001-0085	18060033974	12	2	1	1	\$ 1,075.00	
SDP2001-0098	18080046219	13	3	2	1	\$ 1,265.00	
SDP2002							
SDP2002-0112	18010033773	10	1	0	1	\$ 885.00	
SDP2002-0113	18010036585	12	3	2	1	\$ 1,265.00	
SDP2002-0115	18020015423	6	4	3	1	\$ 1,455.00	
SDP2002-0119	18030001429	6	3	2	1	\$ 1,265.00	
SDP2002-0131	18040001976	11	3	2	1	\$ 1,265.00	
SDP2002-0144	18050013677	4	2	1	1	\$ 1,075.00	
SDP2002-0149	17070048281	9	3	2	1	\$ 1,265.00	
SDP2002-0184	17040021836	8	3	2	1	\$ 1,265.00	
SDP2002-0190	17050014821	9	3	2	1	\$ 1,265.00	
SDP2002-0191	17050018534	7	3	2	1	\$ 1,265.00	
SDP2002-0194	17050024433	8	3	2	1	\$ 1,265.00	
SDP2002-0198	17050047810	5	3	2	1	\$ 1,265.00	
SDP2003							
SDP2003-0218	16080023388	5	0	0	1	\$ 885.00	
SDP2003-0222	16080033279	8	3	2	1	\$ 1,265.00	
SDP2003-0226	16080049938	9	3	2	1	\$ 1,265.00	
SDP2003-0232	16090036171	9	3	2	1	\$ 1,265.00	
SDP2003-0244	16110006515	10	0	0	1	\$ 885.00	
SDP2003-0249	16110038506	12	2	1	1	\$ 1,075.00	
SDP2003-0250	16110041618	6	0	0	1	\$ 885.00	
SDP2003-0261	16030005970	10	1	0	1	\$ 885.00	
SDP2003-0262	16030026170	8	0	0	1	\$ 885.00	

000093

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost	Comments
SDP2003-0264	16030036020	6	0	0	1	\$ 885.00	
SDP2003-0267	16030052308	4	0	0	1	\$ 885.00	
SDP2003-0276	16050048099	6	0	0	1	\$ 885.00	
SDP2003-0281	16060029200	8	3	2	1	\$ 1,265.00	
SDP2003-0283	16060045061	11	3	2	1	\$ 1,265.00	
SDP2003-0286	16070004521	11	3	2	1	\$ 1,265.00	
SDP2003-0301	16080016214	8	2	1	1	\$ 1,075.00	
SDP2003-0303	15120009462	8	0	0	1	\$ 885.00	
SDP2003-0308	16010043799	8	3	2	1	\$ 1,265.00	
SDP2003-0309	16010048264	8	3	2	1	\$ 1,265.00	
SDP2003-0317	16030015828	9	3	2	1	\$ 1,265.00	
SDP2004							
SDP2004-0322	16080027700	7	0	0	1	\$ 885.00	
SDP2004-0323	16090007159	9	0	0	1	\$ 885.00	
SDP2004-0327	16110002707	6	0	0	1	\$ 885.00	
SDP2004-0340	17100050220	8	0	0	1	\$ 885.00	
SDP2004-0343	18010042410	8	0	0	1	\$ 885.00	
SDP2004-0347	18060020250	15	0	0	1	\$ 885.00	
SDP2004-0348	18050020410	5	0	0	1	\$ 885.00	
SDP2004-0351	18100015759	8	0	0	1	\$ 885.00	
SDP2004-0356	19050045747	11	0	0	1	\$ 885.00	
SDP2004-0357	19080043466	13	0	0	1	\$ 885.00	
SDP2004-0359	19120029963	4	0	0	1	\$ 885.00	
SDP2004-0363	13030000892	8	0	0	1	\$ 885.00	
SDP2004-0364	13030044537	10	0	0	1	\$ 885.00	
SDP2004-0371	14020008422	8	0	0	1	\$ 885.00	
SDP2004-0381	15020026513	8	0	0	1	\$ 885.00	
SDP2004-0387	15080002218	8	0	0	1	\$ 885.00	
SDP2004-0396	16010015975	8	0	0	1	\$ 885.00	
SDP2004-0401	16030048891	8	0	0	1	\$ 885.00	
SDP2004-0403	16040033665	8	0	0	1	\$ 885.00	
SDP2005							
SDP2005-0415	14020045973	12	0	0	1	\$ 885.00	
SDP2005-0420	14030011199	9	0	0	1	\$ 885.00	
SDP2005-0428	14090059230	4	0	0	1	\$ 885.00	
SDP2005-0431	15010016653	14	0	0	1	\$ 885.00	
SDP2005-0450	9110004567	4	0	0	1	\$ 885.00	

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost	Comments
SDP2005-0451	7060017697	6	0	0	1	\$ 885.00	
SDP SAK August Total					71	\$ 72,525.00	

000094



INVOICE

San Diego Police Department
Attn: Accounts Payable
1401 Broadway, MS-715
San Diego, CA 92101

Invoice Date: 11/30/2020

Invoice #: 33638

Net Terms: Net 30

Bode Case #:

Agency Case #:

Case Name:

Bode Project #:

Quote #:

Shipment #: SDP2001/2002/2003/2006/2007

Contract:

PO:

Line Item #	Description	Quantity	Rate/Unit Price (\$)	Amount (\$)
1	Work on 81 Cases Shipment: SDP2001/SDP2002/SDP2003/SDP2006/SDP 2007	1	74,035.00	74,035.00

Total Amount: \$74,035.00

Payments/Credits \$0.00

Balance Due \$74,035.00

Remit Payment To:
Bode Cellmark Forensics
dba Bode Technology
Attn: Accounts Receivable
10430 Furnace Road, Suite 107
Lorton, VA 22079

Bode TIN:54-1750293

10430 Furnace Road, Suite 107
Lorton, VA 22079

1.866.BODE.4.ID
www.bodetech.com

tel. 703-646-9829
fax. 703-852-2740

000095

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost	Comments
SDP2001							
SDP2001-0022	19060016728	10	3	2	1	\$1,265.00	
SDP2001-0025	19060027239	6	0	0	1	\$0.00	Kit only inventoried.
SDP2001-0036	19080006924	5	0	0	1	\$885.00	
SDP2001-0063	19090036493	8	0	0	1	\$0.00	Kit only inventoried.
SDP2001-0068	19100030569	2	0	0	1	\$0.00	Kit only inventoried.
SDP2001-0071	19110035946	5	0	0	1	\$0.00	Kit only inventoried.
SDP2001-0073	19120001946	0	0	0	1	\$885.00	
SDP2001-0074	19120016063	6	0	0	1	\$885.00	
SDP2002							
SDP2002-0127	18030031620	10	0	0	1	\$885.00	
SDP2002-0128	18030035941	1	0	0	1	\$885.00	
SDP2002-0133	18040016975	5	0	0	1	\$885.00	
SDP2002-0134	18040017010	11	0	0	1	\$885.00	
SDP2002-0135	18040021328	2	0	0	1	\$885.00	
SDP2002-0138	18040039074	5	0	0	1	\$885.00	
SDP2002-0151	17080015553	5	0	0	1	\$885.00	
SDP2002-0154	17080029398	5	0	0	1	\$885.00	
SDP2002-0155	17080033529	7	0	0	1	\$885.00	
SDP2002-0157	17080034789	6	0	0	1	\$885.00	
SDP2002-0159	17090011150	4	0	0	1	\$885.00	
SDP2002-0163	17090030627	8	0	0	1	\$885.00	
SDP2002-0164	17090045791	8	0	0	1	\$885.00	
SDP2002-0168	17100009737	7	0	0	1	\$885.00	
SDP2002-0169	17100014146	12	0	0	1	\$885.00	
SDP2002-0177	HP081018141	3	0	0	1	\$885.00	
SDP2002-0179	17020030776	7	0	0	1	\$885.00	
SDP2002-0185	17040028755	5	0	0	1	\$885.00	
SDP2002-0195	17050039867	9	0	0	1	\$885.00	
SDP2002-0203	17060015491	6	0	0	1	\$885.00	
SDP2002-0207	17060024642	4	0	0	1	\$885.00	
SDP2002-0213	17070004297	6	0	0	1	\$885.00	
SDP2002-0214	17070004650	9	0	0	1	\$885.00	
SDP2003							
SDP2003-0221	16080032587	7	2	1	1	\$1,075.00	
SDP2003-0227	16090001200	4	3	2	1	\$1,265.00	
SDP2003-0228	16090002636	4	2	1	1	\$1,075.00	
SDP2003-0242	16110001829	8	1	0	1	\$885.00	

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost	Comments
SDP2003-0245	16110022212	8	2	1	1	\$1,075.00	
SDP2003-0251	16110044117	8	2	1	1	\$1,075.00	
SDP2003-0252	16110048034	8	2	1	1	\$1,075.00	
SDP2003-0254	16120024445	5	2	1	1	\$1,075.00	
SDP2003-0270	16040008811	4	2	1	1	\$1,075.00	
SDP2003-0275	16050039619	4	3	2	1	\$1,265.00	
SDP2003-0280	16060024712	7	2	1	1	\$1,075.00	
SDP2003-0296	16080010287	6	1	0	1	\$885.00	
SDP2003-0297	16080010633	7	1	0	1	\$885.00	
SDP2006							
SDP2006-0526	15080025521	8	1	0	1	\$885.00	
SDP2006-0561	14070029632	6	1	0	1	\$885.00	
SDP2006-0564	14080014286	9	2	1	1	\$1,075.00	
SDP2006-0568	14090027633	8	1	0	1	\$885.00	
SDP2006-0571	14090054749	9	2	1	1	\$1,075.00	
SDP2006-0574	14100032849	5	2	1	1	\$1,075.00	
SDP2006-0578	14110028771	8	3	2	1	\$1,265.00	
SDP2006-0594	13070012913	4	3	2	1	\$1,265.00	
SDP2006-0595	13070006316	7	3	2	1	\$1,265.00	
SDP2006-0596	13070023132	13	2	1	1	\$1,075.00	
SDP2006-0597	13070030491	9	2	1	1	\$1,075.00	
SDP2006-0599	13080008862	0	2	1	1	\$1,075.00	
SDP2006-0601	13080035338	8	3	2	1	\$1,265.00	
SDP2006-0604	13080053552	7	1	0	1	\$885.00	
SDP2006-0611	13120045618	14	2	1	1	\$1,075.00	
SDP2006-0613	14030047994	8	2	1	1	\$1,075.00	
SDP2006-0614	14030049278	7	2	1	1	\$1,075.00	
SDP2007							
SDP2007-0629	12090020140	7	0	0	1	\$885.00	
SDP2007-0630	12080056238	3	0	0	1	\$885.00	
SDP2007-0637	12110007135	5	0	0	1	\$885.00	
SDP2007-0641	12110053412	6	0	0	1	\$885.00	
SDP2007-0642	12110051783	3	0	0	1	\$885.00	
SDP2007-0651	13020031813	6	0	0	1	\$885.00	
SDP2007-0653	13020043112	5	0	0	1	\$885.00	
SDP2007-0655	13030024215	8	0	0	1	\$885.00	
SDP2007-0660	13040018759	6	0	0	1	\$885.00	
SDP2007-0661	13040037473	4	0	0	1	\$885.00	

260000

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost	Comments
SDP2007-0663	13040031627	0	0	0	1	\$885.00	
SDP2007-0665	13040043601	9	0	0	1	\$885.00	
SDP2007-0681	12020047547	0	0	0	1	\$885.00	
SDP2007-0682	12020047362	5	0	0	1	\$885.00	
SDP2007-0695	12040040289	5	0	0	1	\$885.00	
SDP2007-0704	12060053398	5	0	0	1	\$885.00	
SDP2007-0708	12080009852	6	0	0	1	\$885.00	
SDP2007-0722	11100032971	7	0	0	1	\$885.00	
SDP2007-0728	11120000202	6	0	0	1	\$885.00	
SDP2007-0729	11120008727	5	0	0	1	\$885.00	
SDP SAK November Total					81	\$74,035.00	

000098



INVOICE

San Diego Police Department
Attn: Accounts Payable
1401 Broadway, MS-715
San Diego, CA 92101

Invoice Date: 11/30/2020
Invoice #: 33492
Net Terms: 30 Days
Shipment #: SDP2002; SDP2004;
SDP2006; SDP2007;
SDP2008

Line Item Number	Quantity	Description	Unit Price	Sales Amount
0001	1	Work on <u>70</u> Cases Shipment: SDP2002; SDP2004; SDP2006; SDP2007; SDP2008	\$ 68,410.00	\$ 68,410.00
TOTAL AMOUNT DUE				\$ 68,410.00

Make checks payable to:
Bode Cellmark Forensics
Attn: Accounts Receivable
10430 Furnace Road, Suite 107
Lorton, VA 22079

Tax ID: 54-1750293

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost
SDP2002						
SDP2002-0187	17040036583	9	1	0	1	\$885.00
SDP2004						
SDP2004-0324	16090028634	9	3	2	1	\$1,265.00
SDP2004-0325	16100026194	7	1	0	1	\$885.00
SDP2004-0326	16100035763	9	2	1	1	\$1,075.00
SDP2004-0328	16110009837	11	2	1	1	\$1,075.00
SDP2004-0334	17030010112	9	3	2	1	\$1,265.00
SDP2004-0338	17070026809	11	1	0	1	\$885.00
SDP2004-0342	18010034768	5	1	0	1	\$885.00
SDP2004-0346	18030020522	12	2	1	1	\$1,075.00
SDP2004-0349	18070006947	15	3	2	1	\$1,265.00
SDP2004-0352	18100038620	12	1	0	1	\$885.00
SDP2004-0353	19030021239	10	3	2	1	\$1,265.00
SDP2004-0354	19040016265	5	1	0	1	\$885.00
SDP2004-0358	19120045359	12	1	0	1	\$885.00
SDP2004-0366	13060017313	5	1	0	1	\$885.00
SDP2004-0369	13110014150	8	2	1	1	\$1,075.00
SDP2004-0388	15080046588	10	2	1	1	\$1,075.00
SDP2004-0394	16010001356	6	2	1	1	\$1,075.00
SDP2004-0395	16010013452	3	2	1	1	\$1,075.00
SDP2004-0397	16010046750	8	2	1	1	\$1,075.00
SDP2004-0398	16020038669	5	1	0	1	\$885.00
SDP2004-0402	16040011195	7	3	2	1	\$1,265.00
SDP2006						
SDP2006-0508	15050019500	6	3	2	1	\$1,265.00
SDP2006-0510	15050030026	2	1	0	1	\$885.00
SDP2006-0513	15060032520	10	3	2	1	\$1,265.00
SDP2006-0520	15070042255	5	2	1	1	\$1,075.00
SDP2006-0521	15070051574	9	3	2	1	\$1,265.00
SDP2006-0522	15070056296	8	3	2	1	\$1,265.00
SDP2006-0527	15080030523	10	1	0	1	\$885.00
SDP2006-0532	15090006795	9	1	0	1	\$885.00
SDP2006-0536	15090037720	9	2	1	1	\$1,075.00
SDP2006-0538	15100019274	12	1	0	1	\$885.00
SDP2006-0540	15100031596	8	3	2	1	\$1,265.00
SDP2006-0542	15100043494	8	2	1	1	\$1,075.00
SDP2006-0545	15120005035	3	1	0	1	\$885.00
SDP2006-0546	HP041114136	10	1	0	1	\$885.00
SDP2006-0550	14050041935	5	2	1	1	\$1,075.00

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost
SDP2006-0557	14070007902	6	3	2	1	\$1,265.00
SDP2006-0584	13050006162	9	0	0	1	\$885.00
SDP2006-0609	13120004411	3	0	0	1	\$885.00
SDP2007						
SDP2007-0638	12110004540	9	0	0	1	\$885.00
SDP2007-0646	13010041053	1	0	0	1	\$885.00
SDP2007-0652	13020043068	10	0	0	1	\$885.00
SDP2007-0658	13040000832	8	0	0	1	\$885.00
SDP2007-0667	12010050326	3	0	0	1	\$885.00
SDP2007-0673	12010025830	11	0	0	1	\$885.00
SDP2007-0680	12020034159	3	0	0	1	\$885.00
SDP2007-0684	12030012030	16	0	0	1	\$885.00
SDP2007-0693	12040038011	12	0	0	1	\$885.00
SDP2007-0697	12050022079	8	0	0	1	\$885.00
SDP2007-0700	12050052183	2	0	0	1	\$885.00
SDP2007-0707	12070058355	3	0	0	1	\$885.00
SDP2007-0710	11080001824	12	0	0	1	\$885.00
SDP2007-0712	11080007101	12	0	0	1	\$885.00
SDP2007-0723	11100048618	3	0	0	1	\$885.00
SDP2008						
SDP2008-0734	11060046620	10	0	0	1	\$885.00
SDP2008-0739	11070055777	2	0	0	1	\$885.00
SDP2008-0754	11040006988	17	0	0	1	\$885.00
SDP2008-0778	11020036096	4	0	0	1	\$885.00
SDP2008-0781	10080054119	10	0	0	1	\$885.00
SDP2008-0793	10060000785	9	0	0	1	\$885.00
SDP2008-0799	10060013134	13	0	0	1	\$885.00
SDP2008-0800	10050055677	9	0	0	1	\$885.00
SDP2008-0811	10030063804	9	0	0	1	\$885.00
SDP2008-0825	9120057896	8	0	0	1	\$885.00
SDP2008-0830	11060044399	4	0	0	1	\$885.00
SDP2008-0831	9080063690	9	0	0	1	\$885.00
SDP2008-0832	9090015759	9	0	0	1	\$885.00
SDP2008-0834	9100051501	8	0	0	1	\$885.00
SDP2008-0836	9080046461	8	0	0	1	\$885.00
SDP SAK October Total					70	\$68,410.00



INVOICE

San Diego Police Department
Attn: Accounts Payable
1401 Broadway, MS-715
San Diego, CA 92101

Invoice Date: 11/30/2020
Invoice #: 33357
Net Terms: 30 Days
Shipment #: SDP2001, SDP2002,
SDP2003, SDP2004,
SDP2006

Line Item Number	Quantity	Description	Unit Price	Sales Amount
0001	1	Work on <u>74</u> Cases Shipment: SDP2001, SDP2002, SDP2003, SDP2004, SDP2006	\$ 73,660.00	\$ 73,660.00
TOTAL AMOUNT DUE				\$ 73,660.00

Make checks payable to:
Bode Cellmark Forensics
Attn: Accounts Receivable
10430 Furnace Road, Suite 107
Lorton, VA 22079

Tax ID: 54-1750293

10430 Furnace Road, Suite 107
Lorton, VA 22079

1.866.BODE.4.ID
www.bode-labs.com

tel. 703-646-9829
fax. 703-852-2740

000102

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost	Comments
SDP2001							
SDP2001-0015	19040032317	10	1	0	1	\$ 885.00	
SDP2001-0027	19060038057	16	3	2	1	\$ 1,265.00	
SDP2001-0034	19070038597	15	3	2	1	\$ 1,265.00	
SDP2001-0054	19080045077	10	1	0	1	\$ 885.00	
SDP2001-0057	19090003125	11	1	0	1	\$ 885.00	
SDP2001-0058	19090010766	11	3	2	1	\$ 1,265.00	
SDP2001-0099	18080048060	4	3	2	1	\$ 1,265.00	
SDP2001-0108	18100036449	13	3	2	1	\$ 1,265.00	
SDP2002							
SDP2002-0111	18010010978	5	2	1	1	\$ 1,075.00	
SDP2002-0130	18030045344	14	3	2	1	\$ 1,265.00	
SDP2002-0145	18040040865	9	3	2	1	\$ 1,265.00	
SDP2002-0160	17090015701	6	5	4	1	\$ 1,645.00	
SDP2002-0162	17090029015	6	3	2	1	\$ 1,265.00	
SDP2002-0170	17100053490	9	5	4	1	\$ 1,645.00	
SDP2002-0171	17110028164	12	3	2	1	\$ 1,265.00	
SDP2002-0178	HP091018001	12	3	2	1	\$ 1,265.00	
SDP2002-0189	17050000701	7 13	6	5	2	\$ 2,720.00	2 Victim Kits Submitted
SDP2002-0204	17060018370	6	3	2	1	\$ 1,265.00	
SDP2002-0205	17060020955	12	1	0	1	\$ 885.00	
SDP2002-0206	17060022684	6	3	2	1	\$ 1,265.00	
SDP2002-0209	17060030368	7	3	2	1	\$ 1,265.00	
SDP2002-0217	17070045421	19	4	3	1	\$ 1,455.00	
SDP2003							
SDP2003-0233	16090048428	6	0	0	1	\$ 885.00	
SDP2003-0236	16100019396	7	0	0	1	\$ 885.00	
SDP2003-0240	16100049424	6	0	0	1	\$ 885.00	
SDP2003-0266	16030044939	4	0	0	1	\$ 885.00	
SDP2003-0278	16060010953	6	0	0	1	\$ 885.00	
SDP2003-0291	16070040300	5	0	0	1	\$ 885.00	
SDP2004							
SDP2004-0335	17050010050	6	0	0	1	\$ 885.00	
SDP2004-0339	17100002367	7	0	0	1	\$ 885.00	

001003

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost	Comments
SDP2004-0341	17080036230	2	0	0	1	\$ 885.00	
SDP2004-0350	18070027641	2	0	0	1	\$ 885.00	
SDP2004-0355	19040024070	4	0	0	1	\$ 885.00	
SDP2004-0377	14100001101	4	0	0	1	\$ 885.00	
SDP2004-0378	14100018047	6	0	0	1	\$ 885.00	
SDP2004-0380	15020004607	4	0	0	1	\$ 885.00	
SDP2004-0383	15030006607	6	0	0	1	\$ 885.00	
SDP2004-0384	15030043922	6	0	0	1	\$ 885.00	
SDP2004-0392	15120023594	5	0	0	1	\$ 885.00	
SDP2004-0393	16010001811	6	0	0	1	\$ 885.00	
SDP2004-0404	16040049277	7	0	0	1	\$ 885.00	
SDP2004-0406	16050005218	6	0	0	1	\$ 885.00	
SDP2006							
SDP2006-0504	15040029067	8	0	0	1	\$ 885.00	
SDP2006-0511	15050032812	9	0	0	1	\$ 885.00	
SDP2006-0518	15070030213	12	0	0	1	\$ 885.00	
SDP2006-0519	15070036872	6	0	0	1	\$ 885.00	
SDP2006-0524	15070056162	3	0	0	1	\$ 885.00	
SDP2006-0530	15080040767	4	0	0	1	\$ 885.00	
SDP2006-0531	15090013504	3	0	0	1	\$ 885.00	
SDP2006-0533	15090014955	6	0	0	1	\$ 885.00	
SDP2006-0535	15090035943	6	0	0	1	\$ 885.00	
SDP2006-0539	15100029268	11	0	0	1	\$ 885.00	
SDP2006-0541	15100020244	7	0	0	1	\$ 885.00	
SDP2006-0544	15110048010	8	0	0	1	\$ 885.00	
SDP2006-0551	14060009090	7	0	0	1	\$ 885.00	
SDP2006-0559	14070026179	8	0	0	1	\$ 885.00	
SDP2006-0560	14070023787	5	0	0	1	\$ 885.00	
SDP2006-0563	14080008642	5	0	0	1	\$ 885.00	
SDP2006-0569	14090033262	5	0	0	1	\$ 885.00	
SDP2006-0572	14090047906	7	0	0	1	\$ 885.00	
SDP2006-0579	14110031435	8	0	0	1	\$ 885.00	
SDP2006-0583	13040037792	9	0	0	1	\$ 885.00	
SDP2006-0585	13050019535	4	0	0	1	\$ 885.00	

Bode Technology Case #	Lab #	Number of Samples in kit	Total Number of Samples Amplified	Additional Samples (over 1) Amplified	Number of Kits	Cost	Comments
SDP2006-0586	13050022438	3	0	0	1	\$ 885.00	
SDP2006-0588	13050047211	9	0	0	1	\$ 885.00	
SDP2006-0593	13070008464	8	0	0	1	\$ 885.00	
SDP2006-0606	13080028783	10	0	0	1	\$ 885.00	
SDP2006-0608	13110052037	6	0	0	1	\$ 885.00	
SDP2006-0612	13120045987	2	0	0	1	\$ 885.00	
SDP2006-0615	14040008084	2	0	0	1	\$ 885.00	
SDP2006-0618	14040011439	3	0	0	1	\$ 885.00	
SDP2006-0621	14050022609	7	0	0	1	\$ 885.00	
SDP2006-0622	14050022143	5	0	0	1	\$ 885.00	
SDP SAK September Total					74	\$ 73,660.00	

000105

Exhibit 8

000106



The City of San Diego
MEMORANDUM

OK
4/13/2020

DATE: April 6, 2020

TO: Kris Michell, Chief Operating Officer
via Matt Vespi, Director, Department of Finance

FROM: *AM* Albert Guaderrama, Executive Assistant Chief, Police Department *mc*
via Kyle Meaux, Administrative Services Manager, Police Department *km AH*

SUBJECT: Request to Study and fill Four (4.00) FTE Full Time, Supplemental
Criminalist II Positions for the Police Crime Laboratory

If this request is approved, please route to the Personnel Department for processing. If you have any questions, please contact Stephanie Rose, Police Captain, Police Department at (619) 531-2407.

Please provide the following information (please reference SAP values, T-Code PPOSE):

Business Area (Department #):	1914
Job Abbreviation # and Title:	(1384) Criminalist
Fund # and Title:	100000 General Fund
Cost Recovery Status:	No
OM Forms Attached:	Yes, (On line)
Planned Date To Fill:	FY20 - April
Annual Salary (no fringe):	\$106,537.60

Explain the purpose and/or role of the position: This is a DNA Criminalist position in the Forensic Biology Unit of the Crime Laboratory. The Biology Unit is responsible for screening evidentiary items for the presence of body fluids and for developing DNA profiles from evidence items with the purpose of providing an investigative lead in a criminal investigation. The Criminalist position participates in the Crime Scene Reconstruction Program, which requires participants to respond to crime scenes in order to do bloodstain pattern reconstruction, trajectory reconstruction, and to search for biological fluids at crime scenes.

Provide impact statement if the position remains vacant: Over the past three years, the Forensic Biology unit had been able to complete approximately as many cases as it had received, indicating that our staffing levels had been appropriate. Recently, the Biology Unit has lost 4 Criminalists to other units or other outside employment. The result of these vacancies has been an exponential growth of unassigned (backlogged) DNA requests. In just the past three months, the backlog has increased from 166 unassigned DNA requests, to 285, an increase of 71%. If this trend continues, the DNA backlog will grow by approximately 50 cases a month. It will take approximately 11 months to train the new hires, once the unit fills these open positions. In order to address the projected backlog, a year from now, the unit will need additional Criminalists to tackle just the backlog of DNA requests that will continue to accumulate over the next year or more.

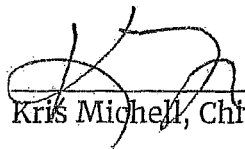
000107

In addition, the Forensic Biology Unit will be greatly impacted this current year by two changes: the outsourcing of approximately 1,800 sexual assault evidence kits and the passing of SB 22, which requires the timely analysis of all collected sexual assault evidence. Senate Bill 22 is effective January 1, 2020, and requires all sexual assault evidence collected since January 1, 2016, be tested within certain time lines. Although the Police Department is outsourcing the DNA analysis on 1,800 kits already in evidence, the Biology Unit will need to do a technical review of any case in which foreign DNA was found for upload into the Combined DNA Index System (CODIS) database. SB 22 requires the laboratory to review and upload cases within 30 days of receiving the data from the outsourced laboratory. Based on feedback from other laboratories that receive outsourced data, the Biology Unit anticipates needing 3 Criminalists working full time for the next 2-5 years on the review of just the outsourced data.

Historically, investigators submit approximately 60% of all collected victim sexual assault kits (kits) to the Biology Unit for testing. In order to meet the requirements of SB 22, the Biology Unit has adopted a proactive approach to the testing of ALL victim kits collected in the city. The Biology Unit anticipates needing 2 full time Criminalists in order to test the additional 40% of all victim kits collected per year.

If we do not fill these additional four Criminalists positions, the impact will be a growing backlog of DNA requests. The Biology Unit will not be able to provide law enforcement important investigative information, that could prevent additional crimes, in timely manner; the city will risk not meeting the 120 day turn-around-time required by SB 22 for sexual assault evidence analysis; the unit will be unable to meet all court deadlines for analysis; and overtime will be regularly needed just to do routine analysis.

REVIEWED: _____
Matt Vespi, Director, Department of Finance Date

APPROVED:  _____
Kris Michell, Chief Operating Officer

4/13/2020
Date

000108

Exhibit 9

000109

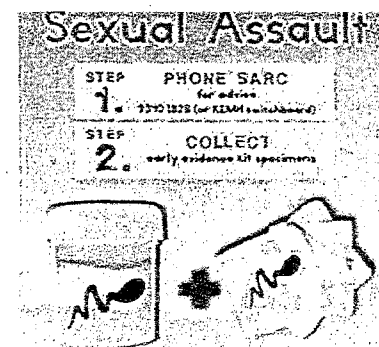
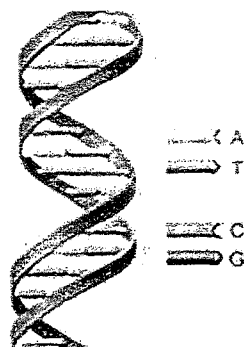
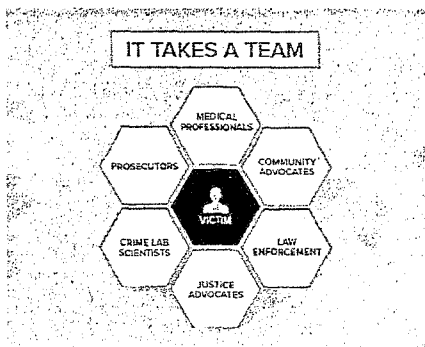
Sexual Assault Evidence Response Kit Cost Per Unit

Item	Price	Unit	Unit Type	Price per unit	Unit Use per Kit	Cost per kit	Notes	GRAND TOTAL	Price per Sample
Digest Buffer	\$62.44	1000	ml	\$0.06	7.5	\$0.47	assumes 15 samples per kit (10 evidences + 5 blanks)	\$ 804.23	\$60.42
TE buffer	\$29.32	500	ml	\$0.20	0	\$0.00			
Proteinase K	\$350.96	50	ml	\$7.01	0.6	\$4.20			
DTT	\$56.09	31	ml	\$1.75	0.3	\$0.53			
Spin Basket Tube				#DIV/0!	3				
Lyse & Spin Baskets	\$41.13	50	each	\$0.82	8	\$6.58			
Razor blades	\$13.97	100	each	\$0.14	6	\$0.84			
E21 kit	\$459.00	48	samples	\$9.56	17	\$162.56			
QIAcube reagent bottles	\$17.19	6	each	\$2.87	2	\$5.73			
QIAcube rotor adapters	\$39.87	240	each	\$0.17	3	\$0.50			
QIAcube wide-bore tips	\$90.90	1024	each	\$0.09	64	\$5.68			
Sarstedt 1.5 mL Tubes	\$42.43	500	each	\$0.08	11	\$0.93			
Quant Duo	\$1,999.50	360	reactions	\$5.55	20	\$111.08			
96-well plate	\$2,232.00	500	each	\$4.46	2	\$8.93			
Optical adhesive cover	\$219.30	100	each	\$2.19	1	\$2.19			
GlobalFiler	\$4,199.80	180	reactions	\$23.33	9	\$209.99	assumes 3 samples for GF amp		
8-cap strips	\$97.00	300	each	\$0.32	2	\$0.65			
Anode Buffer	\$119.97	4	each	\$29.99	0.007	\$0.21			
Cathode Buffer	\$159.96	4	each	\$39.99	0.007	\$0.28			
Conditioning Reagent	\$29.99	1	each	\$29.99	0.5	\$15.00			
POP-4 Polymer	\$200.25	60	injections	\$3.34	2	\$6.68			
Capillary Array	\$1,357.72	160	injections	\$8.49	2	\$16.97			
Plate Septa	\$389.67	10	septa	\$38.97	1	\$38.97			
Genescan UZ 600	\$438.03	400	ul	\$1.10	0.00048	\$0.00			
Formamide	\$38.79	25	ml	\$1.55	0.115	\$0.18			
1000 ul tips	\$382.16	3072		\$0.12	16	\$1.99			
200 ul tips	\$470.97	4800		\$0.10	3	\$0.29			
Nimbus tips 300	\$485.00	5760		\$0.08	1	\$0.08			
Nimbus tips 50	\$480.00	5760		\$0.08	29	\$2.42			

000110

Exhibit 10

000111

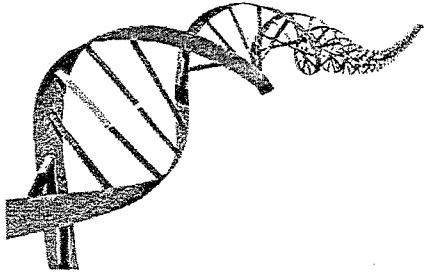


SART KITS

SDPD utilizes a systematic approach to ensure high quality timely results for sexual assault victims.

000112





MOST IMPORTANT!



All SART kits from stranger cases are forwarded for analysis.

IMPORTANT NOTICE

000113



HISTORY

1994 DNA IDENTIFICATION ACT



The DNA Identification Act of 1994 authorized the establishment of a national index of DNA profiles from:

- (1) Persons convicted of crimes,
- (2) Evidence items recovered from crime scenes, and
- (3) Unidentified human remains.

In addition, it specified several standards for those laboratories that contribute profiles to the national index system, including proficiency testing requirements for DNA analysts and **privacy protection standards** related to the information in the national index system.

Finally, it established criminal penalties for individuals who knowingly violate the privacy protection standards, and provided that access to the national index system was subject to cancellation if the quality control and privacy requirements were not met.



CODIS – WHAT IS IT?



Combined DNA Index System (**CODIS**) is the name of the FBI 's database that enables law enforcement to link serial crimes to each other and to known offenders.

CODIS



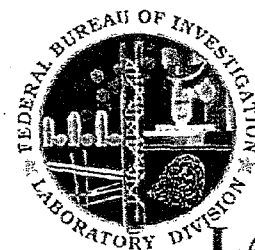
CODIS *CONTINUED...*



CODIS began as a pilot project in 1990 serving 14 state and local laboratories. In October 1998, the FBI's National DNA Index System (NDIS) became operational.

CODIS enables federal, state, and local crime labs to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to convicted offenders.

000116



FBI
LABORATORY



CODIS *CONTINUED*



CODIS has three tiers - local, state, and national.

All DNA profiles originate at the local level (LDIS), then flow to the state (SDIS) and national levels.

NDIS is the highest level in the CODIS hierarchy, and enables laboratories to exchange and compare DNA profiles on a national level.

SDIS allows laboratories within states to exchange DNA profiles. The tiered approach allows state and local agencies to operate their databases according to their specific legislative or legal requirements.

000117



WHAT ARE THE RULES?



The Federal DNA Act specifies the categories of DNA records that may be stored and searched in the NDIS.

NDIS Operational Procedures Manual, Chapter 3 DNA Records:

3.1.1.1 Eligibility of DNA Records for Forensic Indexes at NDIS

"...there shall be documentation that a crime has been committed."

"The Forensic unknown...shall originate from and/or be associated with a crime scene in order to be eligible for NDIS; the source of which is attributable to a putative perpetrator."



000118



RULES FOR FORENSIC UNKNOWNNS



For a profile to be eligible, the following criteria MUST be met:

- A criminal offense must have occurred
- The profile must be from an item of evidence collected by an active law enforcement agent/employee
- There is reasonable belief the item in question is linked to a perpetrator of the crime being investigated, and
- When a consensual partner is present, an elimination sample should be requested.

000119



CALIFORNIA PENAL CODE SECTION 680



Sexual Assault Victim's Bill of Rights

680 (b) (7) (D) – 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

000120



NO TYPE OF EVIDENCE IS ALWAYS CODIS ELIGIBLE

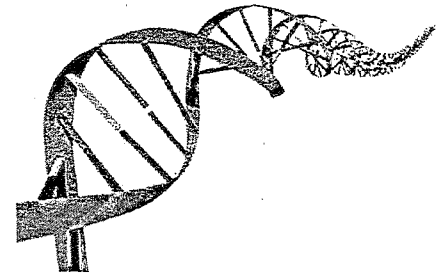


- 1) When determining CODIS eligibility, examine each case in its totality

A single piece of information, or a complete lack of information can change CODIS eligibility

- 2) Avoid determining CODIS eligibility by formulas
- 3) Avoid determining CODIS eligibility by crime type
"Sexual Assault is always CODIS eligible" - not necessarily

000121



PRIORITY



Highest Priority Cases

Homicides

Sexual Assaults

Robberies

Assaults



000122

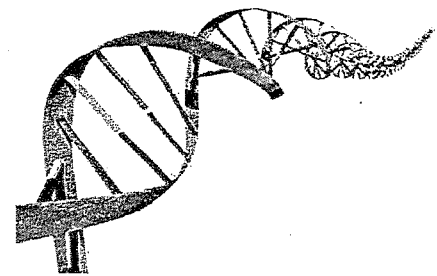


BACKLOG VERSUS INVENTORY



- Backlog: defined as cases waiting in the laboratory for analysis for longer than 30 days.
- Inventory: cases impounded in the Property Room, held for the possibility of future analysis should something change with the investigation.
 - These pieces of evidence were deemed non-essential for investigatory purposes.

000123

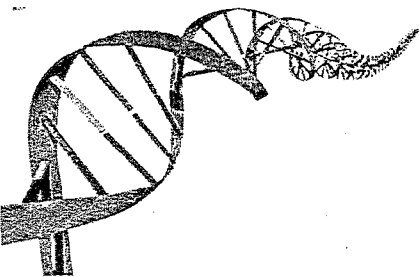


SEXUAL ASSAULT KIT BACKLOG



- 5-20 CODIS eligible cases at any given time
- Average turnaround time for screening cases less than 30 days
- Average turnaround time for complete analysis less than 50 days
- January 1, 2017 – May 26th, 2017
 - 156 Sexual Assault Work Requests Analyzed
 - 787 Items Analyzed
 - 47 Day Average Turnaround Time





INVENTORY



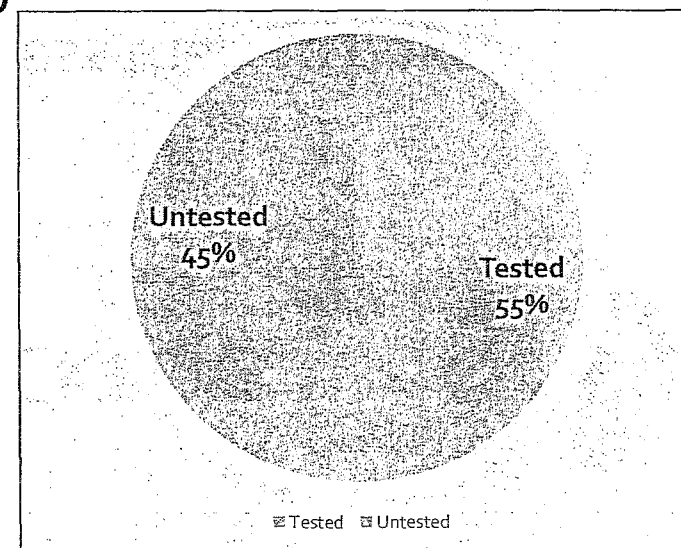
Currently there are 1965 untested Victim SART kits in the Property Room. Collection of those kits span **(27)** years...

Average testing percentage of kits = 55%

Total Victim Kits – 4389

Total Victim Kits Tested – 2424

Total Untested Kits - 1965





CODES TO TRACK KITS



SART Not Tested	01 Warrant of Arrest
SART Not Tested	02 Adult/Juvenile Arrest
SART Not Tested	03 Allegation Cannot Be Substantiated
SART Not Tested	04 Inactivated – Non-Participation by Victim
SART Not Tested	05 Other Evidence Tested
SART Not Tested	06 Reviewed and Declined by Prosecuting Agency
SART Not Tested	07 VDP w/o Suspect ID
SART Not Tested	08 NIR
SART Not Tested	09 Out of Jurisdiction
SART Not Tested	10 Recant
SART Not Tested	11 Suspect ID but VDP
SART Not Tested	12 Unfounded
SART Not Tested	13 Beyond SOL
SART Not Tested	14 Out of Country
SART Not Tested	15 Labs Submitted – Awaiting Results
SART Not Tested	16 Convicted/Serving Sentence/To Be Reviewed
SART Not Tested	17 Exceptional (Deceased)
SART Not Tested	18 Specialized Unit (IA/PSU/Homicide)

000126



Important
boxes to track
the kits

FileOnQ 7.0.3117 - OnQ - Shen, Jennifer

File Edit View Filterroom Labels eDocuments Reports Tools Data Help

New Print Barcode Label Request Browse

Barcod

Details

Home Location: Lot or box Location: Date Completed:

Location Category:

Evidence Info | Comments | History | Retention | Documents

Case # Booking # Recovery Date at Assigned Command

Charges Code

Incident Date Beat #

Station Impounded:

Owner Last Owner First MI Owner Address City, State ZIP Owner DOB PRF on file Finder Wants to Claim Remarks

Suspect Last Suspect First MI Suspect ID # DOB Suspect Address City, State ZIP Add Suspects

Victim Last Victim First Victim MI Victim DOB Add Victims See Notes Status Date CRMS status

Evidence Holds Evidence Cautions

Category

Color: Caliber: 10s Drug Type Gun Type Con Value \$ Money Total Value \$

Drug Qty/Weight Measure Quantity

Alcohol Testing 11550 Drugs Placard Paper Property Tag # (Old) Agency ORL Date, Case # Owner Prohibition

Drug Testing General Drugs Prescription Add Description Remarks / Finder Info

Reference Sample Other Specify Other Drug: Blood Drawn By:

1st Void 2nd Void Stop Test if General Positive

SART Kit Tested:

FOR LAB USE ONLY

Stolen Gun	Notes	PTO:
QHA	Notes	QHA 2
RQHA	Notes	RQHA 2
QRO	Notes	QRO 2
QMNF	Notes	QMNF 2
RI01	Notes	RI01 2

Query None Worklist

5:04 PM 5/25/2017

000127

Ctrl+N

 Ctrl+S

Evidence Holds
 Category: Evidence
 Item Type: SART KIT
 Lab Item Type:
 Color:
 Drug Type:
 Drug Qty/Weight: Measure
☐ Alcohol Testing
☐ Drug Testing
☐ Reference Sample
☐ 1st Void
☐ 2nd Void

☐ 11550
☐ General
☐ Prescribed
☐ Other
☐ Stop

Item saved...

Category: SART Kits

- ☐ SART (NO)
- ☐ SART Kit (Suspect)
- ☐ SART kits tested is (blank)
- ☐ SART not tested - 01 Active warrant
- ☐ SART not tested - 02 Adult/juvenile arrest
- ☐ SART not tested - 03 Allegation cannot be substant
- ☐ SART not tested - 04 Inactivated non-par by vic
- ☐ SART not tested - 05 other evidence tested
- ☐ SART not tested - 06 Elements of crime rev _ rej
- ☐ SART not tested - 07 VDP w/o suspect ID
- ☐ SART not tested - 08 NIR (non-investigative rape)
- ☐ SART not tested - 09 Out of jurisdiction
- ☐ SART not tested - 10 Recant
- ☐ SART not tested - 11 Suspect ID-VDP (v decl pros)
- ☐ SART not tested - 12 Unfounded
- ☐ SART not tested - 13 Beyond Statute of Limitations
- ☐ SART not tested - 14 Out of Country
- ☐ SART not tested - 15 Labs Submitted, awaiting resu
- ☐ SART not tested - 16 Convicted/Ser Sen, to be Rev
- ☐ SART not tested - 17 Exceptional (deceased)
- ☐ SART not tested - 18 Specialized Unit Inv
- ☐ Total SART Kits in Inventory
- ☐ Total SART kits TESTED
- ☐ Total Victim SART Kits In Inventory
- ☐ Total Victim SART Kits Tested

Category: Sex Crimes

- ☐ SART Kits not tested <2005
- ☐ SART Kits tested <2005
- ☐ SART Kits Tested by date
- ☐ SART not tested - Inactivated - Awaiting add Info
- ☐ Untested SART Kits by Date

Home Location: LAB
 Location Category: Lot or box Location: EA-1-082
 Date Completed:

Assigned to Detective: TAGABAN, ESMERALDA - 5794
 Assigned Command: AssignmentSexCrimes
 Team: Assigned: 04/22/2011
 Transported by: Transport Date: at:

Asset Seizure: Victim Last: SHERIDAN
 Victim First: Sue
 Victim MI: Victim DOB: 11/04/1987
 Add Victims See Notes

Status Date: 06/16/2011
 CRMS status: Canceled

FOR LAB USE ONLY
 Stron Gun: ☐ PTO: ☐
 QHA: ☐ Notes: ☐ QHA 2
 RQHA: ☐ Notes: ☐ RQHA 2
 QRO: ☐ Notes: ☐ QRO 2
 QMHF: ☐ Notes: ☐ QMHF 2
 RI01: ☐ Notes: ☐ RI01 2

Agency ORI, Date, Case #: 175279
 Owner Prohibition:

Dispo Notice Sent: ☐
 Owner Letter Sent: ☐

SART Kit Tested: 13

6 of 181 | Worklist

5:13 PM
5/25/2017

000128

FileOnQ 7.0.3117 - OnQ - Shen, Jennifer

File Edit View Fileroom Labels eDocuments Reports Tools Data Help

New Print Barcode Label Request Browse

Barcode: 10011895
11070037182

Home Location: Lot or box Location: EA-1-082
Date Completed: / /

Location Category:

Evidence Info Comments History Retention Documents

Case # 11028040 Booking # Recovery Date 10/7/18/2011 at 11900
Charges 261(a) Code PC - Penal
Incident Date 07/12/2011 Beat # 1815
Station Impounded IFS / SART

Recovery Location Victim

Owner Last
Owner First
Owner Address
City, State ZIP
Owner DOB 04/02/1990 PRF on file
Finder Wants to Claim Remarks
Add Suspects #2 B&W/ 20-25 yrsold/5-10/160-170lbs/Skinny

Suspect Last
Suspect First
Suspect ID #
Suspect Address
City, State ZIP

Victim Last
Victim First
Victim MI
Victim DOB 04/02/1990
Add Victims See Notes
Status Date 09/16/2011
CRMS status Canceled

Evidence Holds
Evidence SART KIT

Item Type SART KIT

Color
Drug Type
Drug Qty/Weight
Measure
Quantity 1
Money Total Value \$

Caliber
Gun Type
Com Value \$
Paper Property Tag #

Alcohol Testing
Drug Testing
Reference Sample
1st Void
2nd Void
11550 Drugs
General Drugs
Prescription
Other - Specify Other Drug
Stop Test if General Positive

SART Kit Tested: 06

FOR LAB USE ONLY
Stolen Guri
QHA Notes
RQHA Notes
QRO Notes
QMHF Notes
RQI1 Notes

PTO:
QHA 2
RQHA 2
QRO 2
QMHF 2
RQI1 2

Prohibition

Enter Victim First Name

1 of 128 | Worksheet

5:15 PM 5/25/2017

000129

FileOnQ 7.0.3117 - OnQ - Shen, Jennifer

File Edit View Filterroom Labels eDocuments Reports Tools Data Help

New Print Barcode Label Request Browse

Barcode: 10019946
11040032941

Current Location: SART Box 327 - TEHP CONTROLLED SART BOX 327, 4/18/2016 5:26:36 AM Jeayvare

Home Location: LAB
Lot or box Location: EA-I-082
Date Completed: / /

Location Category:

Details

Evidence Info Comments History Retention Documents

NotesLog

Add Entry Refresh

☒ Split tab vertically

Date	Subject	Entry	Login
12/2/2016 11:37:41 AM	SART not tested - 04 Inactivated - non-participation by victim	Victim states susp was outside her apt sitting in a car. She assumed he was the person coming to see her for rent bedroom. She invited him inside and he began to proposition her, assuming she was a prostitute. She felt scared and he wouldn't leave so she performed oral copulation on him to get him to leave. Vic said she allowed him to take naked pic of her on his phone first. Vic led throughout her interview. She has been FI'd (along with her boyfriend) for 647b activity near her apt.	KFroetscher

Add a NotesLog entry

Subject: 1. Disk of statements

Entry: PR- SHIPPING
RE: Disposal
SART not tested - 01 Active warrant
SART not tested - 02 Adult/juvenile arrest
SART not tested - 03 Allegation cannot be substantiated
SART not tested - 04 Inactivated - non-participation by vic
SART not tested - 05 Other evidence tested
SART not tested - 06 Elements of crime reviewed & reject

☐ Add same entry for all the items (516)

OK Cancel

Victim states susp was outside her apt sitting in a car. She assumed he was the person coming to see her for rent bedroom. She invited him inside and he began to proposition her, assuming she was a prostitute. She felt scared and he wouldn't leave so she performed oral copulation on him to get him to leave. Vic said she allowed him to take naked pic of her on his phone first. Vic led throughout her interview. She has been FI'd (along with her boyfriend) for 647b activity near her apt.

Susp says it was a 647b deal when he met her on ECB. She took him to her apt and they agreed on oral copulation. When they were through he went to his car to get his money to pay her and decided to leave instead. Susp says she made false sexual assault claim because she didn't get paid. Susp cooperated in inv and came in for a polygraph. He did not pass the poly because he stated he was nervous. Victim became angry during inv with detective because she felt we weren't believing her. Vic stopped returning phone calls. Case cannot be proven.

Comments for current record

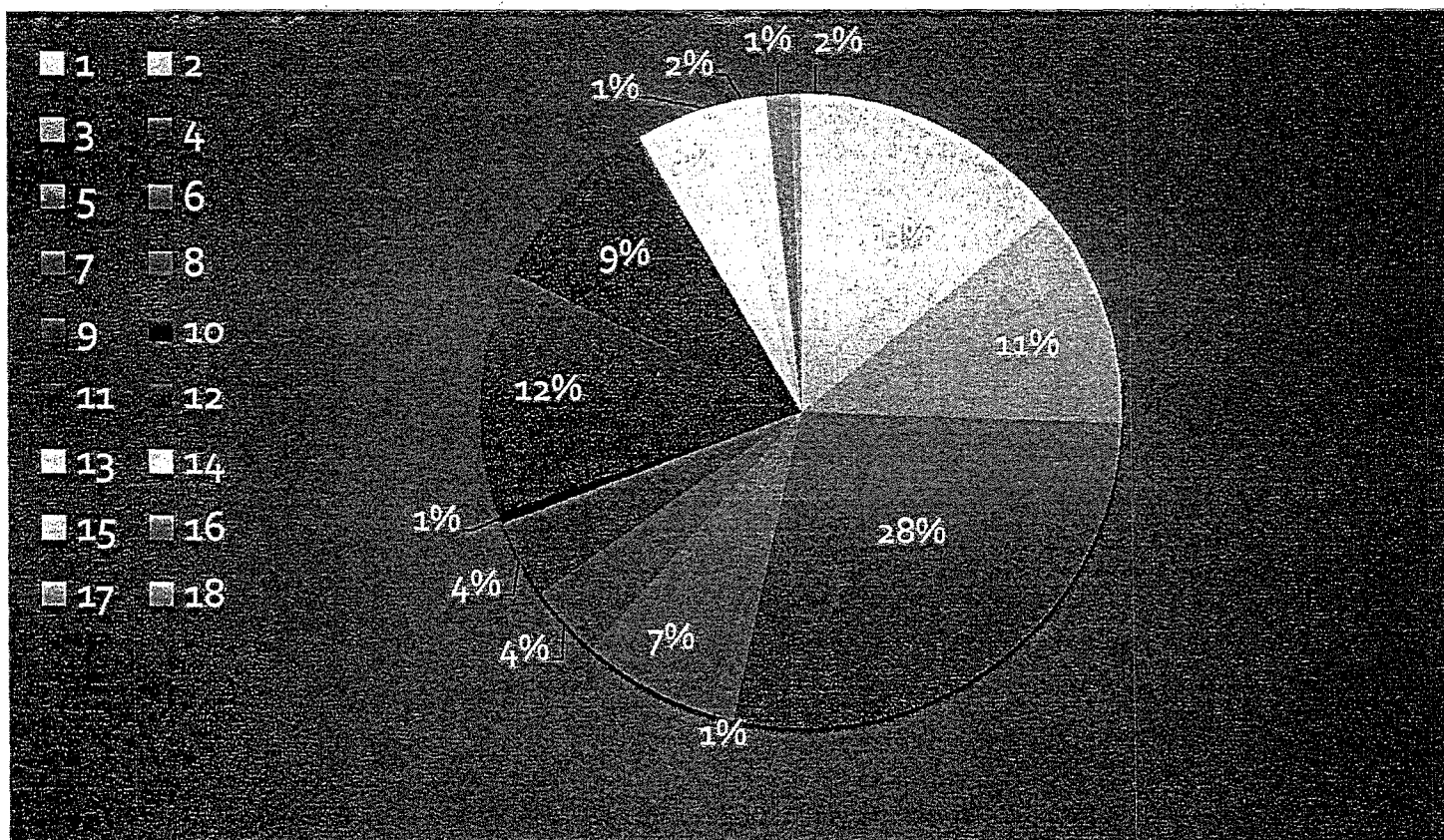
14 of 516 | Worklist

5:19 PM
5/25/2017

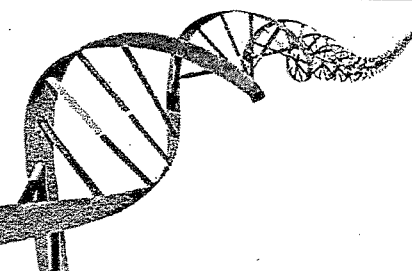
00130



PERCENTAGES FOR UNTESTED KITS FOR THE 27 YEAR PERIOD



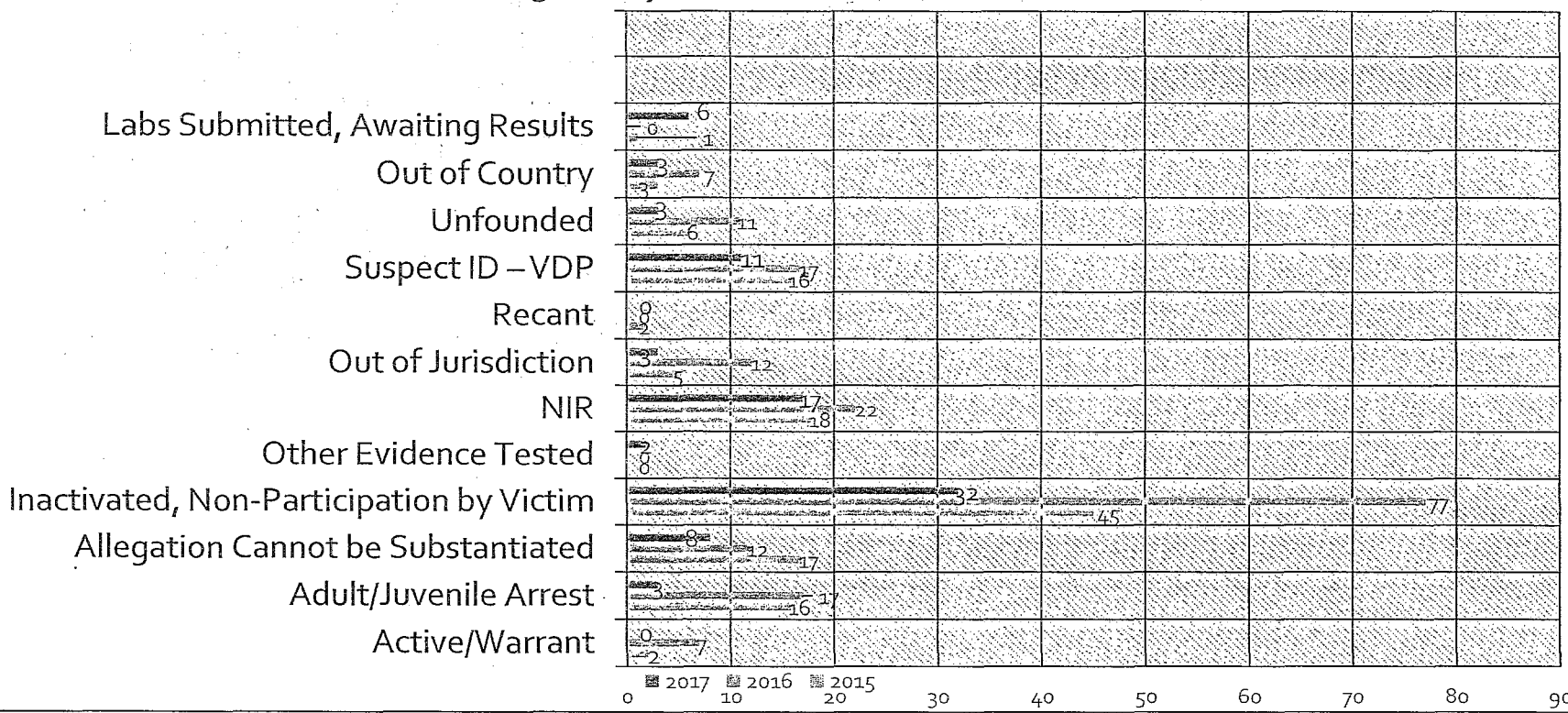
000131



DATA FOR UNTESTED KITS OVER LAST THREE YEARS



2015 - 2017 Untested Victim Kits



000132



WHAT ABOUT OTHER AGENCIES?



LAPD/LASO analyzed over 10,000 backlogged kits...

LASO:

Analyzed 4,763 kits

2,906 were positive (61%)

1,268 did not meet CODIS Upload Eligibility Requirements
(44% of the positive kits)

1,638 were uploaded to CODIS (56% of the positive kits)

TOTAL COST: \$4.5 million

000133

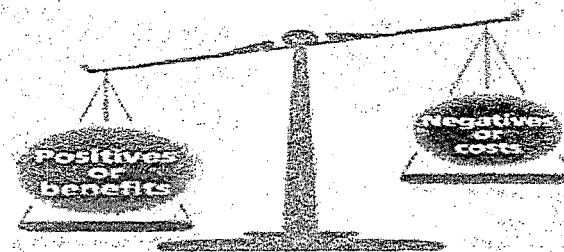


RESULTS



② cases resulted in conviction

Neither of which relied upon the DNA analysis!



COST - BENEFIT ANALYSIS

000134



SEXUAL ASSAULT KIT BACKLOG STUDY



Study funded by the US Department of Justice, written by Dr. Joe Peterson, professor at Cal State University, Los Angeles, School of Criminal Justice and Criminalistics

From the Final Report:

- 1) "For the backlogged SAK (SART Kits)...no new arrests resulted after SAK testing occurred, but one filing and two convictions did. We determined that neither of the two new convictions involved helpful DNA testing."
- 2) "Focus group participants expressed the belief that mandatory testing of all backlogged SAKs was unnecessary and that future kit testing must reflect investigator and prosecutor evaluation of the case."
- 3) All focus group members agreed that the community (victim group) pressure should not dictate analysis protocols.

000135



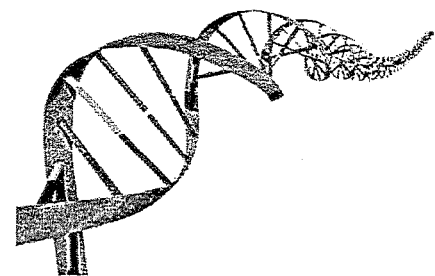
STUDY CONTINUED...



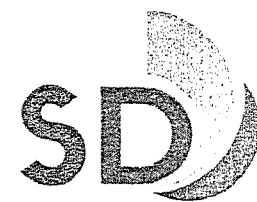
Principal Policy Recommendation:

The forensic testing of ALL backlogged sexual assault kits is not recommended. Before testing, the goals of agencies must be clearly defined, the investigation status of cases determined, and agencies become familiar with the likely short and long term benefits of such testing. For future testing, unsolved stranger cases should be the primary focus.

000136



CALIFORNIA STATE AUDITOR SEXUAL ASSAULT EVIDENCE KITS



SDPD audited in 2014

Cases chosen at random to determine if decision-making about not testing a kit was sound.

-Auditors agreed that it was.

From the report: (page 27)

- Based on the information we reviewed, it is unclear whether analyzing all sexual assault evidence kits in California would substantially improve the arrest and prosecution rates in sexual assault cases in the State.
- If investigators already made such determinations (kit analysis would not be helpful), we would expect there to be less benefit to analyzing kits than in cases where no decision about the kit's value to an investigation was ever made.

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STATE AUDIT REPORT *CONTINUED*



From (page 45)

If agencies were to request analysis of all sexual assault evidence kits in cases with unknown assailants, the agencies might realize investigative benefits.

From (page 46)

However, we believe that certain types of cases should be exempted from any requirement to analyze sexual assault evidence kits in unknown assailant cases. Specifically, to respect the preferences of victims, investigators should not be required to have labs analyze kits in sexual assault cases in which the victims request the kit not be analyzed. Similarly, agencies should be exempted from such requirements in cases in which investigators determined that no crime occurred.



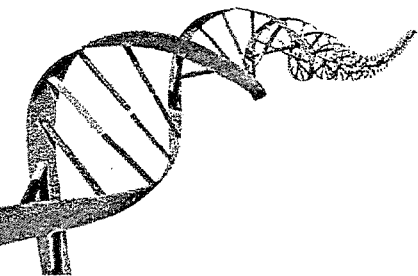
STATE AUDIT REPORT *CONTINUED*



Only recommendation for the SDPD SART kit program:

To ensure that sexual assault evidence kits are not overlooked and the reason they are not sent for analysis is clear, by December 1, 2014, ...the San Diego Police Department should adopt a policy that requires investigators to document the reason they do not submit a request for sexual assault evidence kit analysis to a crime lab.

000139



SO SHOULD WE "TEST ALL KITS?"



- What about unfounded cases?
- What about cases in which the suspect's profile is ALREADY in the database?
- What about NIR's?
- What about the cases in which the victim says "do not go further on my case!"
- What about cases from crimes committed in another country?

180

242

73

535

25

**REALLY
BIG
QUESTIONS**

000140

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000141

Exhibit 11

000142

Treatment of *Brady v. Maryland* Material
in United States District and State Courts'
Rules, Orders, and Policies

Report to the Advisory Committee on
Criminal Rules of the Judicial Conference
of the United States

Laural L. Hooper, Jennifer E. Marsh, and Brian Yeh
Federal Judicial Center
October 2004

This report was undertaken in furtherance of the Federal Judicial Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. The views expressed are those of the authors and not necessarily those of the Federal Judicial Center.

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I. Introduction

In July 2004, the Judicial Conference Advisory Committee on Criminal Rules asked the Federal Judicial Center to study the local rules of the U.S. district courts, state laws, and state court rules that address the disclosure principles contained in *Brady v. Maryland*.¹ *Brady* requires that prosecutors fully disclose to the accused all exculpatory evidence in their possession. Subsequent Supreme Court decisions have elaborated the *Brady* obligations to include the duty to disclose (1) impeachment evidence,² (2) favorable evidence in the absence of a request by the accused,³ and (3) evidence in the possession of persons or organizations (e.g., the police).⁴ This report presents the findings of that research.

The committee's interest is in learning whether federal district courts and state courts have adopted any formal rules or standards that provide prosecutors with specific guidance on discharging their *Brady* obligations. Specifically, the committee wanted to know whether the U.S. district and state courts' relevant authorities (1) codify the *Brady* rule; (2) set any specific time when *Brady* material must be disclosed; or (3) require *Brady* material to be disclosed automatically or only on request. In addition, the Center sought information regarding policies in two areas: (1) due diligence obligations of the government to locate and disclose *Brady* material favorable to the defendant, and (2) sanctions for the government's failure to comply specifically with *Brady* disclosure obligations.

This report has three sections. Section I presents a general introduction to the report, along with a summary of our findings. Section II describes the federal district court local rules, orders, and policies that address *Brady* material, and Section III discusses the treatment of *Brady* material in the state courts' statutes, rules, and policies.

A. Background: *Brady*, Rule 16, and Rule 11

1. *Brady v. Maryland*

In *Brady v. Maryland*, the Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution."⁵ Subsequent Supreme Court decisions have held that the government has a constitutionally mandated, affirmative duty to disclose exculpatory evidence to the defendant to help ensure the defendant's right to a fair trial under the Fifth and Fourteenth Amendments' Due Process

1. 373 U.S. 83 (1963).

2. *Giglio v. United States*, 405 U.S. 150, 153-54 (1972).

3. *United States v. Agurs*, 427 U.S. 97, 107 (1976).

4. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

5. 373 U.S. at 87.

Clauses.⁶ The Court cited as justification for the disclosure obligation of prosecutors “the special role played by the American prosecutor in the search for truth in criminal trials.”⁷ The prosecutor serves as “the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.”⁸

The *Brady* decision did not define what types of evidence are considered “material” to guilt or punishment, but other decisions have attempted to do so. For example, the standard of “materiality” for undisclosed evidence that would constitute a *Brady* violation has evolved over time from “if the omitted evidence creates a reasonable doubt that did not otherwise exist,”⁹ to “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different,”¹⁰ to “whether in [the undisclosed evidence’s] absence [the defendant] received a fair trial, understood as a trial resulting in a verdict worthy of confidence,”¹¹ to the current standard, “when prejudice to the accused ensues . . . [and where] the nondisclosure [is] so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict.”¹²

2. *Federal Rule of Criminal Procedure 16*

Federal Rule of Criminal Procedure 16 governs discovery and inspection of evidence in federal criminal cases. The Notes of the Advisory Committee to the 1974 Amendments expressly said that in revising Rule 16 “to give greater discovery to both the prosecution and the defense,” the committee had “decided not to codify the *Brady* Rule.”¹³ However, the committee explained, “the requirement that the government disclose documents and tangible objects ‘material to the preparation of his defense’ underscores the importance of disclosure of evidence favorable to the defendant.”¹⁴

Rule 16 entitles the defendant to receive, upon request, the following information:

- statements made by the defendant;
- the defendant’s prior criminal record;

6. See *United States v. Bagley*, 473 U.S. 667, 675 (1985) (“The *Brady* rule is based on the requirement of due process. Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur.”).

7. *Strickler v. Greene*, 527 U.S. 263, 281 (1999).

8. *Kyles v. Whitley*, 514 U.S. 419, 439 (1995) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

9. *United States v. Agurs*, 427 U.S. 97, 112 (1976).

10. *Bagley*, 473 U.S. at 682.

11. *Kyles*, 514 U.S. at 434.

12. *Strickler*, 527 U.S. at 281–82.

13. Fed. R. Crim. P. 16 advisory committee’s note (italics added).

14. *Id.*

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- documents and tangible objects within the government's possession that "are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant";
- reports of examinations and tests that are material to the preparation of the defense; and
- written summaries of expert testimony that the government intends to use during its case in chief at trial.¹⁵

Rule 16 also imposes on the government a continuing duty to disclose additional evidence or material subject to discovery under the rule, if the government discovers such information prior to or during the trial.¹⁶ Finally, Rule 16 grants the court discretion to issue sanctions or other orders "as are just" in the event the government fails to comply with a discovery request made under the rule.¹⁷

3. *Federal Rule of Criminal Procedure 11*

Federal Rule of Criminal Procedure 11 governs prosecutor and defendant practices during plea negotiations. The Supreme Court has not said whether disclosure of exculpatory evidence is required in the context of plea negotiations; however, in *United States v. Ruiz*, the Court held that the government is not constitutionally required to disclose *impeachment* evidence to a defendant prior to entering a plea agreement.¹⁸ The Court noted that "impeachment information is special in relation to the *fairness of a trial*, not in respect to whether a plea is *voluntary* ('knowing,' 'intelligent,' and 'sufficiently aware')." ¹⁹ The Court stated that "[t]he degree of help that impeachment information can provide will depend upon the defendant's own independent knowledge of the prosecution's potential case—a matter that the Constitution does not require prosecutors to disclose."²⁰ Finally, the Court stated that "a constitutional obligation to provide impeachment information during plea bargaining, prior to entry of a guilty plea, could seriously interfere with the Government's interest in securing those guilty pleas that are factually justified, desired by defendants, and help to secure the efficient administration of justice."²¹

4. *American College of Trial Lawyers' proposal*

In October 2003, the American College of Trial Lawyers (ACTL) proposed amending Federal Rules of Criminal Procedure 11 and 16 in order to "codify the rule of law first propounded in *Brady v. Maryland*, clarify both the nature and

15. Fed. R. Crim. P. 16(a)(1)(A)–(E).

16. Fed. R. Crim. P. 16(c).

17. Fed. R. Crim. P. 16(d)(2).

18. 536 U.S. 622, 633 (2002).

19. *Id.* at 629 (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)).

20. *Id.* at 630.

21. *Id.* at 631.

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scope of favorable information, require the attorney for the government to exercise due diligence in locating information and establish deadlines by which the United States must disclose favorable information.”²²

5. Department of Justice’s response to the ACTL’s proposal

The Department of Justice (DOJ) opposes the ACTL’s proposal to amend Federal Rules of Criminal Procedure 11 and 16. DOJ contends that the government’s *Brady* obligations are “clearly defined by existing law that is the product of more than four decades of experience with the *Brady* rule,” and therefore no codification of the *Brady* rule is warranted.²³

B. Summary of Findings

1. Relevant authorities identified in the U.S. district courts

- Thirty of the ninety-four districts reported having a relevant local rule, order, or procedure governing disclosure of *Brady* material. References to *Brady* material are usually in the courts’ local rules but are sometimes in standard or standing orders and joint discovery statements.
- Eighteen of the thirty districts that explicitly reference *Brady* material use the term “favorable to the defendant” in describing evidence subject to the disclosure obligation. Nine other districts refer to *Brady* material as evidence that is exculpatory in nature. One additional district uses neither term, and two other additional districts use both terms in defining *Brady* material.
- Twenty-one of the thirty districts mandate automatic disclosure; five dictate that the government provide such material only upon request of the defendant. One district requires parties to address *Brady* material in a pretrial conference statement, and three are silent on disclosure.
- The thirty districts that reference *Brady* material vary significantly in their timetables for disclosure of the material. The most common time frame is “within 14 days of the arraignment,” followed by “within five days of the arraignment.” Some districts have no specified time requirements for disclosure, using terms such as “as soon as reasonably possible” or “before the trial.”
- In twenty-two of the thirty districts with *Brady*-related provisions, the disclosure obligation is a continuing one, such that if additional evidence is discovered during the trial or after initial disclosure, the defendant must be notified and provided with the new evidence.

22. Memorandum from American College of Trial Lawyers to the Judicial Conference Advisory Committee on Federal Rules of Criminal Procedure (October 2003), at 2.

23. Memorandum from U.S. Department of Justice (Criminal Division) to Hon. Susan C. Bucklew, Chair, Judicial Conference Subcommittee on Rules 11 and 16 (April 26, 2004), at 2.

- Of the thirty districts with policies governing *Brady* material, five have specific due diligence requirements for prosecutors. One district has a certificate of compliance requirement only. The remaining twenty-four districts do not appear to have due diligence requirements.
- None of the districts specify sanctions for nondisclosure by prosecutors, leaving any sanction determination to the discretion of the court.
- Three of the thirty districts that reference *Brady* have declination procedures for disclosure of specific types of information.

2. *Relevant authorities identified in the state courts*

- All fifty states and the District of Columbia have a rule or other type of authority, including statutes, concerning the prosecutor's obligation to disclose information favorable to the defendant.
- Many of the states have enacted rules similar to Federal Rule of Criminal Procedure 16; however, some of these rules and statutes vary in their details. Some states go beyond the scope of Rule 16 and the *Brady* constitutional obligations by explicitly setting time limits on disclosure; other states have adopted Rule 16 almost verbatim, using language like "evidence material to the preparation of the defense" and "evidence favorable to the defendant."
- Most states' rules impose a continuing disclosure obligation, such that if additional evidence is discovered during the trial or after initial disclosure, the defendant must be promptly notified and shown such new evidence.
- A few states have a specific due diligence obligation that requires prosecutors to submit a "certificate of compliance" indicating that they have exercised due diligence in locating favorable evidence and that, to the best of their knowledge and belief, all such information has been disclosed to the defense.
- All of the states authorize sanctions for prosecutors' failure to comply with discovery obligations and other state-court-mandated disclosure requirements. A few states permit a trial court to dismiss charges entirely as a sanction for prosecutorial misconduct, while other states have held dismissal to be too severe a sanction.

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II. U.S. District Court Policies for the Treatment of *Brady* Material

In this section, we describe federal local court rules, orders, and procedures in the thirty responding districts that codify the *Brady* rule, define *Brady* material and/or set the timing and conditions for disclosure of *Brady* material. In addition, we discuss due diligence obligations of the government and specific sanctions for the government's failure to comply with disclosure procedures.

A. Research Methods

Because of the short time we had to complete our research, we were unable to survey each district court about compliance with its *Brady* practices, that is, the degree to which the court's rules and other policies describe what actually occurs in the district. To obtain a comprehensive picture of such practices, we would need to survey U.S. attorneys, federal public defenders, and selected retained or appointed defense counsel in each of the ninety-four districts. Such a survey would be considerably more time-consuming than the research conducted for this report.

We searched the Westlaw RULES-ALL and ORDERS-ALL databases using the following search terms:

- "Brady v. Maryland" & ci(usdct!);
- "exculpatory" & ci(usdct!);
- "exculpatory evidence" & ci(usdct!); and
- "evidence favorable to the defendant" & ci(usdct!).

In addition, we reviewed paper copies of each district court's local rules. For twenty-two districts, these database and paper-copy searches yielded specific local rules and orders that relate to the *Brady* decision or that set forth guidance to the government regarding disclosure of *Brady* material. For the seventy-two (94 minus 22) districts for which our searches did not yield a relevant local rule or order, we contacted the clerks of court to request their assistance in locating any local rules, orders, or procedures relating to the application of the *Brady* decision. Through this effort, we identified eight additional districts (for a total of thirty) that clearly refer to *Brady* material in their local rules, orders, or procedures.

We also received responses from another eight districts that do not clearly refer to *Brady* material, but that provided summary information about their disclosure policies.²⁴ Some districts responded with statements such as "We have not promulgated any local rule and/or general order referencing *Brady* material." Others stated, "We have not adopted any formal standards or rules that provide guidance to prosecutors on discharging *Brady* obligations." And a few districts

24. These districts were M.D. La., N.D. Miss., E.D. Mo., W.D.N.Y., N.D. Ohio, M.D. Pa., D.S.C., and D.V.I.

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reported, "We follow Federal Rule of Criminal Procedure 16." In most instances, these districts did not provide any other information regarding how *Brady* material disclosures operated in their districts.

The thirty districts that have local rules, orders, and procedures specifically addressing *Brady* material served as the basis for the federal courts section of our analysis. We reviewed and analyzed each of the thirty districts' rules, orders, and published procedures to determine

- the types of information defined as *Brady* material;
- whether the material is disclosed automatically or only upon request;
- the timing of disclosure;
- whether the parties had a continuing duty to disclose;
- whether the parties had a due diligence requirement; and
- whether there are specific provisions authorizing sanctions for failure to disclose *Brady* material.

We also noted whether the districts had declination procedures.

B. Governing Rules, Orders, and Procedures

We found references to *Brady* material in various documents, including local rules, orders (including standing orders and standard discovery, arraignment, scheduling, and pretrial orders), and supplementary materials such as joint statements of discovery and checklists (including disclosure agreement checklists).

Provisions for obligations to disclose *Brady* material are contained in the documents listed in Table 1.²⁵ We were unable to find information on each of the variables discussed here for all districts. Consequently, this is not a comprehensive description of each of the thirty districts' procedures.

C. Definition of *Brady* Material

Most disclosure rules, orders, and procedures in the thirty districts that address the *Brady* decision define *Brady* material in one of two ways: as evidence favorable to the defendant (18 districts),²⁶ or as exculpatory evidence (9 districts).²⁷ One

25. Two of the thirty districts (W.D. Okla., D. Vt.) address *Brady*-material disclosure in more than one document.

26. M.D. Ala. Standing Order on Criminal Discovery § (1)(B); S.D. Ala. L.R. 16.13(b)(1)); N.D. Cal. Crim. L.R. 17.1-1(b)(3); D. Conn. L. Crim. R. App. Standing Order on Discovery § (A)(11); N.D. Fla. L.R. 26.3(D)(1); S.D. Fla. L.R. Gen. Rule 88.10; M.D. Ga. Standard Pretrial Order; S.D. Ga. L. Crim. R. 16.1(f); D. Idaho Crim. Proc. Order §§ I(5) & (I)5(a); W.D. Mo. Scheduling and Trial Order § VI.A.; D. Nev. Joint Discovery Statement § II; W.D. Okla. App. 5, § 5; W.D. Pa. L. Crim. R. 16.1(F); E.D. Tenn. Discovery and Scheduling Order (sample); M.D. Tenn. L.R. 10(a)(2)(d); D. Vt. L. Crim. R. 16.1(a)(2); W.D. Wash. Crim. R. 16(a)(1)(K); and S.D. W. Va. Arraignment Order and Standard Discovery Requests § (3)(1)(H)).

27. S.D. Ind. Notification of Assigned Judge, Automatic Not Guilty Plea, Trial Date, Discovery Order, and Other Matters § VII(a)(1)(h); D. Mass. Crim. R. 116.02(A); D.N.H. L. Crim. R.

district (Western District of Kentucky) refers to the material by case name (“*Brady* material”) but does not define it further—for example, the terms “evidence favorable to the defendant” or “exculpatory evidence” do not appear in the order.²⁸ Finally, two districts (Northern District of Georgia²⁹ and Northern District of New York³⁰) use both terms, “evidence favorable to the defendant” and “exculpatory evidence,” to define *Brady* material.

Table 1. District Court Documents That Reference *Brady* Material

Documents	Number of Districts	Districts
Local rules	16	S.D. Ala., N.D. Cal., N.D. Fla., S.D. Fla., S.D. Ga., D. Mass., D.N.H., D.N.M., N.D.N.Y., E.D.N.C., W.D. Okla., W.D. Pa., D.R.I., M.D. Tenn., W.D. Wash., E.D. Wis.
Standard orders	3	M.D. Ga., S.D. Ind., D. Vt.
Standing orders	2	M.D. Ala., D. Conn.
Procedural orders	1	D. Idaho
Arraignment orders & standard discovery requests	1	S.D. W.Va.
Arraignment orders & reciprocal orders of discovery	1	W.D. Ky.
Joint discovery statements	2	D. Nev., W.D. Okla.
Discovery & scheduling orders	1	E.D. Tenn.
Scheduling orders	1	W.D. Mo.
Magistrate judges’ pretrial orders	1	N.D. Ga.
Criminal pretrial orders	1	D. Vt.
Criminal progression orders	1	D. Neb.
Model checklists	1	W.D. Tex.

16.1(c); D.N.M. L.R.-Crim. R. 16.1; E.D.N.C. L. Crim. R. 16.1(b)(6); D.R.I. R. 12(e); W.D. Tex. Crim. R. 16 (Model Checklist); N.D. W. Va. L.R. Crim. P. 16.05; and E.D. Wis. Crim. L.R. 16.1(b) & (c).

28. W.D. Ky. Arraignment Order & Reciprocal Order of Discovery § (4)(V).

29. N.D. Ga. Magistrate Judge’s Pretrial Order § IV(B).

30. N.D.N.Y. L.R. Crim. P. 14.1(b)(2) (“favorable to the defendant”), and N.D.N.Y. L.R. Crim. P. 17.1.1(c) (“exculpatory and other evidence”).

1. Evidence favorable to the defendant

The most common definition of “evidence favorable to the defendant,” found in ten of the eighteen districts that use the term, defines *Brady* material as any material or information that may be favorable to the defendant on the issues of guilt or punishment and that is within the scope (or meaning) of *Brady*.³¹ Three of the ten districts add the qualifier “without regard to materiality.”³²

2. Exculpatory evidence or material

Nine districts refer to *Brady* material as exculpatory in nature.³³ Seven of these use the terms “exculpatory evidence” or “exculpatory material.”³⁴ An eighth district, Rhode Island, refers to “material or information, which tends to negate the guilt of the accused or to reduce his punishment for the offense charged.”³⁵ Finally, the ninth district, New Mexico, specifically provides for an assessment of the material where there is disagreement among the parties: “if a question exists of the exculpatory nature of material sought under *Brady*, it will be made available for in camera inspection at the earliest possible time.”³⁶

Of these nine districts, Massachusetts has the most detailed and expansive rule dealing with *Brady* material and exculpatory evidence. It defines exculpatory evidence as follows:

- Information that would tend directly to negate the defendant’s guilt concerning any count in the indictment or information.
- Information that would cast doubt on the admissibility of evidence that the government anticipates offering in its case-in-chief and that could be subject to a motion to suppress or exclude, which would, if allowed, be appealable under 18 U.S.C. § 3731.

31. M.D. Ala. Standing Order on Criminal Discovery § (1)(B); S.D. Ala. L.R. 16.13(b)(1)); D. Conn. L. Crim. R. App. Standing Order on Discovery § (A)(11); N.D. Fla. L.R. 26.3(D)(1); S.D. Fla. L.R. Gen. Rule 88.10; W.D. Mo. Scheduling and Trial Order § VI.A.; E.D. Tenn. Discovery and Scheduling Order (sample); M.D. Tenn. Rule 10(a)(2)(d); D. Vt. L. Crim. R. 16.1(a)(2); and W.D. Wash. Crim. R. 16(a)(1)(K).

32. M.D. Ala. Standing Order on Criminal Discovery § (1)(B); S.D. Ala. L.R. 16.13(b)(1)); and N.D. Fla. L.R. 26.3(D)(1).

33. S.D. Ind. Notification of Assigned Judge, Automatic Not Guilty Plea, Trial Date, Discovery Order, and Other Matters § VII(a)(1)(h); D. Mass. Crim. R. 116.02(A); D.N.H. L. Crim. R. 16.1(c); D.N.M. L.R.-Crim. R. 16.1; E.D.N.C. L. Crim. R. 16.1(b)(6); D.R.I. R. 12(e); W.D. Tex. Crim. R. 16 (Model Checklist); N.D. W. Va. L.R. Crim. P. 16.05; and E.D. Wis. Crim. L.R. 16.1(b) & (c).

34. S.D. Ind. Notification of Assigned Judge, Automatic Not Guilty Plea, Trial Date, Discovery Order, and Other Matters § VII(a)(1)(h); D. Mass. Crim. R. 116.02(A); D.N.H. L. Crim. R. 16.1(c); E.D.N.C. L. Crim. R. 16.1(b)(6); W.D. Tex. Crim. R. 16 (Model Checklist); N.D. W. Va. L.R. Crim. P. 16.05; and E.D. Wis. Crim. L.R. 16.1(b) & (c).

35. D.R.I. R. 12(e).

36. D.N.M. Crim. R. 16.1.

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- A statement whether any promise, reward, or inducement has been given to any witness whom the government anticipates calling in its case-in-chief, identifying by name each such witness and each promise, reward, or inducement, and a copy of any promise, reward, or inducement reduced to writing.
- A copy of any criminal record of any witness identified by name whom the government anticipates calling in its case-in-chief.
- A written description of any criminal cases pending against any witness identified by name whom the government anticipates calling in its case-in-chief.
- A written description of the failure of any percipient witness identified by name to make a positive identification of a defendant, if any identification procedure has been held with such a witness with respect to the crime at issue.
- Any information that tends to cast doubt on the credibility or accuracy of any witness whom or evidence that the government anticipates calling or offering in its case-in-chief.
- Any inconsistent statement, or a description of such a statement, made orally or in writing by any witness whom the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant.
- Any statement, or a description of such a statement, made orally or in writing by any person, that is inconsistent with any statement made orally or in writing by any witness the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant.
- Information reflecting bias or prejudice against the defendant by any witness whom the government anticipates calling in its case-in-chief.
- A written description of any prosecutable federal offense known by the government to have been committed by any witness whom the government anticipates calling in its case-in-chief.
- A written description of any conduct that may be admissible under Fed. R. Evid. 608(b) known by the government to have been committed by a witness whom the government anticipates calling in its case-in-chief.
- Information known to the government of any mental or physical impairment of any witness whom the government anticipates calling in its case-in-chief, that may cast doubt on the ability of that witness to testify accurately or truthfully at trial as to any relevant event.
- Exculpatory information regarding any witness or evidence that the government intends to offer in rebuttal.
- A written summary of any information in the government's possession that tends to diminish the degree of the defendant's culpability or the defendant's Offense Level under the United States Sentencing Guidelines.³⁷

37. D. Mass. L.R. 116.2(B).

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D. Disclosure Requirements

Twenty-one districts mandate automatic disclosure of *Brady* material.³⁸ One, the Middle District of Georgia, has a caveat—the government need not furnish the defendant with *Brady* information that the defendant has obtained, or with reasonable diligence, could obtain himself or herself.³⁹ New Mexico mandates “discussion” of disclosure, and says that in camera inspection may be needed.⁴⁰

Five districts dictate that the government provide *Brady* material only upon request of the defendant.⁴¹ The Northern District of California adds qualifying language that requires that the parties address the issue “if pertinent to the case,” and in their pretrial conference statement “if a conference is held.”⁴² Three districts⁴³ do not mention this issue in their local rules or orders.

Only one district specifically addresses the disposition of the information or evidence once the case has been resolved. The Middle District of Tennessee requires that the information or evidence be returned to the “government or destroyed following the completion of the trial, sentencing of the defendant, or completion of the direct appellate process, whichever occurs last.”⁴⁴ A party who destroys materials must certify the destruction by letter to the government.

38. M.D. Ala. Standing Order on Criminal Discovery § (1)(B); S.D. Ala. L.R. 16.13(b)(1); D. Conn. L. Crim. R. App. Standing Order on Discovery § (A)(11); N.D. Fla. L.R. 26.3(D)(1); S.D. Fla. L.R. Gen. Rule 88.10; M.D. Ga. Standard Pretrial Order; S.D. Ind. Notification of Assigned Judge, Automatic Not Guilty Pleas, Trial Date, Discovery Order and Other Matters § VII(a)(1)(H); D. Mass. Crim. R. 116.2(B); W.D. Mo. Scheduling and Trial Order § VI(A); D. Nev. Joint Discovery Statement § II; D.N.M. L.R.-Crim. R. 16.1; D.N.H. L. Crim. R. 16.1(c); N.D.N.Y. L.R. Crim. P. 14.1(b); W.D. Okla. L. Crim. R. 16.1(b) & App. V. Joint Statement of Discovery Conference § 5; W.D. Pa. L. Crim. R. 16.1(F); D.R.I. Rule 12(e)(A)(5); E.D. Tenn. Discovery & Scheduling Order; M.D. Tenn. L.R. 10(a)(2)(d); D. Vt. L. Crim. R. 16.1(a)(2); N.D. W. Va. L.R. Crim. P. 16.05; and E.D. Wis. Crim. L.R. 16.1(b).

39. M.D. Ga. Standard Pretrial Order, citing *United States v. Slocum*, 708 F.2d 587, 599 (11th Cir. 1983).

40. D.N.M. L.R.-Crim. R. 16.1.

41. N.D. Ga. Standard Magistrate Judge's Pretrial Order; S.D. Ga. L. Crim. R. 16.1(f); E.D.N.C. L. Crim. R. 16.1(b)(6); W.D. Wash. Crim. R. 16(a)(1)(K); and S.D. W. Va. Arraignment Order and Standard Discovery Request § III(1)(H).

42. N.D. Cal. Crim. L.R. 17.1-1(b).

43. D. Idaho, W.D. Ky., and W.D. Tex.

44. M.D. Tenn. R. 12(k).

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1. Time requirements for disclosure⁴⁵

The thirty districts vary significantly in their disclosure timetables. Some districts specify a time by which the prosecution must disclose *Brady* material, while other districts rely upon nonspecific terms such as "timely disclosure" or "as soon as practicable."

a. Specific time requirement

Twenty-five districts have mandated time limits (or specific events, such as hearings or pretrial conferences) for prosecutorial disclosure of *Brady* material (see Table 2).

Table 2. Districts with Time Requirements for Prosecutorial Disclosure of *Brady* Material

Time Requirement	Districts
At arraignment	M.D. Ala., ⁴⁶ S.D. Ala.
Within 5 days of arraignment	N.D. Fla., S.D. Ga., W.D. Pa., E.D. Wis.
Within 7 days of arraignment	D. Idaho, N.D. W. Va.
Within 10 days of arraignment	D. Conn., D.R.I., S.D. W. Va.
Within 14 days of arraignment	S.D. Fla., N.D.N.Y., M.D. Tenn., W.D. Tenn., W.D. Tex., D. Vt., W.D. Wash.
Within 28 days of arraignment	D. Mass.
At the discovery conference	W.D. Okla.
Within 10 days of the scheduling order	W.D. Mo.
Prior to the pretrial conference	N.D. Ga.
At the pretrial conference (PTC) (or address in the PTC statement or order)	N.D. Cal., E.D.N.C.
At least 20 days before trial	D.N.H.

45. It is well settled that the district court may order when *Brady* material is to be disclosed, *United States v. Starusko*, 729 F.2d 256 (3d Cir. 1984). Some decisions have held that the Jencks Act controls and that *Brady* material relating to a certain witness need not be disclosed until that witness has testified on direct examination at trial, *United States v. Bencs*, 28 F.3d 555 (6th Cir. 1994); *United States v. Jones*, 612 F.2d 453 (9th Cir. 1979); *United States v. Scott*, 524 F.2d 465 (5th Cir. 1975). Others have held that *Brady* material might be disclosed prior to trial, in order to afford the defendant the opportunity to make effective use of it during trial, *United States v. Perez*, 870 F.2d 1222 (7th Cir. 1989); *United States v. Campagnuolo*, 592 F.2d 852 (5th Cir. 1979); *United States v. Pollack*, 534 F.2d 964 (D.C. Cir. 1976).

46. "or on a date otherwise set by the Court for good cause shown." M.D. Ala. Standing Order on Criminal Discovery § 1.

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b. No specific time requirement

Four districts have nonspecific time requirements for disclosure, set out in local rules or in various court orders, or determined by case law.⁴⁷ The terms used for these time requirements include the following descriptions:

- “as soon as reasonably possible”;⁴⁸
- “before the trial”;⁴⁹
- “after defense counsel has entered an appearance”;⁵⁰ and
- “[t]iming of disclosure should be *described* in the District’s standard Arraignment Order/Reciprocal Order of Discovery.”⁵¹

Time requirements for disclosure for one district were not given.⁵²

2. Duration of disclosure requirements

Twenty-two of the thirty districts make the prosecutor’s disclosure obligation a continuing one, such that if additional evidence is discovered during the trial or after initial disclosure, the defendant must be notified and shown the new evidence.⁵³ A few districts use adjectives or modifiers to more clearly define how soon after discovery of new material the government must disclose it.⁵⁴ One dis-

47. In the Eastern District of Tennessee, timing of disclosure is governed by *U.S. v. Presser*, 844 F.2d 1275 (6th Cir. 1988), which addressed material that was arguably exempt from pretrial disclosure by the Jencks Act, yet also arguably exculpatory under the *Brady* rule. There, the material needed only to be disclosed to defendants “in time for use at trial.”

48. M.D. Ga. Standard Pretrial Order.

49. D. Nev. Joint Discovery Statement § II.

50. S.D. Ind. Notification of Assigned Judge, Automatic Not Guilty Plea, Trial Date, Discovery Order and Other Matters § VII(a)(1)(H).

51. W.D. Ky. Arraignment Order and Reciprocal Order of Discovery § V (emphasis added).

52. D.N.M.

53. M.D. Ala. Standing Order on Criminal Discovery; S.D. Ala. L.R. 16.13(c); D. Conn. L. Crim. R. App. Standing Order on Discovery § D; N.D. Fla. Crim. L.R. 26.3(G); S.D. Fla. L.R. Gen. R. 88.10; S.D. Ga. L. Crim. R. 16.1; D. Idaho Procedural Order § I(5); S.D. Ind. Notification of Assigned Judge, Automatic Not Guilty Plea, Trial Date, Discovery Order and Other Matters § VII(c); W.D. Mo. Scheduling and Trial Order § II; D.N.H. L. Crim. R. 16.2; D.N.M. L.R.-Crim. R. 16.1; N.D.N.Y. L.R. Crim. P. 14.1(f); E.D.N.C. L. Crim. R. 16.1(e); W.D. Okla. App. 5; E.D. Tenn. Discovery and Scheduling Order; M.D. Tenn. R. 10(a)(2); W.D. Tex. C.R. 16(b)(4); D. Vt. L. Crim. R. 16.1(e); W.D. Wash. Crim. R. 16(d); N.D. W. Va. L.R. Crim. P. 16.05; S.D. W. Va. Arraignment Order and Standard Discovery Request § III(4); and E.D. Wis. Crim. L.R. 16(b).

54. *E.g.*, “immediately” (D. Conn. L. Crim. R. App. Standing Order on Discovery § D; S.D. Fla. L.R. Gen. R. 88.10; N.D.N.Y. L.R. Crim. P. 14.1(f); M.D. Tenn. R. 10(a)(2); and N.D. W. Va. L.R. Crim. P. 16.05); “as soon as it is received” (S.D. W. Va. Arraignment Order and Standard Discovery Request § III(4)); “promptly” (S.D. Ind. Notification of Assigned Judge, Automatic Not Guilty Plea, Trial Date, Discovery Order and Other Matters § VII(c); W.D. Tex. C.R. 16(b)(4)); “expeditiously” (M.D. Ala. Standing Order on Criminal Discovery; S.D. Ala. L.R. 16.13(c); N.D.N.Y. L.R. Crim. P. 14.1(f)); and “by the speediest means available” (N.D. Fla. Crim. L.R. 26.3(G)).

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trict's local rule explicitly states that motions to enforce the continuing duty "should not be necessary."⁵⁵

E. Due Diligence Requirements

Five districts have specific "due diligence" requirements for prosecutors.⁵⁶ Two of these five districts⁵⁷ plus one additional district⁵⁸ require the government to sign and file a "certificate of compliance" (with *Brady* obligations) with discovery. In one of the five districts, failure to file the certificate of compliance along with a discovery or inspection motion "may result in summary denial of the motion or other sanctions within the discretion of the court."⁵⁹

While other districts do not use the term "due diligence" in their local rules, orders, or procedures, some make it clear that the government has the responsibility to identify and produce discoverable evidence and information. For example, the Western District of Missouri's rule regarding the government's responsibility for reviewing the case file for *Brady* (and *Giglio*) material says:

The government is advised that if any portion of the government's investigative file or that of any investigating agency is not made available to the defense for inspection, the Court will expect that trial counsel for the government or an attorney under trial counsel's immediate supervision who is familiar with the *Brady/Giglio* doctrine will have reviewed the applicable files for the purpose of ascertaining whether evidence favorable to the defense is contained in the file.⁶⁰

In addition, the Middle and Southern Districts of Alabama include a restriction on the delegation of the responsibility:

The identification and production of all discoverable information and evidence is the personal responsibility of the Assistant U.S. Attorney assigned to the action and may not be delegated without the express permission of the Court.⁶¹

F. Sanctions for Noncompliance with *Brady* Obligations

None of the thirty districts specify remedies for prosecutorial nondisclosure. All leave the determination of any sanctions to the discretion of the court.

One district, however, provides some guidance for judges dealing with the failure of the government to comply with *Brady/Giglio* obligations. The Uniform Procedural Order in the District of Idaho says:

55. D.N.M. Crim. R. 16.1.

56. D. Conn. L. Crim. R. App. Standing Order on Discovery § A; W.D. Mo. Scheduling and Trial Order § II; D. Nev. Joint Discovery Statement § II; D.N.H. L. Crim. R. 16.2; and W.D. Wash. Crim. R. 16(a).

57. W.D. Mo. and W.D. Wash.

58. D.N.M. *See* D.N.M. L.R.-Crim. R. 16.1. This rule does not use the term "due diligence."

59. W.D. Wash. Crim. R. 16(i).

60. W.D. Mo. Scheduling and Trial Order Note following §§ VI(A) & (B).

61. M.D. Ala. Standing Order on Criminal Discovery; S.D. Ala. L.R. 16.13(b)(2)(C). 000158

If the government has information in its possession at the time of the arraignment, but elects not to disclose this information until a later time in the proceedings, the court can consider this as one factor in determining whether the defendant can make effective use of the information at trial.⁶²

Most courts allow sanctions (generally based on Rule 16's authority) for both parties for general discovery abuses. These sanctions include exclusion of evidence at trial, a finding of contempt, granting of a continuance, and even dismissal of the indictment with prejudice. For example, the Northern District of Georgia's standard Magistrate Judge's Pretrial Order says:

Where reciprocal discovery is requested by the government, the attorney for the defendant shall personally advise the defendant of the request, the defendant's obligations thereto, and the possibility of sanctions, including exclusion of any such evidence from trial, for failure to comply with the Rule. *See* Fed. R. Crim. P. 16(b) and (d) (as amended December 1, 2002); L.Cr.R. 16.1 (N.D. Ga.).⁶³

The Southern District of Florida's Discovery Practices Handbook states that "[i]f a Court order is obtained compelling discovery, unexcused failure to provide a timely response is treated by the Court with the gravity it deserves; willful violation of a Court order is always serious and is treated as contempt."⁶⁴ The Northern District of West Virginia's local rule is even more sweeping:

If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with L.R. Crim. P. 16 [the general discovery rule], the Court may order such party to permit the discovery or inspection, grant a continuance or prohibit the party from introducing evidence not disclosed, or the Court may enter such order as it deems just under the circumstances up to and including the dismissal of the indictment with prejudice.⁶⁵

G. Declination Procedures

Three of the thirty districts specifically refer to declination procedures in their local rules or orders.⁶⁶ For example, the Southern District of Georgia's local rule says:

In the event the U.S. Attorney declines to furnish any such information described in this rule, he shall file such declination in writing specifying the types of disclosure

62. D. Idaho Uniform Procedural Order § I(5).

63. N.D. Ga. standard Magistrate Judge's Pretrial Order.

64. S.D. Fla. L.R. App. A. Discovery Practices Handbook § I.D(4) Sanctions. Note that the practices set forth in the handbook do not have the force of law, but are for the guidance of practitioners. The *Discovery Practices Handbook* was prepared by the Federal Courts Committee of the Dade County Bar Association and adopted as a published appendix to the Local General Rules.

65. N.D. W. Va. L.R. Crim. P. 16.11.

66. S.D. Ga. L. Crim. R. 16.1(g); D. Mass. L.R. 116.6(A); and W.D. Wash. Crim. R. 16(e).

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that are declined and the ground therefor. If defendant's attorney objects to such refusal, he shall move the Court for a hearing therein.⁶⁷

The District of Massachusetts has an even more detailed rule governing the declination of disclosure and protective orders, providing for challenges, sealed filings, and ex parte motions:

(A) Declination. If in the judgment of a party it would be detrimental to the interests of justice to make any of the disclosures required by these Local Rules, such disclosures may be declined, before or at the time that disclosure is due, and the opposing party advised in writing, with a copy filed in the Clerk's Office, of the specific matters on which disclosure is declined and the reasons for declining. If the opposing party seeks to challenge the declination, that party shall file a motion to compel that states the reasons why disclosure is sought. Upon the filing of such motion, except to the extent otherwise provided by law, the burden shall be on the party declining disclosure to demonstrate, by affidavit and supporting memorandum citing legal authority, why such disclosure should not be made. The declining party may file its submissions in support of declination under seal pursuant to L.R. 7.2 for the Court's in camera consideration. Unless otherwise ordered by the Court, a redacted version of each such submission shall be served on the moving party, which may reply.

(B) Ex Parte Motions for Protective Orders. This Local Rule does not preclude any party from moving under L.R. 7.2 and ex parte (i.e., without serving the opposing party) for leave to file an ex parte motion for a protective order with respect to any discovery matter. Nor does this Local Rule limit the Court's power to accept or reject an ex parte motion or to decide such a motion in any manner it deems appropriate.⁶⁸

Other districts have procedures for motions to deny, modify, restrict, or defer discovery or inspection.⁶⁹ The moving party has the burden to show cause why discovery should be limited.

67. S.D. Ga. L. Crim. R. 16.1(g). *See also* S.D. Ind. Notification of Assigned Judge, Automatic Not Guilty Plea, Trial Date, Discovery Order and Other Matters (standard order in criminal cases) § VII(d).

68. D. Mass. Crim. R. 116.6. The Western District of Washington has a similar but less detailed and expansive rule. W.D. Wash. Crim. R. 16(e).

69. *See, e.g.*, D. Conn. Standing Order on Discovery § F. The Middle District of Tennessee's standing order language is similar to Connecticut's; however, the Middle District of Tennessee's includes the following cautionary message: "It is expected by the Court, however, that counsel for both sides shall make every good faith effort to comply with the letter and spirit of this Rule." M.D. Tenn. R. 10(a)(2)(n).

III. State Court Policies for the Treatment of *Brady* Material

This section describes state court statutes, rules, orders, and procedures that codify the *Brady* rule or incorporate specific aspects of it, define *Brady* material and/or set the timing and conditions for its disclosure, impose any due diligence obligations on the government, and specify sanctions for the government's failure to comply with such disclosure procedures.

A. Research Methods

We identified within all fifty states and the District of Columbia the relevant statewide legal authority governing prosecutorial disclosure of information favorable to the defendant. We searched relevant databases in Westlaw and LEXIS, including state statutes, criminal procedure rules, state court rules governing criminal discovery, state constitutions, state court opinions, and state rules on professional conduct. For most states, we were able to locate a relevant state rule, order, or other legal authority when we used the following search terms in various combinations:

- "exculpatory evidence";
- "favorable evidence";
- "*Brady* material";
- "prosecution disclosure"; and
- "suppression of evidence."

If we were unable to locate a rule for a state, we reviewed state court opinions to determine if case law addressed or clarified the legal obligation regarding prosecutorial disclosure of information favorable to the defendant.

Our analyses and conclusions are based on our interpretation of the relevant authorities that we identified. We looked for relevant legal authority that contained clear and unequivocal language regarding the duty of the prosecutor to disclose information to the defense. Where we could not identify authority with clear language regarding the prosecution's disclosure obligation, we erred on the side of caution and noted the absence of a clear authority regarding the duty to disclose.

B. Governing Rules, Orders, and Procedures

All fifty states and the District of Columbia address the prosecutor's obligation to disclose information favorable to the defendant. Table 3 shows the sources of the relevant authority.

Table 3. Sources of Authority for Prosecutor's Obligation to Disclose Evidence Favorable to the Defendant

Authorities ⁷⁰	Number of States	States
Rules of Criminal Procedure or general court rules	35	Ala., Alaska, Ariz., Ark., Colo., Del., D.C., Fla., Idaho, Ill., Ind., Iowa, Ky., Me., Md., Mass., Mich., Minn., Miss., Mo., N.H., N.J., N.M., N.D., Ohio, Pa., R.I., S.C., Tenn., Utah, Vt., Va., Wash., W. Va., Wyo.
General statutes	14	Conn., Ga., Kan., La., Mont., Neb., Nev., N.Y., N.C., Okla., Or., S.D., Tex., Wis.
Penal code	2	Cal., Haw.

Some state supreme courts have found prosecutors' suppression of exculpatory evidence to violate the due process clauses of their constitutions. For example, in *State v. Hatfield*, the West Virginia Supreme Court held that "[a] prosecution that withholds evidence which if made available would tend to exculpate an accused by creating a reasonable doubt as to his guilt violates due process of law under Article III, Section 14 of the West Virginia Constitution."⁷¹ Another state, Nevada, explicitly notes in its criminal discovery procedure statute that "[t]he provisions of this section are not intended to affect any obligation placed upon the prosecuting attorney by the constitution of this state . . . to disclose exculpatory evidence to the defendant."⁷²

C. Definition of *Brady* Material

In thirty-three of the fifty-one jurisdictions, we found rules or procedures that codify the *Brady* rule. There are differences in the *Brady*-related definitions of materials covered.

1. Evidence favorable to the defendant

Although there is some variation in the specific language used to define *Brady* material,⁷³ twenty-three states⁷⁴ have adopted language generally resembling the

70. We identified several states that address the favorable evidence disclosure obligation in more than one source, e.g., in a statute as well as in a rule. We charted only the highest authority.

71. 286 S.E.2d 402, 411 (W. Va. 1982).

72. Nev. Rev. Stat. § 174.235(3) (2004).

73. See, e.g., Me. R. Crim. P. 16(a)(1)(C) ("any matter or information known to the attorney for the state which may not be known to the defendant and which tends to create a reasonable doubt of the defendant's guilt as to the offense charged.").

following: "any material or information which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the accused's punishment therefor."⁷⁵

2. *Exculpatory evidence or material*

Ten other states⁷⁶ expressly list exculpatory material as items of information that prosecutors are required to disclose. These states describe exculpatory material in two ways: as "exculpatory evidence"⁷⁷ or as "exculpatory material."⁷⁸

The remaining states do not appear to have any express language regarding *Brady* material, but case law in several of those states discusses the *Brady* obligation. For example, in *Potts v. State*, the Georgia Supreme Court held that the "[d]efendant . . . has the burden of showing that the evidence withheld from him so impaired his defense that he was denied a fair trial within the meaning of the *Brady* Rule."⁷⁹ The Supreme Court of Wyoming noted that although "[t]here is no general constitutional right to discovery in a criminal case. . . . [s]uppression of evidence favorable to an accused upon request violates due process where the evidence is material to guilt."⁸⁰ Other state courts have similarly invoked the *Brady* rule in their decisions.⁸¹

No state procedure expressly refers to impeaching evidence as material subject to disclosure requirements, but three states specify that prosecutors must turn over any information required to be produced under the Due Process Clause of the U.S. Constitution.⁸² Two states require disclosure pursuant to the *Brady* decision.⁸³ Despite this lack of express language, however, it appears that any state court

74. Ala., Ariz., Ark., Colo., Fla., Haw., Idaho, Ill., Ky., La., Me., Md., Minn., Mo., Mont., N.J., N.M., Ohio, Okla., Pa., Tex., Utah, and Wash.

75. Idaho Crim. R. 16(a).

76. Cal., Conn., Mass., Mich., Miss., Nev., N.H., Tenn., Vt., Wis.

77. See, e.g., Nev. Rev. Stat. § 174.235(3).

78. See, e.g., Cal. Penal Code § 1054.1(e).

79. 243 S.E.2d 510, 517 (Ga. 1978) (citation omitted).

80. *Dodge v. State*, 562 P.2d 303, 307 (Wyo. 1977) (citations omitted).

81. *Bui v. State*, 717 So. 2d 6, 27 (Ala. Crim. App. 1997) ("In order to prove a *Brady* violation, a defendant must show (1) that the prosecution suppressed evidence, (2) that the evidence was of a character favorable to his defense, and (3) that the evidence was material." (citation omitted)); *O'Neil v. State*, 691 A.2d 50, 54 (Del. 1997) ("[T]he [prosecution's] obligation to disclose exculpatory information is triggered by the defendant's request pursuant to Super. Ct. Crim. Rule 16 and is not limited to trial proceedings."); *Lomax v. Commonwealth*, 319 S.E.2d 763, 766 (Va. 1984) ("[T]he Commonwealth has a duty to disclose the [*Brady*] materials in sufficient time to afford an accused an opportunity to assess and develop the evidence for trial.").

82. See, e.g., Nev. Rev. Stat. § 174.235(3); N.M. Dist. Ct. R. Cr. P. 5-501(A)(6); N.Y. Consol. Law Serv. Crim. P. Law § 240.20(1)(h).

83. See, e.g., N.H. Super. Ct. R. 98(A)(2)(iv); Tenn. Crim. P. R. 16 (Advisory Commission Comments).

opinion that cites the *Brady* rule would include impeachment evidence as material that state prosecutors are constitutionally obliged to produce for defendants.⁸⁴

D. Disclosure Requirements

Five states⁸⁵ use the term “favorable” in describing evidence subject to the state disclosure obligation. However, these states limit the clause “evidence favorable to the accused” with a condition that such evidence be “material and relevant to the issue of guilt or punishment.”⁸⁶

Although *Brady* used “favorable” in describing the evidence required for prosecutorial disclosure,⁸⁷ Rule 16 does not expressly refer to “favorable evidence.” The rule permits a defendant in federal criminal cases to receive, upon request, documents and tangible objects within the possession of the government that “*are material to the preparation of the defendant’s defense* or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.”⁸⁸ In describing some of the items of evidence subject to the criminal discovery right, twenty-six states use language identical or substantially similar to the italicized language above.⁸⁹

1. Types of information required to be disclosed

All of the states,⁹⁰ require, at a minimum, disclosure of the types of evidence that Rule 16 permits to be disclosed before trial:

- written or recorded statements, admissions, or confessions made by the defendant;
- books, papers, documents, or tangible objects obtained from the defendant;

84. See *United States v. Bagley*, 473 U.S. 667, 676 (“Impeachment evidence, as well as exculpatory evidence, falls within the *Brady* rule.”).

85. La., N.M., Ohio, Okla., Pa.

86. See, e.g., Pa. R. Crim. P. 573 (B)(1)(a) (“The Commonwealth shall . . . permit the defendant’s attorney to inspect and copy or photograph . . . any evidence favorable to the accused that is material either to guilt or to punishment.”); La. Code Crim. P. Ann. art. 718 (“[O]n motion of the defendant, the court shall order the district attorney to permit or authorize the defendant to inspect, copy, examine . . . [evidence] favorable to the defendant and which [is] material and relevant to the issue of guilt or punishment.”).

87. 373 U.S. at 87 (“[S]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment.”).

88. Fed. R. Crim. P. 16(a)(1)(C) (emphasis added).

89. Ala., Conn., Del., D.C., Haw., Idaho, Ind., Iowa, Kan., Ky., Miss., Mo., Neb., N.D., Ohio, Pa., S.C., S.D., Tenn., Tex., Utah, Vt., Va., Wash., W. Va., Wyo.

90. Indiana is unique in that it does not contain a separate rule for criminal discovery and relies on civil trial procedural rules to govern criminal trials. See Ind. Crim. R. 21 (“The Indiana rules of trial and appellate procedure shall apply to all criminal proceedings.”) Therefore, Indiana does not provide a specific list of evidence subject to criminal discovery. Presumably, however, a criminal defendant in Indiana state court would be entitled to the basic items of evidence listed here.

- reports of experts in connection with results of any physical or mental examinations made of the defendant, and scientific tests or experiments made;
- records of the defendant's prior criminal convictions; and
- written lists of the names and addresses of persons having knowledge of relevant facts who may be called by the state as witnesses at trial.⁹¹

Some states, however, go beyond this basic list of information and specify other material for disclosure:

- any electronic surveillance of any conversations to which the defendant was a party;⁹²
- whether an investigative subpoena has been executed in the case;⁹³
- whether the case has involved an informant;⁹⁴
- whether a search warrant has been executed in connection with the case;⁹⁵
- transcripts of grand jury testimony relating to the case given by the defendant, or by a codefendant to be tried jointly;⁹⁶
- police, arrest, and crime or offense reports;⁹⁷
- felony convictions of any material witness whose credibility is likely to be critical to the outcome of the trial;⁹⁸
- all promises, rewards, or inducements made to witnesses the state intends to present at trial;⁹⁹
- DNA laboratory reports revealing a match to the defendant's DNA;¹⁰⁰
- expert witnesses whom the prosecution will call at the hearing or trial, the subject of their testimony, and any reports they have submitted to the prosecution;¹⁰¹
- any information that indicates entrapment of the defendant;¹⁰² and
- "any other evidence specifically identified by the defendant, provided the defendant can additionally establish that its disclosure would be in the interests of justice."¹⁰³

91. See, e.g., Conn. Gen. Stat. § 54-86(a) (2003); Idaho Crim. Rule 16(a).

92. Mont. Code Ann. § 415-15-322 (2)(a).

93. Mont. Code Ann. § 415-15-322 (2)(b).

94. Mont. Code Ann. § 415-15-322 (2)(c).

95. Ariz. St. RCRP R. 15.1(b)(10).

96. N.Y. Consol. Law Serv. Crim. P. Law § 240.20(1)(b).

97. Colo. Crim. P. Rule 16 (a)(I).

98. Cal. Penal Code § 1054.1(d).

99. Mass. Crim. P. R. 14(1)(A)(ix) (as amended, effective Sept. 7, 2004).

100. N.C. Gen. Stat. § 15A-903(g).

101. Wash. Super. Ct. Crim. R. 4.7(a)(2)(ii).

102. Wash. Super. Ct. Crim. R. 4.7(a)(2)(iii).

103. Pa. R. Crim. P. 573(B)(2)(a)(iv).

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Most states provide that this “favorable” evidence *may* be disclosed to the defendant upon request or at the discretion of the court. Other states require that evidence beyond the scope of *Brady* material *must* be disclosed even without a request or court order.

2. *Mandatory disclosure without request*

Thirteen states¹⁰⁴ require mandatory disclosure of information “favorable” to the defense, regardless of whether the defendant made a specific discovery request for the material. We determined that this disclosure is mandatory because of the use of the phrase “prosecutor *shall* disclose,” and the lack of any conditional clause such as “upon defendant’s request,” or “at the court’s discretion.” For example, Massachusetts describes as being “mandatory discovery for the defendant” the following items of evidence:

- (i) Any written or recorded statements, and the substance of any oral statements, made by the defendant or a co-defendant.
- (ii) The grand jury minutes, and the written or recorded statements of a person who has testified before a grand jury.
- (iii) Any facts of an exculpatory nature.
- (iv) The names, addresses, and dates of birth of the Commonwealth’s prospective witnesses other than law enforcement witnesses
- (v) The names and business addresses of prospective law enforcement witnesses.
- (vi) Intended expert opinion evidence, other than evidence that pertains to the defendant’s criminal responsibility
- (vii) Material and relevant police reports, photographs, tangible objects, all intended exhibits, reports of physical examinations of any person or of scientific tests or experiments, and statements of persons the Commonwealth intends to call as witnesses.
- (viii) A summary of identification procedures, and all statements made in the presence of or by an identifying witness that are relevant to the issue of identity or to the fairness or accuracy of the identification procedures.
- (ix) Disclosure of all promises, rewards or inducements made to witnesses the Commonwealth intends to present at trial.¹⁰⁵

In contrast, Hawaii requires disclosure of evidence favorable to the defendant only if the defendant is charged with a felony.¹⁰⁶ In cases other than felonies, Hawaii permits a state court, at its discretion, to require disclosure of favorable evidence “[u]pon a showing of materiality and if the request is reasonable.”¹⁰⁷

Of the thirteen states that require disclosure of favorable evidence, three distinguish between information that is subject to mandatory disclosure and other

104. Alaska, Ariz., Cal., Colo., Fla., Haw., Me., Md., Mass., N.H., N.M., Or., Wash.

105. Mass. Crim. P. Rule 14 (as amended, effective Sept. 7, 2004).

106. Haw. R. Penal P. 16(a) (“[D]iscovery under this rule may be obtained in and is limited to cases in which the defendant is charged with a felony.”)

107. Haw. R. Penal P. 16(d).

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evidence that must be specifically requested by the defendant or ordered by the court. Maine requires prosecutors to disclose the following items:

1. Statements obtained as a result of a search and seizure, statements resulting from any confession or admission made by the defendant, statements relating to a lineup or voice identification of the defendant.
2. Any written or recorded statements made by the defendant.
3. Any statement that tends to create a reasonable doubt of the defendant's guilt as to the offense charged.¹⁰⁸

Maine requires the defendant to make a written request to compel the disclosure of books, papers, documents, tangible objects, reports of experts made in connection with the case, and names and addresses of the witnesses whom the state intends to call in any proceeding.¹⁰⁹

The other two states that distinguish between items of evidence that are subject to mandatory disclosure are Maryland¹¹⁰ and Washington.¹¹¹

3. Disclosure upon request of defendant

Thirty-eight states¹¹² require a defendant to request favorable information, sometimes in writing, before the prosecution's obligation to disclose is triggered.

Ten states¹¹³ place an additional condition on the defense:

- the defendant must make "a showing [to the court] that the items sought may be material to the preparation of his defense and that the request is reasonable,"¹¹⁴ or
- the defendant must show "good cause" for discovery of such information.¹¹⁵

It appears that these ten states permit disclosure of certain favorable evidence only at the discretion of the trial court, and only if the court finds that the defendant has met the burden of proof in making the discovery request.

4. Time requirements for disclosure

States vary considerably in their time requirements for disclosure of *Brady* material. Some specify a time by which the prosecution must disclose favorable information, while others rely upon undefined terms such as "timely disclosure" or "as

108. Me. R. Crim. P. 16(a)(1)(A)-(C).

109. Me. R. Crim. P. 16(b).

110. Md. Rule 4-263.

111. Wash. Super. Ct. Crim. R. 4.7.

112. Ala., Ark., Conn., Del., D.C., Ga., Idaho, Ill., Ind., Iowa, Kan., Ky., La., Mich., Minn., Miss., Mo., Mont., Neb., Nev., N.J., N.Y., N.C., N.D., Ohio, Okla., Pa., R.I., S.C., S.D., Tenn., Tex., Utah, Vt., Va., W. Va., Wis., Wyo.

113. Conn., Idaho, Ind., Minn., Mo., Neb., Pa., Tex., Va., Wash.

114. Conn. Gen. Stat. § 54-86(a).

115. Tex. Code Crim. Proc. art. 39.14 (2004).

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soon as practicable.” Ten states¹¹⁶ have established two separate time limits—one for the period within which the defendant must file a discovery request for favorable information and another for the period within which the prosecution must disclose the information.¹¹⁷

For a small number of states,¹¹⁸ we were unable to determine a specific timetable for disclosure of *Brady* material. Nonetheless, it is probable that these states impose a “timely” disclosure requirement that would not prejudice the defendant’s right to a fair trial.

a. Specific time requirement

Twenty-eight states¹¹⁹ have mandated specific time limits for prosecutorial disclosure of evidence favorable to the defendant. Table 4 summarizes these time requirements.

Table 4. States with Specific Time Limits for Prosecutorial Disclosure of Evidence Favorable to the Defendant

State	Authority	Time Requirement
Alabama	Ala. R. Cr. P. 16.1	Within 14 days after the request has been filed in court
Arizona	Ariz. St. R. Cr. P. 15.6(c)	Not later than 7 days prior to trial
California	Cal. Penal Code § 1054.7	Not later than 30 days prior to trial
Colorado	Colo. Cr. P. R. 16(b)	Not later than 20 days after filing of charges
Connecticut	Conn. Gen. Stat. § 54-86(c)	Not later than 30 days after defendant pleads not guilty
Delaware	Del. Super. Ct. Crim. R. 16(d)(3)(B)	Within 20 days after service of discovery request
Florida	Fla. R. Cr. P. 3.220(b)(1)	Within 15 days after service of discovery request
Georgia	Ga. Code Ann. § 17-16-4(a)(1)	Not later than 10 days prior to trial
Hawaii	Haw. R. Penal P. 16(e)(1)	Within 10 calendar days after arraignment and plea of the defendant

116. D.C., Idaho, Mo., Nev., N.Y., Ohio, Okla., R.I., Va., W. Va.

117. *See, e.g.*, Nev. Rev. Stat. § 174.285 (2004) (“A request . . . may be made only within 30 days after arraignment or at such reasonable later time as the court may permit. . . . A party shall comply with a request made . . . not less than 30 days before trial or at such reasonable later time as the court may permit.”).

118. D.C., Iowa, Pa., S.D., Tenn., Tex., and Wyo.

119. Ala., Ariz., Cal., Colo., Conn., Del., Fla., Ga., Haw., Idaho, Ind., Kan., Me., Md., Mass., Mich., Minn., Mo., Nev., N.H., N.J., N.M., N.Y., Ohio, Okla., R.I., S.C., Wash.

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State	Authority	Time Requirement
Idaho	Idaho Cr. R. 16 (e)(1)	Within 14 days after service of discovery request
Indiana	Ind. R. Trial P. 34(B)	Within 30 days after service of discovery request
Kansas	Kan. Stat. Ann. § 22-3212(f)	Within 20 days after arraignment
Maine	Me. R. Crim. P. 16(a)(3)	Within 10 days after arraignment
Maryland	Md. R. 4-263(e)	Within 25 days after appearance of counsel or first appearance of defendant before the court, whichever is earlier
Massachusetts	Mass. Crim. P. Rule 14(1)(A)	At or prior to the pretrial conference
Michigan	Mich. Ct. R. 6.201(F)	Within 7 days after service of discovery request
Minnesota	Minn. R. Crim. P. 9.03; Minn. Bd. of Judicial Stand. R. 9(e)	Within 60 days after service of discovery request; by the time of the omnibus hearing
Missouri	Mo. Sup. Ct. R. 25.02	Within 10 days after service of discovery request
Nevada	Nev. Rev. Stat. § 174.285	Not later than 30 days prior to trial
New Hampshire	N.H. Sup. Ct. R. 98(A)(2)	Within 30 days after defendant pleads not guilty
New Jersey	N.J. Ct. R. 3:13-3(b)	Not later than 28 days after the indictment
New Mexico	N.M. R. Crim. P. 5-501(A)	Within 10 days after arraignment
New York	N.Y. Consol. Law Serv. Crim. P. Law § 240.80(3)	Within 15 days after service of discovery request
Ohio	Ohio R. Crim. P. 16(F)	Within 21 days after arraignment or 7 days prior to trial, whichever is earlier
Oklahoma	Okla. Stat. § 2002(D)	Not later than 10 days prior to trial
Rhode Island	R.I. Super. R. Crim. P. 16(g)(1)	Within 15 days after service of discovery request
South Carolina	S.C. R. Crim. P. 5(a)(3)	Not later than 30 days after service of discovery request
Washington	Wash. Super. Ct. Crim. R. 4.7(a)(1)	No later than the omnibus hearing

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b. Nonspecific, descriptive time frame

Eighteen states¹²⁰ provide nonspecific, descriptive time requirements for disclosure of *Brady* material. The terms used for these general time frames include the following:

- “timely disclosure”;¹²¹
- “as soon as practicable”;¹²²
- “a reasonable time in advance of trial date”;¹²³
- “within a reasonable time”;¹²⁴
- “in time for the defendants to make effective use of the evidence”;¹²⁵
- “as soon as possible”;¹²⁶
- “as soon as reasonably possible”;¹²⁷ and
- “within a reasonable time before trial.”¹²⁸

State case law may provide guidance on whether a particular disclosure has satisfied the “timely” disclosure requirement. In general, however, the state courts have interpreted “timely” or “as soon as possible” to mean that the prosecution must disclose information favorable to the defendant “within a sufficient time for its effective use” by the defendant in preparation for his or her defense.¹²⁹ State courts that have ruled on the issue of timing of disclosures have emphasized that any disclosure must not constitute “unfair surprise” to the defendant and must not prejudice the defendant’s right to a fair trial.¹³⁰

120. Alaska, Ark., Ill., Ky., La., Me., Miss., Mont., Neb., N.C., N.D., Ohio, Or., Utah, Vt., Va., W. Va., Wis.

121. *See, e.g.*, Alaska R. Prof. Conduct 3.8(d); La. R. Prof. Conduct 3.8(d).

122. *See, e.g.*, Ark. R. Crim. P. 17.2(a); Ill. Sup. Ct. R. 412(d).

123. *See, e.g.*, Ky. R. Crim. P. 7.24(4).

124. *See, e.g.*, Me. R. Crim. P. 16(a).

125. *See, e.g.*, *State v. Taylor*, 472 S.E.2d 596, 607 (N.C. 1996) (“[D]ue process and *Brady* are satisfied by the disclosure of the evidence at trial, so long as disclosure is made in time for the defendants to make effective use of the evidence.” (citations omitted))

126. *See, e.g.*, Vt. R. Crim. P. 16(b).

127. *See, e.g.*, *State v. Hager*, 342 S.E.2d 281, 284 (W. Va. 1986) (“[W. Va. R. Crim. P.] 16 impliedly sanctions the use of newly discovered evidence at trial, so long as the evidence is disclosed to the defense as soon as reasonably possible.”)

128. *See, e.g.*, Wis. Stat. § 971.23(1).

129. *State v. Harris*, 680 N.W.2d 737, 754–55 (Wis. 2004) (“We hold that in order for evidence to be disclosed ‘within a reasonable time before trial’ . . . it must be disclosed within a sufficient time for its effective use. Were it otherwise, the State could withhold all *Brady* evidence until the day of trial in the hope that the defendant would plead guilty under the false assumption that no such evidence existed.”).

130. *State v. Golder*, 9 P.3d 635 (Mont. 2000) (defendant argued that the timing of the state’s formal disclosure of the two witnesses and the nature of their testimony constituted unfair surprise and jeopardized his right to a fair trial as assured under the Montana Constitution).

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E. Due Diligence Obligations

By various means each state imposes a continuing duty on the prosecutor to locate and disclose additional favorable information discovered throughout the course of a trial. Delaware's Superior Court Rule 16(c) is typical of the rules in most states with a due diligence obligation:

If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or that other party's attorney or the court of the existence of the additional evidence or material.¹³¹

Beyond this basic duty to supplement discovery of information, five states¹³² require prosecutors to certify, in writing, that they have exercised diligent, good faith efforts in locating all favorable information, and that what has been disclosed is accurate and complete to the best of their knowledge or belief. For example, Florida requires the following:

Every request for discovery or response . . . shall be signed by at least 1 attorney of record . . . [certifying] that . . . to the best of the signer's knowledge, information, or belief formed after a reasonable inquiry it is consistent with these rules and warranted by existing law . . .¹³³

Similarly, Massachusetts provides:

When a party has provided all discovery required by this rule or by court order, it shall file with the court a Certificate of Compliance. The certificate shall state that, to the best of its knowledge and after reasonable inquiry, the party has disclosed and made available all items subject to discovery other than reports of experts, and shall identify each item provided.¹³⁴

F. Sanctions for Noncompliance with *Brady* Obligations

All states provide remedies for prosecutorial nondisclosure that follow closely, if not explicitly mirror, Federal Rule of Criminal Procedure 16(d)(2), which states that a "court may order [the prosecution] to permit the discovery or inspection, grant a continuance, or prohibit [the prosecution] from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances."¹³⁵

In addition, eleven states¹³⁶ indicate that willful violations of a criminal discovery rule or court order requiring disclosure may subject the prosecution to other sanctions as the court deems appropriate. These sanctions "may include, but

131. Del. Super. Ct. R. 16(c).

132. Colo., Fla., Idaho, Mass., N.M.

133. Fla. R. Crim. P. 3.220(n)(3). *See also* Idaho Crim. R. 16(e) (Certificate of Service).

134. Mass. Crim. P. R. 14(a)(1)(E)(3) (as amended, effective Sept. 7, 2004).

135. Fed. R. Crim. P. 16(d)(2).

136. Ala., Ark., Fla., Haw., Ill., La., Minn., Mo., N.M., Vt., Wash.

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are not limited to, contempt proceedings against the attorney . . . as well as the assessment of costs incurred by the opposing party, when appropriate.”¹³⁷

At least one state, Idaho, expressly states that failure to comply with the time prescribed for disclosure “shall be grounds for the imposition of sanctions by the court.”¹³⁸ Other states probably also permit their courts to impose sanctions for failure to meet time requirements, as their rules provide remedies for failure to comply with *any* discovery rules, which can and often do include a time-limits provision.

At least three states¹³⁹ allow the court to order a dismissal as a possible sanction for particularly egregious violations of disclosure obligations. For example, Maine’s rules state the following:

If the attorney for the state fails to comply with this rule, the court on motion of the defendant or on its own motion may take appropriate action, which may include, but is not limited to, one or more of the following: requiring the attorney for the state to comply, granting the defendant additional time or a continuance . . . prohibiting the attorney for the state from introducing specified evidence and *dismissing charges with prejudice*.¹⁴⁰

However, three states¹⁴¹ regard dismissal to be too severe a sanction for non-disclosure. Louisiana’s Code of Criminal Procedure notes that for disclosure violations, their state courts may “enter such other order, *other than dismissal*, as may be appropriate.”¹⁴² Similarly, the Supreme Court of Pennsylvania found dismissal to be “too severe” a sanction for failure to disclose *Brady* material, and explained that the discretion of Pennsylvania trial courts “is not unfettered.”¹⁴³

137. Fla. R. Crim. P. 3.220(n)(2).

138. Idaho Crim. Rule 16(e)(2).

139. Conn., Me., N.C.

140. Me. R. Crim. P. 16(d) (emphasis added).

141. La., Tex., Pa.

142. La. Code Crim. P. Ann. art. 729.5(A) (emphasis added).

143. Commonwealth v. Burke, 781 A.2d 1136, 1143 (Pa. 2001) (“[O]ur research has revealed [no judicial precedents] that approve or require a discharge as a remedy for a discovery violation. In fact, the precedents cited by the trial court and appellant support the view that the discharge ordered here was too severe . . . [W]hile it is undoubtedly true that the trial court possesses some discretion in fashioning an appropriate remedy for a *Brady* violation, that discretion is not unfettered.”).

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TEST CLAIM CERTIFICATION

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- ☐ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages _____ to _____.
- ☒ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 14 to 14.
- ☒ Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5).* Pages 21 to 24.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to Government Code section 17553

- ☒ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to California Code of Regulations, title 2, section 1183.1(a)(1-5) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in section 1183.1(a)(1-5) of the Commission's regulations, and not by the representative.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. (Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.)

Matthew Vespi

Chief Financial Officer

Name of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Print or Type Title


Signature of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

2/22/2021
Date

000174

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 26, 2021, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued February 26, 2021**
- **Test Claim filed by the City of San Diego on December 31, 2020**
Sexual Assault Evidence Kits: Testing, 20-TC-01
Penal Code Section 680 as added by Statutes 2019, Chapter 588 (SB 22)
City of San Diego, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 26, 2021 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/26/21

Claim Number: 20-TC-01

Matter: Sexual Assault Evidence Kits: Testing

Claimant: City of San Diego

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Manny Alvarez Jr., Executive Director, *Commission on Peace Officer Standards and Training*
860 Stillwater Road, Suite 100, West Sacramento, CA 95605
Phone: (916) 227-3909
Manny.Alvarez@post.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Cindy Black, City Clerk, *City of St. Helena*
1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
ctzaopoulos@cityofsthenela.org

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Jim Grottkau, Bureau Chief, *Commission on Peace Officer Standards and Training*
Basic Training, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605
Phone: (916) 227-3909
Jim.Grottkau@post.ca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Jeffrey Jordon, Captain, *City of San Diego*
Claimant Representative
San Diego Police Department, 1401 Broadway, San Diego, CA 92101
Phone: (619) 756-5264
jjjordon@pd.sandiego.gov

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, *City of Newport Beach*
Revenue Division, 100 Civic Center Drive, Newport Beach, CA 90266
Phone: (949) 644-3199
jkessler@newportbeachca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Alison Leary, Deputy General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200
aleary@cacities.org

Fernando Lemus, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Amber Lozano, *Department of Justice*
Child Protection Program, Room H122, 4949 Broadway, Sacramento, CA 95820

Phone: (916) 227-3263
amber.lozano@doj.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Corrie Manning, Assistant General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200
cmanning@cacities.org

Brian Marvel, President, *Peace Officers Research Association of California (PORAC)*
4010 Truxel Road, Sacramento, CA 95834
Phone: (916) 928-3777
president@porac.org

Elizabeth McGinnis, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Elizabeth.McGinnis@csm.ca.gov

Jane McPherson, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
JmcPherson@oceansideca.org

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Debra Morton, Manager, Local Reimbursements Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-0256
DMorton@sco.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Theresa Schweitzer, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3140
tschweitzer@newportbeachca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Michelle Skaggs Lawrence, City Manager, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
citymanager@oceansideca.org

Joe Stephenshaw, Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Joe.Stephenshaw@sen.ca.gov

Brittany Thompson, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Brittany.Thompson@dof.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Matthew Vespi, Chief Financial Officer, *City of San Diego*

Claimant Contact

202 C Street, 9th Floor, San Diego, CA 92101

Phone: (619) 236-6218

mvespi@sandiego.gov

Renee Wellhouse, *David Wellhouse & Associates, Inc.*

3609 Bradshaw Road, H-382, Sacramento, CA 95927

Phone: (916) 797-4883

dwa-renee@surewest.net

Jeannine Willie, *California Department of Justice (D-01)*

Missing Persons DNA Program, 4949 Broadway, Room A132, Sacramento, CA 95820

Phone: (916) 227-5997

jeannine.willie@doj.ca.gov

Hasmik Yaghobyan, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-9653

hyaghobyan@auditor.lacounty.gov



Exhibit B

Gavin Newsom ■ Governor

915 L Street ■ Sacramento CA ■ 95814-3706 ■ www.dof.ca.gov

March 29, 2021

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RECEIVED
March 29, 2021
*Commission on
State Mandates*

Response to Test Claim 20-TC-01, Sexual Assault Evidence Kit Testing

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed Test Claim 20-TC-01 submitted to the Commission on State Mandates (Commission) by the City of San Diego (Claimant). The Claimant alleges there are state-mandated, reimbursable costs associated with Chapter 588, Statutes of 2019 (SB 22).

SB 22 amended Penal Code section 680 and requires law enforcement agencies to adhere to the following procedures within a specified timeframe for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:

- Penal Code section 680(c)(1)(A)—Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.
- Penal Code section 680(c)(1)(B)—Transport evidence from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.
- Penal Code section 680(c)(2)(A)—Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into the FBI's Combined DNA Index System (CODIS) as soon as practically possible, but no later than 120 days after initially receiving the evidence.
- Penal Code section 680(c)(2)(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.

Prior to the passage of SB 22, law enforcement agencies were encouraged but not required to complete these procedures within a specified timeframe. SB 22 changed the statutory language regarding these procedures and timelines from "should" to "shall". As a result of SB 22 compliance, the Claimant is seeking reimbursement for the costs allegedly incurred by the San Diego Police Department (SDPD). The Claimant is

seeking reimbursement for costs of the activities related to Penal Code sections 680(c)(2)(A) and 680(c)(2)(B). For these activities, SDPD alleges it incurred actual costs of \$116,139 in 2019-20 and will incur estimated costs of \$2,335,306 in 2020-21. The costs claimed by SDPD are related to outsourcing the testing of sexual assault evidence kits, department personnel, and lab consumables.

Outsourcing Costs

Prior to SB 22, SDPD had discretion over whether to submit and test the sexual assault evidence kits in its possession. Per SDPD, this caused a significant amount of kits to be untested. After the passage of SB 22, SDPD determined it had a backlog of 472 sexual assault evidence kits that needed to be tested because they were received after the statutory timeframe of January 1, 2016. SDPD outsourced the backlog to a private lab, Bode Technology, because the Claimant states SDPD did not have the staffing and capacity necessary to test these backlogged kits within its own lab. Penal Code sections 680(c)(2)(A) and 680(c)(2)(B) require the law enforcement agency to either process the sexual assault evidence kits in its own lab or transmit it to a different crime lab for processing. The Claimant states the costs to outsource the testing to the private lab were \$52,670 in 2019-20 and \$214,855 in 2020-21. SDPD will utilize its Citizens Option for Public Safety grant to offset the 2020-21 costs.

Department Personnel

The Claimant alleges SDPD incurred personnel costs of \$63,469 in 2019-20 and will incur personnel costs of \$2,264,535 in 2020-21 related to staffing increases and new workload activities to comply with SB 22. The claimed costs are for the following purposes:

DNA Technical Manager, costs of \$986 in 2019-20 and \$56,752 in 2020-21

SDPD's DNA Technical Manager is responsible for the technical specifications of the outsourcing contract and performs duties associated with receiving, analyzing data, filing, review of case work, and review of reports from Bode Technology. The Technical Manager also verifies and prepares any DNA profiles for upload into CODIS. The claimant alleges these are all new duties that are required to adhere to SB 22.

Police Investigative Service Officer, costs of \$62,483 in 2019-20 and \$124,996 in 2020-21

SDPD created an administrative position, a Police Investigative Service Officer, to serve as the program manager and handle administrative tasks associated with sexual assault evidence kit tracking, processing, and case management within the department's crime lab. The Claimant alleges the creation of this position was necessary to address the additional workload and testing timeframes required by Penal Code Section 680(c)(2)(A). The referenced statute neither requires this position to be created nor requires the administrative duties that are fulfilled by this position. This cost should not be considered for reimbursement.

Four New Criminalist positions, costs of \$876,678 in 2020-21

In addition to the backlogged kits that are being outsourced, SDPD estimates it will be required to test approximately 118 new cases a year in its own lab starting January 1, 2020. To meet the anticipated increase in testing volume, SDPD hired four criminalist positions. The Claimant alleges the four criminalist positions were required to

prevent a growing backlog of kits and to limit the risk of not meeting the 120 day turnaround time required by Penal Code Section 680(c)(2)(A).

Sex Crimes Cold Case Team, costs of \$1,206,109 in 2020-21

SDPD's Sex Crimes Cold Case team, composed of one sergeant and two detectives, had their investigative duties modified to focus on conducting the follow-up investigations that are related to new evidence being uncovered from the previously untested sexual assault evidence kits. The Claimant alleges the costs related to performing follow-up investigative work related to new evidence are driven by Penal Code section 680(c)(2)(B). The basis of this test claim are Penal Code sections 680(c)(2)(A) and 680(c)(2)(B); however, these sections are focused on the processing of sexual assault evidence kits and do not contain any requirements for investigative work related to new sexual assault evidence. The officers were already performing investigative work, so they are not providing a new or higher level of service by focusing on sex crime investigations. Therefore, these costs are beyond the scope of this test claim and should not be considered for reimbursement.

Lab Consumables

SDPD estimates the number of kits that are tested per year in its own crime lab will increase by 118 tests per year, which caused the department to increase its crime lab budget to procure more testing materials. The Claimant alleges this increase in cost is a result of the amended language in Penal Code Sections 680(c)(2)(A). The estimated cost for 2020-21 is \$70,800.

In summary, Finance contends that several of the activities the Claimant performed or intends to perform in regard to SB 22 are not required by that statute. The costs in the test claim related to these non-required activities are \$62,483 in 2019-20 and \$1,331,105 in 2020-21.

Sincerely,

Teresa Calvert

TERESA CALVERT
Program Budget Manager

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 30, 2021, I served the:

- **Department of Finance's Comments on the Test Claim filed March 29, 2021**

Sexual Assault Evidence Kits: Testing, 20-TC-01

Penal Code Section 680 as added by Statutes 2019, Chapter 588 (SB 22)

City of San Diego, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 30, 2021 at Sacramento, California.



Jill L. Magee

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/12/21

Claim Number: 20-TC-01

Matter: Sexual Assault Evidence Kits: Testing

Claimant: City of San Diego

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Manny Alvarez Jr., Executive Director, *Commission on Peace Officer Standards and Training*
860 Stillwater Road, Suite 100, West Sacramento, CA 95605
Phone: (916) 227-3909
Manny.Alvarez@post.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Cindy Black, City Clerk, *City of St. Helena*
1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
ctzaopoulos@cityofsthenela.org

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Jim Grottkau, Bureau Chief, *Commission on Peace Officer Standards and Training*
Basic Training, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605
Phone: (916) 227-3909
Jim.Grottkau@post.ca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Jeffrey Jordon, Captain, *City of San Diego*
Claimant Representative
San Diego Police Department, 1401 Broadway, San Diego, CA 92101
Phone: (619) 756-5264
jjjordon@pd.sandiego.gov

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, *City of Newport Beach*
Revenue Division, 100 Civic Center Drive, Newport Beach, CA 90266
Phone: (949) 644-3199
jkessler@newportbeachca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Alison Leary, Deputy General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200
aleary@cacities.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Amber Lozano, *Department of Justice*
Child Protection Program, Room H122, 4949 Broadway, Sacramento, CA 95820

Phone: (916) 227-3263
amber.lozano@doj.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Corrie Manning, Assistant General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200
cmanning@cacities.org

Brian Marvel, President, *Peace Officers Research Association of California (PORAC)*
4010 Truxel Road, Sacramento, CA 95834
Phone: (916) 928-3777
president@porac.org

Elizabeth McGinnis, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Elizabeth.McGinnis@csm.ca.gov

Jane McPherson, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
JmcPherson@oceansideca.org

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Debra Morton, Manager, Local Reimbursements Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-0256
DMorton@sco.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Theresa Schweitzer, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3140
tschweitzer@newportbeachca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Michelle Skaggs Lawrence, City Manager, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
citymanager@oceansideca.org

Joe Stephenshaw, Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Joe.Stephenshaw@sen.ca.gov

Brittany Thompson, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Brittany.Thompson@dof.ca.gov

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Matthew Vespi, Chief Financial Officer, *City of San Diego*

Claimant Contact

202 C Street, 9th Floor, San Diego, CA 92101

Phone: (619) 236-6218

mvespi@sandiego.gov

Renee Wellhouse, *David Wellhouse & Associates, Inc.*

3609 Bradshaw Road, H-382, Sacramento, CA 95927

Phone: (916) 797-4883

dwa-renee@surewest.net

Jeannine Willie, *California Department of Justice (D-01)*

Missing Persons DNA Program, 4949 Broadway, Room A132, Sacramento, CA 95820

Phone: (916) 227-5997

jeannine.willie@doj.ca.gov

Hasmik Yaghobyan, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-9653

hyaghobyan@auditor.lacounty.gov



THE CITY OF SAN DIEGO

Exhibit C

RECEIVED
May 7, 2021
**Commission on
State Mandates**

LATE FILING

May 7, 2021

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Claimant Response to Department of Finance March 29, 2021 Comments on Test Claim 20-TC-01,
Sexual Assault Evidence Kit Testing

Declaration of Captain Jeffrey Jordon, San Diego Police Department (SDPD)

Dear Ms. Halsey,

I, Jeffrey Jordon, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information and belief.

- 1) I am a police captain for the City of San Diego (SDPD). I have been employed by the City in this capacity since August, 2019 and have been a law enforcement officer since 1995. As part of my duties in the Chief's Office, I am responsible for implementation of "special projects" as determined by the Chief of Police, David Nisleit, and my duties include assisting with the recovery of costs mandated by the State.
- 2) On March 29, 2021, the Department of Finance (DOF) responded to the test claim filed by the City of San Diego, 20-TC-01, Sexual Assault Evidence Kit Testing. The DOF accurately described the bill and highlighted the lab and outsourcing costs, as well as costs for personnel described by claimant as being needed to comply with this alleged mandate.
- 3) While the DOF remained silent on lab outsourcing costs, the increased amounts of consumables or materials needed to test sexual assault evidence kits, and some personnel directly involved in the outsourcing and testing process, they did oppose the reimbursement of specific personnel described by claimant.
- 4) DOF states the mandate alleged by claimant in this Test Claim does not "contain any requirements for investigative work related to the new sexual assault evidence. The officers were already performing investigative work, so they are not providing a new or higher level of service by focusing on sex crime investigations. Therefore, these costs are beyond the scope of this test claim and should not be considered for reimbursement."

This DOF argument fails to address a critical issue. Specifically, but for the passage of SB 22 and the mandate by local agencies to process all sexual assault evidence kits received after January 1, 2016 per Penal Code Sections 680 (c)(2)(A) and 680(c)(2)(B), SDPD's Sex Crimes Cold Case team would not





THE CITY OF SAN DIEGO

exist. They were created because the evidence they are exclusively tasked to review would not have been tested without SB 22's passage and the penal codes it amended.

This means the claimant's Sex Crimes Cold Case team members could be assigned to other investigative tasks essential to claimants operations like investigations related to narcotics, robbery, or child abuse. Instead, they were assigned to perform new duties, associated with new evidence, that require a higher level of service that would not have been required without the passage of SB 22.

Additionally, it is clear the legislature intended that new evidence obtained from testing all sexual assault evidence kits would be investigated by law enforcement. As provided in Exhibit 1 from the Test Claim SB 22's author stated, "It is critically important that any DNA evidence left behind by the attacker is processed quickly so that law enforcement authorities can identify and prosecute rapists and we can put them behind bars-where they belong."

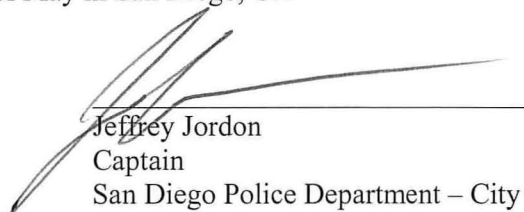
Regardless of the precise language found in SB 22, and the penal code sections it amended, it resulted in these outcomes: new evidence was produced and law enforcement had to be dedicated solely to investigate its impact on criminal investigations, and these new duties came with costs that are alleged to be legislatively mandated.

5) Similar to the Cold Case team and their newly assigned investigative duties, the Police Investigative Service Officer (PISO), and the costs associated with this position, were a direct result of SB 22 amending 680(c)(2)(A). Specifically, the hundreds of new sexual assault evidence kits that claimant was required to process under SB 22 did not happen in a vacuum. These kits have to be handled, tracked, and packaged for outsourcing, or prepared for testing within the lab if not outsourced. This position and associated duties was not needed prior to the passage of this alleged mandate, and much like sworn investigators, there is plenty of other work performed by PISOs that can be assigned if not for the new duties mandated by SB 22 and outlined in this Test Claim.

6) It is believed the City of San Diego, along with the San Diego Police Department, have satisfied the requirements for submitting a Test Claim and explained the relevancy of the costs detailed within the claim. I look forward to the Commission's consideration of this matter.

Except as otherwise indicated herein, I have personal knowledge of the foregoing facts and information presented in this Test Claim, and if so required, I could and would testify to the statements made herein.

Executed this 7th day of May in San Diego, CA


Jeffrey Jordon
Captain

San Diego Police Department – City of San Diego

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 10, 2021, I served the:

- **Claimant's Late Rebuttal Comments filed May 7, 2021**

Sexual Assault Evidence Kits: Testing, 20-TC-01

Penal Code Section 680 as added by Statutes 2019, Chapter 588 (SB 22)

City of San Diego, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 10, 2021 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/13/21

Claim Number: 20-TC-01

Matter: Sexual Assault Evidence Kits: Testing

Claimant: City of San Diego

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Manny Alvarez Jr., Executive Director, *Commission on Peace Officer Standards and Training*
860 Stillwater Road, Suite 100, West Sacramento, CA 95605
Phone: (916) 227-3909
Manny.Alvarez@post.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Cindy Black, City Clerk, *City of St. Helena*
1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
ctzaopoulos@cityofsthenela.org

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Jim Grottkau, Bureau Chief, *Commission on Peace Officer Standards and Training*
Basic Training, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605
Phone: (916) 227-3909
Jim.Grottkau@post.ca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
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AJoseph@sco.ca.gov

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2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
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Phone: (949) 644-3199
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1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200
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Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

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Phone: (916) 445-3274
erika.li@dof.ca.gov

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Phone: (916) 227-3263
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Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
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Phone: (916) 658-8200
cmanning@cacities.org

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4010 Truxel Road, Sacramento, CA 95834
Phone: (916) 928-3777
president@porac.org

Elizabeth McGinnis, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Elizabeth.McGinnis@csm.ca.gov

Jane McPherson, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
JmcPherson@oceansideca.org

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Debra Morton, Manager, Local Reimbursements Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-0256
DMorton@sco.ca.gov

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 628-6028
Marilyn.Munoz@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, Artiano Shinoff

2488 Historic Decatur Road, Suite 200, San Diego, CA 92106

Phone: (619) 232-3122

apalkowitz@as7law.com

Johnnie Pina, Legislative Policy Analyst, League of Cities

1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8214

jpina@cacities.org

Jai Prasad, County of San Bernardino

Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018

Phone: (909) 386-8854

jai.prasad@atc.sbcounty.gov

Theresa Schweitzer, City of Newport Beach

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3140

tschweitzer@newportbeachca.gov

Camille Shelton, Chief Legal Counsel, Commission on State Mandates

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

camille.shelton@csm.ca.gov

Carla Shelton, Commission on State Mandates

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, State Controller's Office

Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: 916-445-8717

NSidarous@sco.ca.gov

Michelle Skaggs Lawrence, City Manager, City of Oceanside

300 North Coast Highway, Oceanside, CA 92054

Phone: (760) 435-3055

citymanager@oceansideca.org

Joe Stephenshaw, Director, Senate Budget & Fiscal Review Committee

California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103

Joe.Stephenshaw@sen.ca.gov

Brittany Thompson, Budget Analyst, Department of Finance

Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

Brittany.Thompson@dof.ca.gov

Jolene Tollenaar, MGT Consulting Group

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 243-8913

jolenetollenaar@gmail.com

Evelyn Tseng, City of Newport Beach

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Matthew Vespi, Chief Financial Officer, *City of San Diego*
Claimant Contact
202 C Street, 9th Floor, San Diego, CA 92101
Phone: (619) 236-6218
mvespi@sandiego.gov

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jeannine Willie, *California Department of Justice (D-01)*
Missing Persons DNA Program, 4949 Broadway, Room A132, Sacramento, CA 95820
Phone: (916) 227-5997
jeannine.willie@doj.ca.gov

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov



May 20, 2021

Exhibit D

Mr. Kris Cook
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

Captain Jeffrey Jordon
City of San Diego
San Diego Police Department
1401 Broadway
San Diego, CA 92101

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Sexual Assault Evidence Kits: Testing, 20-TC-01
Penal Code Section 680 as added by Statutes 2019, Chapter 588 (SB 22)
City of San Diego, Claimant

Dear Mr. Cook and Captain Jordon:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on June 10, 2021**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

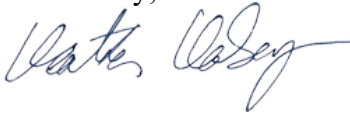
Hearing

This matter is set for hearing on **Friday, July 23, 2021** at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about July 9, 2021.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

Penal Code Section 680

Statutes 2019, Chapter 588 (SB 22)

Sexual Assault Evidence Kits: Testing

20-TC-01

City of San Diego, Claimant

EXECUTIVE SUMMARY

Overview

This Test Claim filed by the City of San Diego (claimant) alleges reimbursable state-mandated activities and costs arising from Penal Code section 680, amended by Statutes 2019, chapter 588 (SB 22), effective January 1, 2020. Penal Code section 680, known as the Sexual Assault Victims' DNA Bill of Rights, makes mandatory the previously encouraged processes and related time frames for DNA testing of sexual assault forensic evidence.

As described herein, staff finds that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 on county and city law enforcement agencies.

Procedural History

The claimant filed the Test Claim on December 31, 2020.¹ The Department of Finance (Finance) filed comments on the Test Claim on March 29, 2021.² The claimant filed late rebuttal comments on May 7, 2021.³ Commission staff issued the Draft Proposed Decision on May 20, 2021.⁴

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or

¹ Exhibit A, Test Claim, filed December 31, 2020, page 1.

² Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 1.

³ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 1.

⁴ Exhibit D, Draft Proposed Decision, issued May 20, 2021.

executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁵

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Was the Test Claim timely filed pursuant to Government Code section 17551 and California Code of Regulations, title 2, section 1183.1?	Government Code section 17551(c) states: “test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines 12 months as 365 days. ⁶	<i>Timely Filed</i> – The test claim statute became effective on January 1, 2020 and the Test Claim was filed December 31, 2020. Accordingly, the Test Claim was timely filed.
Does Penal Code section 680, as amended by Statutes 2019, chapter 588, impose a reimbursable state-mandated program?	Prior to the 2019 test claim statute, Penal Code section 680 encouraged, but did not require, law enforcement agencies in whose jurisdiction specified sex offenses occurred to either submit sexual assault forensic evidence to a crime lab or ensure that a rapid turnaround DNA program is in place. Law enforcement agencies, through their crime labs, were then encouraged, but not	<i>Approve</i> – the test claim statute requires city and county law enforcement agencies to perform the following mandated activities: 1. A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 288a occurred shall do one of the following for any sexual assault forensic evidence

⁵ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁶ California Code of Regulations, title 2, section 1183.1(c).

Issue	Description	Staff Recommendation
	<p>required, to either process the evidence for DNA or transmit it to another crime lab for processing, and to upload any qualifying DNA profiles into the Combined DNA Index System (CODIS). Penal Code section 680 specified the time limits within which each of these activities was recommended to be completed.</p> <p>Penal Code section 680, as amended by Statutes 2019, chapter 588, now requires law enforcement agencies to perform these activities within specified time limits.</p>	<p>received by the law enforcement agency on or after January 1, 2016:</p> <ul style="list-style-type: none"> • Submit sexual assault forensic evidence to the crime lab within 20 days after booking into evidence; <i>or</i> • Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. <p>2. For any sexual assault forensic evidence received by the crime lab on or after January 1, 2016, the law enforcement's crime lab shall do one of the following:</p> <ul style="list-style-type: none"> • 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 initial receipt; <i>or</i> • Transmit sexual assault forensic evidence to another crime lab for

Issue	Description	Staff Recommendation
		<p>DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120 days after the transmitting crime lab initially receives the evidence.</p> <p>All other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed and supported by evidence in the record by the claimant for inclusion in the Parameters and Guidelines pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5, <i>with the exception</i> of conducting follow-up investigations on evidence tested pursuant to the test claim statute, which is not a reimbursable activity.</p>

Staff Analysis

A. The Test Claim Was Timely Filed.

Government Code section 17551(c) requires that a test claim be filed “not later than 12 months after the effective date of the statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c)

of the Commission's regulations defines 12 months as 365 days.⁷ The test claim statute became effective on January 1, 2020.⁸ The Test Claim was filed on December 31, 2020, exactly 365 days after the test claim statute's effective date. Accordingly, the Test Claim was timely filed.

B. Penal Code Section 680(c)(1) and (2), as Amended by Statutes 2019, Chapter 588, Imposes a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution.

As described below, the Commission finds that Penal Code section 680(c)(1) and (2), as amended by the test claim statute (Stats. 2019, ch. 588), imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

1. Penal Code Section 680(c)(1) and (2), As Amended by the Test Claim Statute, Imposes a State-Mandated Program on County and City Law Enforcement Agencies.

- a. Penal Code section 680(c)(1) and (2) impose new requirements on law enforcement agencies to submit all sexual assault forensic evidence received on or after January 1, 2016 to a law enforcement crime lab for processing and uploading qualifying DNA into CODIS.

The plain language of Penal Code section 680(c)(1), as amended by Statutes 2019, chapter 588, now requires law enforcement agencies in whose jurisdiction a specified sex offense occurs to either submit all sexual assault forensic evidence received on or after January 1, 2016 to the crime lab, or ensure that a rapid turnaround DNA agreement is in place so that forensic evidence collected from the victim of a sexual assault is submitted directly from the medical facility where the victim is examined to the crime lab. The plain language of Penal Code section 680(c)(2), as amended by Statutes 2019, chapter 588, now requires crime labs to either conduct DNA testing of all sexual assault forensic evidence received on or after January 1, 2016, or transmit the evidence to another crime lab for processing, and to upload qualifying DNA profiles into CODIS, all within specified time limits. Prior to the test claim statute, these activities and the corresponding deadlines were encouraged, but not required.

While it is clear from the plain language of Penal Code section 680(c)(1) that law enforcement agencies in whose jurisdiction specified sex offenses occurred are required to submit the sexual assault forensic evidence to a crime lab, under subdivision (c)(2), "the crime lab" is required to process the sexual assault forensic evidence received from the law enforcement agency or medical facility (under the rapid turnaround DNA agreement) or transmit the evidence to another crime lab, and to upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence. Because it is not clear from the plain language of subdivision (c)(2) whether the overall duty to process the evidence and upload any qualifying DNA profiles to CODIS is ultimately the responsibility of "the crime lab" or the law enforcement agency, further interpretation is required.

Neither Penal Code section 680 as originally enacted nor its legislative history mention "crime lab." However, the legislative history of Penal Code section 680, when read in context with

⁷ California Code of Regulations, title 2, section 1183.1(c).

⁸ Statutes 2019, chapter 588.

other sections in the Penal Code, evidences an intent that the duties created by the Sexual Assault Victims' DNA Bill of Rights, including those in Penal Code section 680(c)(2), be imposed on law enforcement agencies only. The California Department of Justice (DOJ) has interpreted the test claim statute's requirements as being imposed on law enforcement agencies and *public* crime labs.⁹ This is consistent with Penal Code section 297, which specifies that only accredited state and local law enforcement crime labs are authorized to conduct DNA analysis on forensic evidence.¹⁰ While these public crime labs are authorized to contract with qualifying private labs to process evidence, the public crime labs have a duty to ensure that the DNA profiles are properly processed and comply with FBI standards for DNA.¹¹

Under the rules of statutory construction, it is presumed the Legislature has existing laws in mind when it enacts new statutes.¹² Thus, when the Legislature used the phrase "crime lab" in Penal Code section 680, and required the crime lab to process the sexual assault forensic evidence received from the law enforcement agency or medical facility or transmit the evidence to another crime lab, and to upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence, it was imposing the duty on the state and local law enforcement agencies.

This interpretation is consistent with the legislative history of the test claim statute. According to the Assembly Committee on Appropriations analysis, the purpose of Penal Code section 680 as originally enacted was to "give rape victims the ability to follow their own cases *so that they can urge law enforcement to test the evidence* and determine if the suspect can be located."¹³ In passing the Sexual Assault Victims' DNA Bill of Rights, the Legislature found and declared that "[l]aw 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."¹⁴

Importantly, in describing the legal remedies available to sexual assault victims for a violation of Penal Code section 680, the statute since its enactment has referred only to a law enforcement agency's duty to provide notice when failing to timely analyze DNA evidence or intending to destroy or dispose of sexual assault forensic evidence from an unsolved sexual assault case.¹⁵

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

⁹ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 1.

¹⁰ Penal Code section 297(a), last amended by Statutes 2006, chapter 170.

¹¹ Penal Code section 297(b), last amended by Statutes 2006, chapter 170.

¹² *Keeler v. Superior Court* (1970) 2 Cal.3d 619, 625; *Arthur Anderson v. Superior Court* (1998) 67 Cal.App.4th 1481, 1499.

¹³ Exhibit X, Assembly Committee on Appropriations, Analysis of AB 898 (2003-2004 Reg. Sess.), as introduced February 20, 2003, page 2, emphasis added.

¹⁴ Penal Code section 680(b)(4), as added by Statutes 2003, chapter 537, emphasis added.

¹⁵ Penal Code section 680(e), (f).

standing to file a writ of mandamus to require compliance with subdivision (e) or (f).¹⁶

By contrast, there is no separate remedy available to a sexual assault victim for a crime lab's failure to comply with the requirements of Penal Code section 680.

Taken as a whole, the duties imposed by Penal Code section 680(c)(1) and (2) are ultimately a law enforcement responsibility.

b. The test claim statute does not require law enforcement agencies to conduct follow-up investigations.

The claimant also seeks reimbursement for the cost of employing one police sergeant and two police detectives to conduct follow-up investigations on the previously untested and outsourced sexual assault evidence kits (SAEKs).¹⁷ These costs form the bulk of the claimant's total estimated costs for the 2020-2021 fiscal year.¹⁸ The claimant states that law enforcement officers are required to take any number of actions after receiving new evidence related to any criminal investigation, and therefore, conducting follow-up investigations on any new evidence resulting from the mandated DNA testing is necessary.¹⁹

Conducting investigations on new evidence resulting from the mandated testing requirement is not required by the plain language of the test claim statute. Investigation for future criminal charges and prosecution is within local district attorney and law enforcement existing duties and prosecutorial discretion, and is therefore not state-mandated.²⁰ Accordingly, conducting follow-up investigations is not required by the test claim statute and is, therefore, not eligible for reimbursement.

c. The test claim statute imposes a state-mandated program on counties and cities, but does not impose a state-mandated program on K-12 school districts or community college districts.

The plain language of the test claim statute imposes requirements on law enforcement agencies in whose jurisdiction specified sex offenses occur. On its face, this would include county and

¹⁶ Penal code section 680(k), emphasis added. This provision was originally contained in subdivision (j) and referenced subdivision (d) and (e), which were changed to (e) and (f) following renumbering. Statutes 2003, chapter 537.

¹⁷ Exhibit A, Test Claim, filed December 31, 2020, pages 13-14; Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, pages 1-2.

¹⁸ Exhibit A, Test Claim, filed December 31, 2020, page 23.

¹⁹ Exhibit A, Test Claim, filed December 31, 2020, pages 13-15.

²⁰ Government Code sections 26500, 26501; *Gananian v. Wagstaffe* (2011) 199 Cal.App.4th 1532, 1543 (Although codified by statute, the principle of prosecutorial discretion is rooted in the separation of powers and due process clauses of the California Constitution, and is basic to the state's criminal justice system); *People v. Eubanks* (1996) 14 Cal.4th 580, 589 (prosecutorial discretion extends from the investigation and gathering of evidence relating to criminal offenses, through the crucial decisions of whom to charge and what charges to bring).

city law enforcement agencies, as well as the law enforcement agencies of K-12 school districts and community college districts, as authorized by Education Code sections 38000 and 72330.²¹ California counties and cities “have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction.”²² However, because K-12 school districts and community college districts are permitted but not required by state law to have police departments and employ peace officers, they are not legally compelled to comply with the activities required by Penal Code section 680(c)(1) and (2).²³ Moreover, there is no evidence in the record that K-12 school districts or community college districts are practically compelled to have police departments.

Accordingly, staff finds that the test claim statute imposes a state-mandated program on counties and cities, but does not impose a state-mandated program on K-12 school districts and community college districts.

2. Penal Code section 680(c)(1) and (2), as Amended by the Test Claim Statute, Imposes a New Program or Higher Level of Service.

For the test claim statute to be subject to subvention pursuant to article XIII B, section 6 of the California Constitution, the statute must impose a new program or higher level of service. A new program or higher level of service is defined as a program that carries out the governmental function of providing services to the public, or, in implementing a state policy, imposes unique requirements on local government that do not apply generally to all residents and entities in the state.²⁴

The state-mandated activities are newly imposed on county and city law enforcement agencies and are unique to government. Providing police services and protection to the public is a core governmental function.²⁵ Moreover, the mandated activities relating to the testing of sexual

²¹ Education Code sections 38000 and 72330, authorize school districts and community college districts, respectively, to establish school police departments and employ peace officers.

²² *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367. Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that “It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force” Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d) A chief of police.”

²³ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

²⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57.

²⁵ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537 (Police protection is one “of the most essential and basic functions of local government.”); *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

assault forensic evidence provide a peculiarly governmental service to the public. Thus, staff finds that the test claim statute imposes a new program or higher level of service.

3. Penal Code Section 680(c)(1) and (2), As Amended by the Test Claim Statute, Results in Increased Costs Mandated by the State Within the Meaning of Article XIII B, Section 6 of the California Constitution and Government Code Section 17514.

Government Code section 17514 defines “costs mandated by the state” as any increased costs that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds \$1,000. In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

The claimant alleges that it has incurred increased costs of \$116,139 to comply with the mandated new program or higher level of service in fiscal year 2019-2020.²⁶ The claimant supports these assertions with documentary evidence.²⁷ The record contains sufficient evidence that the claimant’s costs to comply with the mandated new program or higher level of service for fiscal year 2019-2020 exceed \$1,000.

Additionally, no law or facts in the record support a finding that the exceptions specified in Government Code section 17556 apply to this claim. There are, however, several state and federal grant programs and other funding sources that can be used by a claimant to pay for the mandated activities in this program and for other criminal justice programs, which will be identified in the Parameters and Guidelines as potential offsetting revenues if the Commission approves this Test Claim.

Conclusion

Based on the forgoing analysis, staff recommends the Commission partially approve this Test Claim and find that Penal Code section 680(c), as amended by Statutes 2019, chapter 588, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, and requires city and county law enforcement agencies to perform the following mandated activities, beginning January 1, 2020:

1. A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 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 booked into evidence; *or*
 - b. Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit

²⁶ Exhibit A, Test Claim, filed December 31, 2020, page 16.

²⁷ Exhibit A, Test Claim, filed December 31, 2020, pages 21-24, 56-110.

sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. (Penal Code 680(c)(1), Stats. 2019, ch. 588.)

2. For any sexual assault forensic evidence received on or after January 1, 2016, the law enforcement's crime lab shall do one of the following:
 - a. Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt; *or*
 - b. Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120 days after the transmitting crime lab initially receives the evidence. (Penal Code 680(c)(2), Stats. 2019, ch. 588.)

Staff finds that all other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed and supported by evidence in the record by the claimant for inclusion in the Parameters and Guidelines pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5, *with the exception* of conducting follow-up investigations on evidence tested pursuant to the test claim statute, which staff finds is not a reimbursable activity.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to partially approve the Test Claim and authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM	Case No.: 20-TC-01
Penal Code Section 680	<i>Sexual Assault Evidence Kits: Testing</i>
Statutes 2019, Chapter 588 (SB 22)	DECISION PURSUANT TO
Filed on December 31, 2020	GOVERNMENT CODE SECTION 17500
City of San Diego, Claimant	ET SEQ.; CALIFORNIA CODE OF
	REGULATIONS, TITLE 2, DIVISION 2,
	CHAPTER 2.5, ARTICLE 7.
	<i>(Adopted July 23, 2021)</i>

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on July 23, 2021. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Spencer Walker, Representative of the State Treasurer	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	

Summary of the Findings

This Test Claim filed by the City of San Diego (claimant) alleges that reimbursement is required for state-mandated activities arising from Statutes 2019, chapter 588 (SB 22), which amended Penal Code section 680 to require law enforcement agencies to perform specified activities relating to DNA testing of sexual assault forensic evidence within specified time periods.

The Commission finds that effective January 1, 2020, Penal Code section 680(c)(1) and (2) (Stats. 2019, ch. 588) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on county and city law enforcement agencies, in whose jurisdiction specified sex offenses have occurred for the following activities:

1. A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 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 booked into evidence; *or*
 - b. Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. (Penal Code 680(c)(1), Stats. 2019, ch. 588.)
2. For any sexual assault forensic evidence received on or after January 1, 2016, the law enforcement's crime lab shall do one of the following:
 - a. Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt; *or*
 - b. Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120 days after the transmitting crime lab initially receives the evidence.²⁸ (Penal Code 680(c)(2), Stats. 2019, ch. 588.)

²⁸ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 3. The courts will give weight and appropriate deference to the interpretation of a statute by the agency charged with its implementation. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.)

The Commission finds that all other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed and supported by evidence in the record by the claimant for inclusion in the Parameters and Guidelines pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5, *with the exception* of follow-up investigation, which the Commission finds is not a reimbursable activity.

Accordingly, the Commission partially approves this Test Claim.

COMMISSION FINDINGS

I. Chronology

01/01/2020 Effective date of Statutes 2019, chapter 588, amending Penal Code section 680.

12/31/2020 The claimant, City of San Diego, filed the Test Claim.²⁹

03/29/2021 The Department of Finance (Finance) filed comments on the Test Claim.³⁰

05/07/2021 The claimant filed late rebuttal comments.³¹

05/20/2021 Commission staff issued the Draft Proposed Decision.³²

II. Background

This Test Claim alleges reimbursable state-mandated activities and costs arising from Penal Code section 680, as amended by Statutes 2019, chapter 588 (SB 22), effective January 1, 2020. Penal Code section 680, known as the Sexual Assault Victims' DNA Bill of Rights, was amended by the test claim statute to make mandatory the previously encouraged processes and related time frames for DNA testing of sexual assault forensic evidence received by a law enforcement agency on or after January 1, 2016.

A. Prior Law

Penal Code section 680 was added in 2003.³³ In passing the law, the Legislature found and declared as follows:

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.³⁴

The statute as originally enacted authorized law enforcement agencies investigating specified sex offenses to inform victims whether or not a DNA profile was obtained from testing sexual

²⁹ Exhibit A, Test Claim, filed December 31, 2020.

³⁰ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021.

³¹ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021.

³² Exhibit D, Draft Proposed Decision, issued May 20, 2021.

³³ Statutes 2003, chapter 537 (AB 898).

³⁴ Statutes 2003, chapter 537.

assault forensic evidence from the victim's case, whether that information was entered into the Department of Justice's (DOJ's) data bank of case evidence, and whether there was a match between the DNA profile developed from the victim's case evidence and the DOJ Convicted Offender DNA Data Base.³⁵ The statute also required law enforcement agencies to notify victims in writing when electing not to perform DNA testing on sexual assault forensic evidence or when intending to destroy or dispose of the evidence prior to the expiration of the statute of limitations, as specified.³⁶ The statute encouraged law enforcement agencies investigating specified sex offenses to timely perform DNA testing of sexual assault forensic evidence in order to comply with the statute of limitations for filing a criminal complaint.

A law enforcement agency assigned to investigate a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289 should perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner in order to assure the longest possible statute of limitations, pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.³⁷

In 2014, Statutes 2014, chapter 874 amended Penal Code section 680 by changing the recommendation that law enforcement agencies perform DNA testing "in a timely manner" to instead recommend specific procedures and time limits for law enforcement agencies and crime labs to submit and process sexual assault forensic evidence received on or after January 1, 2016.³⁸

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 should occur:

(A) A law enforcement agency in whose jurisdiction a sex offense specified in Section 261, 261.5, 262, 286, 288a, or 289 occurred, *should* do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:

(i) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.

(ii) 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.

³⁵ Statutes 2003, chapter 537.

³⁶ Statutes 2003, chapter 537.

³⁷ Penal Code section 680(b)(6), as added by Statutes 2003, chapter 537.

³⁸ Statutes 2014, chapter 874 (AB 1517).

(B) The crime lab *should* do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016.

(i) 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.

(ii) 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 should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA.³⁹

The inclusion of specific time frames is based on a statutory exception to the 10-year statute of limitations for certain sex crimes that allows charges to be filed within one year of the date when a suspect is conclusively identified by DNA testing, so long as DNA evidence is analyzed within two years of the crime.⁴⁰ Statutes 2014, chapter 874 also revised the notice requirements to require law enforcement agencies to notify victims when an agency does not analyze DNA evidence, regardless of whether the perpetrator's identity is in issue, and to do so within six months of applicable limitations periods.⁴¹

The statute was further amended by Statutes 2017, chapter 692, which changed the recommendation that law enforcement agencies, upon a victim's request, should inform the victim of the status of DNA testing in their case, to require agencies to do so.⁴² The bill also prohibited law enforcement agencies from destroying sexual assault forensic evidence from unsolved sexual assault cases before at least 20 years, or, if the victim was under 18 at the time of the assault, before the victim turns 40.⁴³

B. Test Claim Statute

The test claim statute, Statutes 2019, chapter 588 (SB 22) became effective on January 1, 2020, amending Penal Code section 680(c)(1) and (c)(2)⁴⁴ to now require law enforcement agencies, in whose jurisdictions specified sex offenses occur, to submit sexual assault forensic evidence received on or after January 1, 2016 to a crime lab (either themselves or through a rapid

³⁹ Penal Code section 680, as amended by Statutes 2014, chapter 874, section 1, emphasis added.

⁴⁰ See Penal Code section 803(g)(1).

⁴¹ Statutes 2014, chapter 874, section 1.

⁴² Statutes 2017, chapter 692, section 3.

⁴³ Statutes 2017, chapter 692, section 3.

⁴⁴ Because Statutes 2019, chapter 588 renumbered select subdivisions of Penal Code section 680, it also amended Penal Code sections 680.3 and 13823.14 to update references contained therein to the renumbered subdivisions. There has been no test claim filing on these sections.

turnaround DNA program), with submission occurring within specified time limits, and for the crime lab to process sexual assault forensic evidence received on or after January 1, 2016 for DNA or to transmit the evidence to another crime lab for processing, and to upload qualifying DNA profiles into CODIS (“the Combined DNA Index System,” the FBI’s program and software used to store and search DNA profiles) no later than 120 days after initially receiving the evidence.

Accordingly, Penal Code section 680(c) was amended to change “should” to “shall” as follows:

(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 ~~should~~ shall occur:

(1) A law enforcement agency in whose jurisdiction a sex offense specified in Section 261, 261.5, 262, 286, 287, or 289 or former Section 288a occurred ~~should~~ 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 ~~should~~ 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.

Both the Test Claim and the legislative analyses for the bill that enacted it repeatedly reference “sexual assault evidence kits” (SAEKs) or “rape kits.”⁴⁵ Following a sexual assault, a victim

⁴⁵ Exhibit A, Test Claim, filed December 31, 2020, page 7; Exhibit X, Senate Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), December 3, 2018, pages 1-6; Exhibit X, Assembly Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), as amended May 17, 2019, pages 2-8.

may elect to undergo a medical examination to collect forensic evidence.⁴⁶ The examination, which may take four to six hours, is conducted by specially-trained medical personnel, who prepare a sexual assault forensic medical evidence kit.⁴⁷ As of 2019, a standardized sexual assault forensic medical evidence kit containing a minimum number of basic components is to be used throughout the state.⁴⁸ A standard kit includes multiple body swabs that may contain the perpetrator's DNA, and other potential evidence, such as underwear, hair, and fingernail scrapings, and reference buccal swabs collected from the victim's cheek.⁴⁹ The kit may be stored at a medical facility or sent to the law enforcement agency with jurisdiction over the sexual assault.⁵⁰

Many crime labs, including those operated by the DOJ's Bureau of Forensic Services, have established rapid turnaround DNA programs, which expedite processing of evidence samples from SAEKs.⁵¹ Penal Code section 680(c)(5) defines "rapid turnaround DNA program" as follows:

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.⁵²

Where a rapid turnaround DNA program is in place, the medical facility sends selected samples, from the sexual assault evidence kit, including "the swabs most likely to contain the perpetrator's DNA and sends these, along with a reference buccal swab from the survivor/victim, directly to the crime laboratory," and the rest of the kit is sent to the law enforcement agency.⁵³ Under

⁴⁶ Exhibit X, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

⁴⁷ Exhibit X, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

⁴⁸ Exhibit X, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4; Penal Code section 13823.14.

⁴⁹ Exhibit X, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

⁵⁰ Exhibit X, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

⁵¹ Exhibit X, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

⁵² Penal Code section 680(c)(5).

⁵³ Exhibit X, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

Penal Code section 680(c)(3), it is not required that a crime lab receive or test all forensic evidence items obtained in a sexual assault forensic medical evidence examination and is considered to be in compliance when DNA testing is conducted on representative samples of the evidence. Therefore, where a rapid turnaround program is in place, it is a discretionary investigatory decision of the law enforcement agency (LEA) whether to separately test the remaining samples in the kit.⁵⁴

1. Department of Justice’s Interpretation of the Test Claim Statute.

According to DOJ, the test claim statute “establishes new mandatory requirements for the submission and testing of sexual assault forensic evidence by law enforcement agencies and public crime labs,” and applies to all sexual assault forensic evidence received by a law enforcement agency on or after January 1, 2016.⁵⁵

Regardless of the date of the alleged offense, if an LEA [law enforcement agency] receives sexual assault forensic evidence on or after January 1, 2016, and none of the case evidence has ever been submitted to a crime lab for analysis, SB 22 requires the LEA to submit sexual assault evidence from the case to a crime lab within 20 days of booking the evidence. The crime lab is required to process the evidence and upload a qualifying DNA profile to CODIS within 120 days of receipt of the evidence by the crime lab.⁵⁶

The submission and testing requirements are not limited to SAEKs; they include crime scene evidence as well.

While parts of SB 22 specifically mention “rape kit” evidence, the law more broadly addresses the timely analysis of “sexual assault forensic evidence.” The intent of the law is to ensure, in sexual assault cases, that a probative DNA sample is processed and uploaded to the Combined DNA Index System (CODIS) in a timely manner. Thus, if a sexual assault kit is not collected in a case, representative and probative samples of any other types of sexual assault evidence (e.g., the victim’s clothing, bedding from the assault scene, etc.) must be sent to the crime lab for timely processing to meet the sample processing and DNA profile upload requirements of SB 22.⁵⁷

⁵⁴ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), pages 4-5.

⁵⁵ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), pages 1-2.

⁵⁶ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 2.

⁵⁷ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), pages 1-2.

Under amended Penal Code section 680(c)(1), once a law enforcement agency has booked sexual assault forensic evidence, it has 20 days to submit the evidence to the crime lab.⁵⁸ Even when a case has been solved, if none of the sexual assault forensic evidence was ever tested, it must now be submitted to a crime lab for testing.⁵⁹ Similarly, the submission, testing, and uploading requirements equally apply to cases where the victim chooses to remain anonymous or not to participate in the investigation.

The Violence Against Women Act (VAWA) affords sexual assault victims the right to obtain a medical examination and to have forensic evidence collected without being required to immediately, or ever, report the sexual assault to law enforcement. However, VAWA evidence that an LEA has booked into evidence or that has been submitted to a crime lab is not exempt from the processing mandates set by SB 22. Even if a victim has chosen to remain anonymous and/or does not wish to cooperate with an investigation, sexual assault forensic evidence from their case that is received by an LEA or crime lab on or after January 1, 2016, must be tested and any qualifying DNA profiles uploaded to CODIS.⁶⁰

Under amended Penal Code section 680(c)(2), the crime lab has 120 days to process sexual assault forensic evidence and upload any qualifying DNA profiles to CODIS or 30 days to transmit the evidence to another crime lab.⁶¹ The 120-day time limit applies regardless of whether the evidence is transferred to another lab.

The first lab's 120-day deadline applies even if the evidence is transferred to a second lab. The first lab has 30 days to transmit the evidence to a second lab, and must upload a qualifying DNA profile to CODIS within 30 days after test results are obtained. (Pen. Code, § 680, subd. (c)(2)(B).) Therefore, if the first lab takes 30 days to transmit the evidence to a second lab, the second lab should take no longer than 60 days to process the evidence in order to ensure that the first lab has 30 days to upload a qualifying probative DNA profile into CODIS.⁶²

⁵⁸ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 2.

⁵⁹ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 4.

⁶⁰ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 5.

⁶¹ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 3.

⁶² Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 3.

According to DOJ, “[c]rime labs are considered to be in compliance with the testing mandate when they have processed representative samples of sexual assault evidence ‘in an effort to detect the foreign DNA of the perpetrator.’ (Pen. Code, § 680, subd. (c)(3).)”⁶³

In 2020, DOJ prepared a report summarizing a one-time audit of untested SAEs in the possession of California law enforcement agencies, crime laboratories, medical facilities and others, as required by Penal Code section 680.4 (Stats. 2018, ch. 950). The report provides the following overview of sexual assault evidence testing:

The purpose of conducting laboratory testing of sexual assault evidence is to establish whether there is evidence that the alleged sexual contact occurred, which may be accomplished by screening for the expected biological materials, and to identify the individual(s) who contributed those biological materials, which may be accomplished through DNA testing if a suitable DNA profile is developed from the evidence and a match to a suspect is found.

Qualifying evidence DNA profiles developed from SAE kits can be searched against the DNA profiles of evidence from other cases, convicted offenders, and arrestees by uploading the profiles to CODIS. CODIS is the Federal Bureau of Investigation’s program and software used to store and search DNA profiles in its Local DNA Index System (LDIS), State DNA Index System (SDIS), and National DNA Index System (NDIS) databases. The three main criminal indices in CODIS are the Forensic Index, which contains perpetrator DNA profiles developed from forensic evidence, the Convicted Offender Index, and the Arrestee Index. DNA profiles may be uploaded as far as the LDIS, the SDIS, and the NDIS, provided they meet the criteria for each level and index.

Once uploaded, the DNA profiles in the three criminal indices are regularly searched against each other to identify potential matches. To link forensic evidence to a known convicted offender or arrestee, the Forensic Index is searched against the Convicted Offender Index and the Arrestee Index. The Forensic Index is also searched against itself to link evidence from different crimes to the same perpetrator (referred to as case-to-case hits).⁶⁴

2. Legislative History of the Test Claim Statute.

According to the author of the test claim statute, a number of law enforcement agencies did not follow the prior law guidance on submitting and processing sexual assault forensic evidence.

As amended by Chapter 874, Statutes of 2014, California law states that law enforcement agencies “should” transfer rape kit evidence to the appropriate forensic laboratory within 20 days and that laboratories “should” process such evidence as soon as possible, but no later than 120 days, following receipt. Due

⁶³ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), pages 5-6.

⁶⁴ Exhibit X, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, pages 4-5.

to the current language of the law, this guidance is not currently being followed by a number of law enforcement agencies in the state.

Findings from public records requests filed by the Joyful Heart Foundation demonstrate significant variation in how law enforcement agencies have interpreted and implemented this legislative guidance. Only two jurisdictions of eight surveyed in 2017 reported full compliance with the intent of the law.

Across California, sexual assault survivors are not receiving equal access to justice. Depending on the jurisdiction in which the crime occurred, the timeframe for submission and analysis of their rape kits may vary widely, slowing the criminal justice process.⁶⁵

Therefore, the purpose of these amendments was to require law enforcement agencies and crime labs to adhere to the submission and DNA testing procedures and timelines already enumerated in Penal Code section 680, but which were, prior to the test claim statute, only encouraged.⁶⁶

By amending the language of Penal Code Section 680 from “should” to “shall,” Senate Bill 22 will require all law enforcement agencies and crime labs across the state to follow federal best practices and the intent of existing law. With this change, victims reporting sexual assault across California will have equal access to the swift submission and analysis of forensic evidence associated with their cases. Rape kits must be submitted within 20 days and tested no later than 120 days after receipt, preventing the development of rape kit backlogs in evidence rooms or laboratories throughout California.⁶⁷

The Assembly Committee on Public Safety analysis acknowledges that while “this bill will not undo the backlog of untested kits – estimated to be more than ten thousand by the sponsor of the bill ... – it should prevent additional backlog provided that law enforcement agencies and crime labs have the resource[s] to keep up with the influx of new kit[s].”⁶⁸

The Assembly Committee on Appropriations analysis states that the bill was anticipated to result in reimbursable state-mandated costs as follows:

FISCAL EFFECT:

1) Costs (GF/DNA Identification Fund) of approximately \$854,000 annually for the Department of Justice (DOJ) for personnel, operating expenses and equipment.

⁶⁵ Exhibit X, Senate Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), December 3, 2018, pages 4-5.

⁶⁶ Statutes 2019, chapter 537, section 1.

⁶⁷ Exhibit X, Senate Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), December 3, 2018, page 5.

⁶⁸ Exhibit X, Assembly Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), as amended May 17, 2019, page 6.

2) Possible state reimbursable costs (local funds/GF) in the hundreds of thousands of dollars annually for local law enforcement agencies. The Los Angeles County Sheriff's Department anticipates additional personnel costs of about \$450,000 to process the evidence within the timeframe required. Local costs to comply with this bill would be subject to reimbursement by the state to the extent the Commission on State Mandates determines this bill imposes a reimbursable state-mandated local program.⁶⁹

III. Positions of the Parties

A. City of San Diego

The claimant alleges that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 and Government Code section 17514 for local law enforcement agencies. While the claimant alleges that Penal Code section 680(c)(1) mandates new activities, it asserts that the costs stemming from those new activities are de minimis and are therefore not being pursued in this Test Claim.⁷⁰ The claimant alleges costs incurred to comply with the new requirements under Penal Code section 680(c)(2); namely, to test and process all SAEKs received by its crime lab after January 1, 2016.⁷¹

The claimant states that it incurred increased mandated costs of \$116,138.95 in actual costs in fiscal year 2019-2020 and estimated costs of \$2,335,305.74 in the 2020-2021 fiscal year to implement the mandate.⁷² Additionally the claimant estimates statewide annual costs of \$8,000,000⁷³

The Test Claim is supported by a declaration from Jeffrey Jordon, Captain of the City of San Diego Police Department, stating that the claimant incurred \$116,138.95 in actual costs in fiscal year 2019-2020 and estimating claimant's costs at \$2,335,305.74 in total costs for the 2020-2021 fiscal year to implement the mandate.⁷⁴ The claimant has also included invoices,⁷⁵ a contract between the claimant and the contracted private crime lab,⁷⁶ a hiring memorandum pertaining to new criminalist positions,⁷⁷ and an itemized spreadsheet of consumable costs to support its alleged mandated costs.⁷⁸ The claimant notes that its sexual assault evidence kit outsourcing

⁶⁹ Exhibit X, Assembly Committee on Appropriations, Analysis of SB 22 (2019-2020 Reg. Sess.), as amended May 17, 2019, page 1.

⁷⁰ Exhibit A, Test Claim, filed December 31, 2020, page 9.

⁷¹ Exhibit A, Test Claim, filed December 31, 2020, page 7.

⁷² Exhibit A, Test Claim, filed December 31, 2020, pages 16-17, and 83-105.

⁷³ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁷⁴ Exhibit A, Test Claim, filed December 31, 2020, pages 22-23.

⁷⁵ Exhibit A, Test Claim, filed December 31, 2020, pages 83-105.

⁷⁶ Exhibit A, Test Claim, filed December 31, 2020, pages 56-82.

⁷⁷ Exhibit A, Test Claim, filed December 31, 2020, pages 106-108.

⁷⁸ Exhibit A, Test Claim, filed December 31, 2020, pages 109-110.

costs beginning July 1, 2020 were paid with state Citizen Option for Public Safety (COPS) grant funds and are therefore not included in the claim.⁷⁹ The claimant's estimate of statewide costs for the program amount to \$8,000,000 annually.⁸⁰

While some local law enforcement agencies already submitted and tested all sexual assault forensic evidence kits under the "encouraged" guidelines in preexisting Penal Code section 680, others, including the claimant, did not.⁸¹ Therefore, the claimant argues, the new activities and costs imposed by the test claim statute will vary by agency and depend on an agency's existing staffing, available equipment, investigative practices, as well as the volume of sexual assaults investigated.⁸²

Prior to the passage of the test claim statute, the claimant states that it tested some, but not all, of the sexual assault forensic evidence kits in its possession, which led to a "substantial amount" of kits not being tested.⁸³ The claimant alleges that Penal Code section 680(c)(2)(A) requires local law enforcement agencies to perform the following activities as soon as practically possible, but no later than 120 days after initially receiving the evidence:

- Process sexual assault forensic evidence;
- Create DNA profiles when able; and
- Upload qualifying DNA profiles into CODIS.⁸⁴

The claimant asserts that in order to perform these activities, it was required to: employ a Program Manager to oversee the processing of additional sexual assault evidence kit tests within the police department's own lab; hire additional criminalists to process more tests; create and upload DNA profiles within mandated time limits; and budget for more materials to test the increased number of SAEKs in its lab.⁸⁵

The claimant alleges that under Penal Code section 680(c)(2)(B), it outsourced testing of SAEKs to a contract lab in order to process the kits within the 120-day timeline mandated by Penal Code section 680(c)(2)(A).⁸⁶ The claimant alleges that it had to first determine the number of untested SAEKs in its possession received by its crime lab on or after January 1, 2016, but does not specify any costs for this activity.⁸⁷ The claimant asserts that working with a contract lab creates

⁷⁹ Exhibit A, Test Claim, filed December 31, 2020, page 23.

⁸⁰ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁸¹ Exhibit A, Test Claim, filed December 31, 2020, page 9.

⁸² Exhibit A, Test Claim, filed December 31, 2020, page 9.

⁸³ Exhibit A, Test Claim, filed December 31, 2020, page 9.

⁸⁴ Exhibit A, Test Claim, filed December 31, 2020, page 7.

⁸⁵ Exhibit A, Test Claim, filed December 31, 2020, page 7.

⁸⁶ Exhibit A, Test Claim, filed December 31, 2020, pages 7-8.

⁸⁷ Exhibit A, Test Claim, filed December 31, 2020, page 10.

additional external outsourcing costs and new internal costs.⁸⁸ Internal costs are alleged to include processing of the evidence by the local agency’s criminalists for DNA profiles after the evidence is returned from the contract lab and investigative review of the tested evidence to determine if it impacts any ongoing or completed criminal investigation.⁸⁹

Total actual costs alleged by the claimant to perform these activities for the 2019-2020 fiscal year are \$116,138.95, broken down by the claimant as follows:⁹⁰

Activity	Date(s) Performed	Description	Cost
1) SAEK Outsourcing	1/01/2020-6/30/2020	Contract Lab Analysis	\$ 52,670.00
2) Lab/Police Personnel	1/01/2020-6/30/2020	Follow-Up Outsourcing	\$ 985.75
3) Program Manager	1/01/2020-6/30/2020	SAEK Evidence Management	\$ 62,483.20
Total			\$116,138.95

Total estimated costs alleged by the claimant to perform these activities for the 2020-2021 fiscal year are \$2,335,305.74, broken down by the claimant as follows:⁹¹

Activity	Date(s) Performed	Description	Cost
1) SAEK Outsourcing	7/01/2020-6/30/2021	Contract Lab Analysis	\$ 214,855.00
2) Lab Personnel	7/01/2020-6/30/2021	Outsourcing	\$ 56,752.14
3) Program Manager	7/01/2020-6/30/2021	SEAK Evidence Management	\$ 124,996.40
4) New Lab Hires	7/01/2020-6/30/2021	Need for increased work	\$ 876,678.40
5) Police Personnel	7/01/2020-6/30/2021	Follow-Up Evidence Results	\$1,206,108.80
6) Consumables	7/01/2020-6/30/2021	Increased # SAEKs	\$ 70,800.00
Total			\$2,550,160.74

The claimant asserts that local agencies will be required to perform some, if not all, of the new activities alleged by the claimant, categorized as follows:

- Testing outsourced sexual assault evidence kits;
- Conducting internal administrative reviews of sexual assault evidence kits after receiving results from the outsourced lab;
- Purchasing additional materials to test sexual assault evidence kits (“consumables”);
- Additional lab personnel duties; and

⁸⁸ Exhibit A, Test Claim, filed December 31, 2020, page 8.

⁸⁹ Exhibit A, Test Claim, filed December 31, 2020, page 8.

⁹⁰ Exhibit A, Test Claim, filed December 31, 2020, page 16.

⁹¹ Exhibit A, Test Claim, filed December 31, 2020, page 17.

- Additional sworn police officer duties.⁹²

The claimant references the legislative history of the test claim statute to support its position that additional lab personnel are needed to perform the mandated activities.⁹³ The claimant states that DOJ, at the state level, anticipates receiving approximately 121 additional SAEKs annually as a result of the test claim statute and estimates it will need 3.0 new criminalists and 1.0 criminalist supervisors to complete the increased workload.⁹⁴ The claimant estimates that the City of San Diego will need to test an average of 118 additional SAEKs annually in its own crime lab to comply with the test claim statute.⁹⁵

According to the claimant, the test claim statute's legislative history also notes that the Los Angeles County Sheriff's Department anticipates hiring additional lab personnel to process the evidence in the time limits imposed by the test claim statute and increased costs of \$450,000 annually.⁹⁶ The claimant also contacted other law enforcement agencies and their labs throughout the state in order to estimate the increased costs that local agencies will incur to implement the mandate.⁹⁷ The claimant determined that costs will be unique to each agency, and will depend on how the agency previously handled SAEKs and whether they largely tested all kits prior to the mandate.⁹⁸ The San Jose Police Department estimates new costs at \$100,000, whereas the San Diego County Sheriff's Department estimates costs in excess of \$300,000.⁹⁹ Notably, unlike the claimant, neither of these agencies accounted for the cost of sworn investigators conducting follow-up investigations and making additional disclosures to prosecutors, which the claimant alleges are mandated activities.¹⁰⁰ Estimated costs for individual LEAs throughout the state range from \$100,000 to over \$2 million and may increase if additional staffing is needed or decrease if grant funding is made available.¹⁰¹ The claimant's statewide cost estimate to implement the mandate is \$8 million.¹⁰²

The claimant, in its late rebuttal comments, disputes Finance's assertion that investigation costs are beyond the scope of the test claim.¹⁰³ The claimant argues that if it were not for the test

⁹² Exhibit A, Test Claim, filed December 31, 2020, page 17.

⁹³ Exhibit A, Test Claim, filed December 31, 2020, page 8.

⁹⁴ Exhibit A, Test Claim, filed December 31, 2020, page 8.

⁹⁵ Exhibit A, Test Claim, filed December 31, 2020, page 12.

⁹⁶ Exhibit A, Test Claim, filed December 31, 2020, page 8.

⁹⁷ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁹⁸ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁹⁹ Exhibit A, Test Claim, filed December 31, 2020, page 18.

¹⁰⁰ Exhibit A, Test Claim, filed December 31, 2020, page 18.

¹⁰¹ Exhibit A, Test Claim, filed December 31, 2020, page 18.

¹⁰² Exhibit A, Test Claim, filed December 31, 2020, page 18.

¹⁰³ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 1.

claim statute, the claimant's Sex Crimes Cold Case team would not exist.¹⁰⁴ Because the mandatory testing of all SAEKs resulted in new evidence, the claimant was forced to assign law enforcement personnel to solely investigate the impact of that new evidence on criminal investigations, instead of performing investigative duties in other essential areas, such as narcotics, robbery, or child abuse.¹⁰⁵ The claimant argues that regardless of the precise language of the test claim statute, the Legislature clearly intended that evidence obtained from testing *all* SAEKs would require law enforcement to investigate.¹⁰⁶

The claimant also disputes Finance's opposition to reimbursement for the personnel costs associated with the Program Manager position (Police Investigative Service Officer).¹⁰⁷ As a result of the processing duties under the test claim statute, the claimant, through the Police Investigative Service Officer position, must now either prepare hundreds of new SAEKs for testing, or handle, track, and package the kits for outsourcing, duties that were not required prior to the test claim statute.¹⁰⁸ But for these new requirements, the Police Investigative Service Officer could perform other duties.¹⁰⁹

B. Department of Finance

Finance contends that some of the activities the claimant alleges are reimbursable are not required by the test claim statute.¹¹⁰ Finance groups the costs allegedly incurred by the claimant into three categories: outsourcing of sexual assault evidence kit testing, personnel, and lab consumables.¹¹¹

Finance does not dispute the claimant's assertion that outsourcing the testing of backlogged SAEKs and purchasing additional testing materials are mandated reimbursable activities under the test claim statute.¹¹² Rather, Finance's challenge is limited to select personnel costs relating to staffing increases and new workload activities that the claimant alleges are required to comply with the test claim statute.¹¹³

¹⁰⁴ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, pages 1-2.

¹⁰⁵ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 2.

¹⁰⁶ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 2.

¹⁰⁷ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 2.

¹⁰⁸ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 2.

¹⁰⁹ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 2.

¹¹⁰ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

¹¹¹ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

¹¹² Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, pages 2-3. Notably, both the claimant and the Department of Finance use "outsourcing" and "transmitting" interchangeably when referring to the option under section 680(c)(2)(B) for the crime lab to transmit sexual assault forensic evidence to a different crime lab for DNA processing in lieu of processing the evidence itself.

¹¹³ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

Finance does not dispute the claimant's assertion that the following new duties, as fulfilled by the DNA Technical Manager, are required by the test claim statute: overseeing the technical aspects of the outsourcing contract, including receiving and analyzing data and reviewing case work and reports from the contracted private lab; and verifying and preparing any DNA profiles identified by the contracted private lab.¹¹⁴ Finance also does not dispute the claimant's allegation that because it will be required to test approximately 118 new SAEKs annually in its own lab beginning January 1, 2020, four new criminalist positions are necessary.¹¹⁵

However, Finance challenges the claimant's alleged need to create the Police Investigative Service Officer position, with costs of \$62,483 in fiscal year 2019-2020 and \$124,996 in 2020-2021.¹¹⁶ Finance argues that contrary to the claimant's assertion, the test claim statute neither requires such a position nor the referenced administrative duties of tracking, processing, and managing the SAEKs within the claimant's crime lab.¹¹⁷

Finance also contests the assertion that the creation of the Police Department's Sex Crimes Cold Case Team, with costs of \$1,206,109 in fiscal year 2020-2021, is mandated by the test claim statute.¹¹⁸ The Sex Crimes Cold Case Team is comprised of one sergeant and two detectives tasked with performing follow-up investigative work on new evidence from previously untested SAEKs.¹¹⁹ Finance argues that the claimant's assertion that follow-up investigations are required under Penal Code section 680(c)(2)(B) is incorrect.¹²⁰ Penal Code section 680(c)(2)(A) and (c)(2)(B), which form the basis for the test claim, pertain to the requirements for processing sexual assault forensic evidence.¹²¹ Neither subdivision specifies that investigative work related to newly uncovered sexual assault evidence resulting from that processing is also required.¹²² Furthermore, Finance maintains, because the police officers were already performing investigative work, modification of those duties to focus on sex crime cold cases is not a new or higher level of service and is beyond the scope of the test claim statute.¹²³

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of

¹¹⁴ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

¹¹⁵ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

¹¹⁶ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

¹¹⁷ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

¹¹⁸ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

¹¹⁹ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

¹²⁰ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

¹²¹ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

¹²² Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

¹²³ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹²⁴ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹²⁵

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹²⁶
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹²⁷
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.¹²⁸
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹²⁹

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹³⁰ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹³¹ In making its decisions, the Commission must

¹²⁴ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹²⁵ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹²⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹²⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

¹²⁸ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

¹²⁹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹³⁰ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

¹³¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹³²

A. The Test Claim Was Timely Filed.

Government Code section 17551(c) requires that a test claim be filed “not later than 12 months after the effective date of the statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines 12 months as 365 days.¹³³ The test claim statute became effective on January 1, 2020.¹³⁴ The claimant filed the Test Claim on December 31, 2020, exactly 365 days after the test claim statute’s effective date. The Test Claim was therefore timely filed.

B. Penal Code Section 680(c)(1) and (2), as Amended by Statutes 2019, Chapter 588, Imposes a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution.

As described below, the Commission finds that Penal Code section 680(c)(1) and (2), as amended by the test claim statute (Stats. 2019, ch. 588), imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

1. Penal Code Section 680(c)(1) and (2), as Amended by the Test Claim Statute, Imposes a State-Mandated Program on County and City Law Enforcement Agencies.

- a. Penal Code section 680(c)(1) and (2) impose new requirements on law enforcement agencies to submit all sexual assault forensic evidence received on or after January 1, 2016 to a crime lab for processing and uploading qualifying DNA into CODIS.

The plain language of Penal Code section 680(c)(1), as amended by Statutes 2019, chapter 588, now requires law enforcement agencies in whose jurisdiction a specified sex offense occurs to either submit all sexual assault forensic evidence received on or after January 1, 2016 to the crime lab, or ensure that a rapid turnaround DNA agreement is in place so that forensic evidence collected from the victim of a sexual assault is submitted directly from the medical facility where the victim is examined to the crime lab. The plain language of Penal Code section 680(c)(2), as amended by Statutes 2019, chapter 588, now requires crime labs to either conduct DNA testing of all sexual assault forensic evidence received on or after January 1, 2016, or transmit the evidence to another crime lab for processing, and to upload qualifying DNA profiles into CODIS, all within specified time limits. Prior to the test claim statute, these activities and the corresponding deadlines were encouraged, but not required. The test claim statute amended Penal Code section 680(c)(1) and (c)(2) to change the “should” to “shall” as follows:

¹³² *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 (citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817).

¹³³ California Code of Regulations, title 2, section 1183.1(c).

¹³⁴ Statutes 2019, chapter 588.

(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 ~~should~~ shall occur:

(1) A law enforcement agency in whose jurisdiction a sex offense specified in Section 261, 261.5, 262, 286, 287, or 289 or former Section 288a occurred ~~should~~ 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 ~~should~~ 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.

The legislative history makes clear that that the purpose of these amendments was to require DNA testing on all sexual assault forensic evidence kits (SAEKs) within existing time frames because a number of law enforcement agencies throughout the state were not adhering to the recommended time limits for processing sexual assault forensic evidence collected after an alleged assault, leading to a growing concern over a backlog of untested SAEKs.¹³⁵

Thus, the following activities imposed by Penal Code section 680(c)(1) and (2) are newly required by the state:

1. A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 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:

¹³⁵ Exhibit X, Senate Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), December 3, 2018, page 5.

- a. Submit sexual assault forensic evidence to the crime lab within 20 days after booked into evidence; *or*
 - b. Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. (Penal Code 680(c)(1), Stats. 2019, ch. 588.)
2. For any sexual assault forensic evidence received by the crime lab on or after January 1, 2016, the crime lab shall do one of the following:
 - a. Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt; *or*
 - b. Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120 days after the transmitting crime lab initially receives the evidence.¹³⁶ (Penal Code 680(c)(2), Stats. 2019, ch. 588.)

It is clear from the plain language of Penal Code section 680(c)(1) that law enforcement agencies in whose jurisdiction specified sex offenses occurred are required to submit the sexual assault forensic evidence to a crime lab. However, under subdivision (c)(2), “the crime lab” is required to process the sexual assault forensic evidence received from the law enforcement agency or medical facility (under the rapid turnaround DNA agreement) or transmit the evidence to another crime lab, and to upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence. As indicated below, there are public crime labs run by the state and local agencies, and private labs that contract with law enforcement to process and test forensic evidence. It is not clear from the plain language of the statute whether the overall duty to process and test the evidence and upload any qualifying DNA profiles to CODIS is ultimately the responsibility of “the crime lab” or the law enforcement agency. Thus, further interpretation is required.

While neither the original statute nor the enacting bill analyses mention crime labs, the legislative history of Penal Code section 680, read within the context of other Penal Code

¹³⁶ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 3. The courts will give weight and appropriate deference to the interpretation of a statute by the agency charged with its implementation. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.)

statutes, evidences an intent that the duties created by the Sexual Assault Victims' DNA Bill of Rights, including those in subdivision (c)(2), be imposed on law enforcement agencies only.

DOJ has interpreted the test claim statute's requirements as being imposed on law enforcement agencies and *public* crime labs.¹³⁷ This is consistent with Penal Code section 297(a), which provides in pertinent part:

[O]nly the following laboratories are authorized to analyze crime scene samples and other forensic identification samples of known and unknown origin and to upload and compare those profiles against state and national DNA and forensic identification databanks and databases in order to establish identity and origin of samples for forensic identification purposes pursuant to this chapter:

- (1) The DNA laboratories of the Department of Justice that meet state and federal requirements, including the Federal Bureau of Investigation (FBI) Quality Assurance Standards, and that are accredited by an organization approved by the National DNA Index System (NDIS) Procedures Board.
- (2) Public law enforcement crime laboratories designated by the Department of Justice that meet state and federal requirements, including the FBI Quality Assurance Standards, and that are accredited by an organization approved by the NDIS Procedures Board.
- (3) Only the laboratories of the Department of Justice that meet the requirements of paragraph (1) of subdivision (a) are authorized to upload DNA profiles from arrestees and other qualifying offender samples collected pursuant to this section, Section 296, and Section 296.2.

Section 297(b) authorizes state and local law enforcement public crime labs to contract with private forensic laboratories to process evidence, as long as the private labs meet state and federal requirements, including the FBI Quality Assurance Standards, and are accredited by an organization approved by the NDIS Procedures Board. However, the state or local public crime lab is required by section 297(b) to "conduct the quality assessment and review required by the FBI Quality Assurance Standards" prior to uploading DNA profiles generated by a private lab.¹³⁸ Thus, under this statute, state and local law enforcement public crime labs have the duty to ensure that the DNA profiles are properly processed and comply with FBI standards for DNA.

Under the rules of statutory construction, it is presumed the Legislature has existing laws in mind when it enacts new statutes.¹³⁹ Thus, when the Legislature used the phrase "crime lab" in Penal Code section 680, and required the crime lab to process the sexual assault forensic evidence received from the law enforcement agency or medical facility or transmit the evidence to another

¹³⁷ Exhibit X, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 1.

¹³⁸ Penal Code section 297, last amended by Statutes 2006, chapter 170.

¹³⁹ *Keeler v. Superior Court* (1970) 2 Cal.3d 619, 625; *Arthur Anderson v. Superior Court* (1998) 67 Cal.App.4th 1481, 1499.

crime lab, and to upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence, it was imposing the duty on the state and local law enforcement agencies.

This interpretation is also consistent with the legislative history of Penal Code section 680. According to the Assembly Committee on Appropriations analysis, the purpose of Penal Code section 680, as originally enacted, was to “give rape victims the ability to follow their own cases *so that they can urge law enforcement to test the evidence* and determine if the suspect can be located. This right is similar to other victim's rights, such as the right to be notified of court dates, parole dates, and the disposition of cases.”¹⁴⁰ As discussed above, in passing the Sexual Assault Victims’ DNA Bill of Rights, the Legislature found and declared that “[l]aw 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.”¹⁴¹

Notably, the Penal Code section 680 as originally enacted encouraged law enforcement agencies *only*, not crime labs, to perform DNA testing of sexual assault forensic evidence.

(b)(6) A law enforcement agency assigned to investigate a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289 *should perform DNA testing of rape kit evidence or other crime scene evidence* in a timely manner in order to assure the longest possible statute of limitations, pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.¹⁴²

The original language of subdivision (d) also refers to analysis of DNA evidence as the law enforcement agency’s responsibility.

(d) *If the law enforcement agency elects not to analyze DNA evidence* within the time limits established by subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803, a victim of a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289, where the identity of the perpetrator is in issue, shall be informed, either orally or in writing, of that fact by the law enforcement agency.¹⁴³

Importantly, in describing the legal remedies available to sexual assault victims for a violation of Penal Code section 680, the statute since its enactment has referred only to a law enforcement agency’s duty to provide notice when failing to timely analyze DNA evidence or intending to destroy or dispose of sexual assault forensic evidence from an unsolved sexual assault case.¹⁴⁴

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

¹⁴⁰ Exhibit X, Assembly Committee on Appropriations, Analysis of AB 898 (2003-2004 Reg. Sess.), as introduced February 20, 2003, page 2, emphasis added.

¹⁴¹ Penal Code section 680(b)(4), as added by Statutes 2003, chapter 537, emphasis added.

¹⁴² Penal Code section 680(b)(6), as added by Statutes 2003, chapter 537, emphasis added.

¹⁴³ Statutes 2003, chapter 537, emphasis added.

¹⁴⁴ Penal Code section 680(e), (f).

standing to file a writ of mandamus to require compliance with subdivision (e) or (f).¹⁴⁵

By contrast, there is no separate remedy available to a sexual assault victim for a crime lab's failure to comply with the requirements of Penal Code section 680.

The term "crime lab" was added to Penal Code section 680 by Statutes 2014, chapter 874 (AB 1517) which amended the section by bifurcating law enforcement's responsibility to timely "analyze DNA evidence" into specific tasks to be separately performed by "a law enforcement agency" and "the crime lab."¹⁴⁶ While the bill analyses for AB 1517 do not directly discuss why Penal Code section 680 was changed in this manner, they do indicate that DOJ played a significant role in testing and analyzing sexual assault forensic evidence statewide. According to the Senate Appropriations Committee analysis of AB 1517, costs to comply with the DNA testing guidelines would be incurred by crime labs at both the state and local level, with DOJ handling crime lab functions for 46 counties (representing 25% of the state population), the Los Angeles Crime Lab processing 30 percent of cases statewide, and the remaining counties accounting for 45 percent of cases.¹⁴⁷

California's public crime lab system is comprised of state, county, and city level entities.¹⁴⁸ DOJ, through its Bureau of Forensic Services, serves 46 of the state's 58 counties through its regional and specialized crime labs.¹⁴⁹ Rural and inland areas of the state tend to be served by state-run labs, whereas more populous urban regions are generally served by county-run labs, or a combination of county- and city-run labs.¹⁵⁰ Notably, "[e]ach jurisdiction is served by only one primary forensic laboratory for any given type of testing."¹⁵¹

¹⁴⁵ Penal code section 680(k), emphasis added. This provision was originally contained in subdivision (j) and referenced subdivisions (d) and (e), which were changed to (e) and (f) following renumbering. Statutes 2003, chapter 537.

¹⁴⁶ Statutes 2014, chapter 874, emphasis added.

¹⁴⁷ Exhibit X, Senate Appropriations Committee, Analysis of AB 1517 (2013-2014 Reg. Sess.), as amended May 23, 2014, page 1.

¹⁴⁸ Exhibit X, Excerpts from California Department of Justice, 2003 California Task Force on Forensic Services Force Report, August 2003, page 4.

¹⁴⁹ Exhibit X, California Department of Justice, Bureau of Forensic Services Brochure, September 2019, page 1.

¹⁵⁰ Exhibit X, Excerpts from California Department of Justice, 2003 California Task Force on Forensic Services Force Report, August 2003, pages 4-5.

¹⁵¹ Exhibit X, Excerpts from California Department of Justice, 2003 California Task Force on Forensic Services Force Report, August 2003, page 2.

According to DOJ, DNA analysis is performed at 18 public crime labs,¹⁵² seven of which are state-run labs,¹⁵³ with the remaining 11 consisting of county- and city-run labs.¹⁵⁴ DNA analysis may also be outsourced to accredited private labs in California or other states.¹⁵⁵

While private labs are used by California law enforcement agencies in a significant portion of DNA cases,¹⁵⁶ there is no indication in either the language or legislative history of Penal Code section 680, or in other provisions of the Penal Code, that the Legislature intended to impose the responsibility to conduct DNA processing on private crime labs. The statute since its enactment has referred to law enforcement's obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence.¹⁵⁷

Taken as a whole, the duties imposed by Penal Code section 680(c)(1) and (2) are ultimately a law enforcement responsibility. This conclusion is further supported by the general rule that California counties and cities "have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction."¹⁵⁸

b. The test claim statute does not require law enforcement agencies to conduct follow-up investigations.

The claimant also seeks reimbursement for the cost of employing one police sergeant and two police detectives to conduct follow-up investigations on the previously untested and outsourced SAEKs.¹⁵⁹ These costs form the bulk of the claimant's total estimated costs for the 2020-2021

¹⁵² Exhibit X, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Kits, 2020 Report to the Legislature, page 3.

¹⁵³ Exhibit X, California Department of Justice, Bureau of Forensic Services Brochure, September 2019, page 2.

¹⁵⁴ Exhibit X, Excerpts from California Department of Justice, 2003 California Task Force on Forensic Services Force Report, August 2003, pages 6-9.

¹⁵⁵ Exhibit X, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Kits, 2020 Report to the Legislature, page 3.

¹⁵⁶ Exhibit X, Excerpts from California Department of Justice, 2003 California Task Force on Forensic Services Force Report, August 2003, page 3.

¹⁵⁷ Penal Code section 680, Statutes 2003, chapter 537.

¹⁵⁸ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367. Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that "It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force" Government Code section 36501 further provides that "[t]he government of a general law city is vested in: . . . (d) A chief of police."

¹⁵⁹ Exhibit A, Test Claim, filed December 31, 2020, pages 13-14; Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, pages 1-2.

fiscal year.¹⁶⁰ The claimant states that law enforcement officers are required to take any number of actions after receiving new evidence related to any criminal investigation, and therefore, conducting follow-up investigations on any new evidence resulting from the mandated DNA testing is necessary.¹⁶¹

Conducting investigations on new evidence resulting from the mandated testing requirement is not required by the plain language of the test claim statute. Investigation for future criminal charges and prosecution is within local district attorney and law enforcement existing duties and prosecutorial discretion, and is therefore not state mandated.¹⁶² Furthermore, any duties law enforcement agency personnel may have upon discovering new evidence impacting prior or ongoing criminal proceedings exist independently and outside the scope of the test claim statute. The Commission finds that conducting follow-up investigations is not required by the test claim statute and is, therefore, not eligible for reimbursement.

- c. The test claim statute imposes a state-mandated program on counties and cities, but does not impose a state-mandated program on K-12 school districts or community college districts.

The plain language of the test claim statute imposes requirements on law enforcement agencies in whose jurisdiction specified sex offenses occur. On its face, this would appear to include county and city law enforcement agencies, as well as the law enforcement agencies of K-12 school districts and community college districts, as authorized by Education Code sections 38000 and 72330.¹⁶³ As indicated above, California counties and cities “have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction.”¹⁶⁴ However, because K-12 school districts and community college districts are permitted but not required by state law to have police departments and employ peace officers,

¹⁶⁰ Exhibit A, Test Claim, filed December 31, 2020, page 23.

¹⁶¹ Exhibit A, Test Claim, filed December 31, 2020, pages 13-15.

¹⁶² Government Code sections 26500, 26501; *Gananian v. Wagstaffe* (2011) 199 Cal.App.4th 1532, 1543 (Although codified by statute, the principle of prosecutorial discretion is rooted in the separation of powers and due process clauses of the California Constitution, and is basic to the state’s criminal justice system); *People v. Eubanks* (1996) 14 Cal.4th 580, 589 (prosecutorial discretion extends from the investigation and gathering of evidence relating to criminal offenses, through the crucial decisions of whom to charge and what charges to bring).

¹⁶³ Education Code sections 38000 and 72330, authorize school districts and community college districts, respectively, to establish school police departments and employ peace officers.

¹⁶⁴ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367. Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that “It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force” Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d) A chief of police.”

they are not legally compelled to comply with the activities required by Penal Code section 680(c)(1) and (2).

The courts have made clear that activities required by state law, but triggered by a local discretionary decision (that is, action undertaken without any legal compulsion from the state or threat of penalty for nonparticipation) do not result in a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.¹⁶⁵ In *Department of Finance v. Commission on State Mandates (POBRA)*, the court addressed legislation that provided procedural protections to peace officers employed by counties, cities, and school districts when a peace officer employee is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The court specifically held that “school districts . . . that are permitted by statute [i.e., Education Code sections 38000 and 72330], but not required, to employ peace officers who supplement the general law enforcement units of cities and counties” are not eligible to claim reimbursement under article XIII B, section 6 for the new activities required by the state because school districts and community college districts are not legally or practically compelled by state law to comply.¹⁶⁶ The court reasoned that unlike cities and counties,¹⁶⁷ school districts and community college districts do not have the provision of police protection as an essential and basic function, and instead make a discretionary decision to form a police department and employ peace officers pursuant to statutory authority:

The Commission notes that *Carmel Valley Fire Protection Dist. v. State* characterizes police protection as one of “the most essential and basic functions of local government.” [Citation omitted.] However, that characterization is in the context of cities, counties, and districts that have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction. A fire protection district perforce must hire firefighters to supply that protection.

Thus, as to cities, counties, and such districts, new statutory duties that increase the costs of such services are prima facie reimbursable. This is true, notwithstanding a potential argument that such a local government’s discretionary

¹⁶⁵ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1363.

¹⁶⁶ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357-1367.

¹⁶⁷ Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that “It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force” Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d) A chief of police.”

decision is voluntary in part, as to the number of personnel it hires. (See *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at p. 888. . . .) A school district, for example, has an analogous basic and mandatory duty to educate students. In the course of carrying out that duty, some “discretionary” expulsions will necessarily occur. [Citation to *San Diego Unified School Dist.* omitted.] Accordingly, *San Diego Unified School Dist.* suggests additional costs of “discretionary” expulsions should not be considered voluntary. Where, as a practical matter, it is inevitable that certain actions will occur in the administration of a mandatory program, costs attendant to those actions cannot fairly and reasonably be characterized as voluntary under the rationale of *City of Merced*. [Citation to *San Diego Unified School Dist.* omitted.]

However, the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.¹⁶⁸

As discussed above, the duties under Penal Code section 680(c)(1) and (2) are imposed on law enforcement agencies, including the law enforcement agencies of K-12 school districts and community college districts in whose jurisdiction specified sex offenses occur. As recognized by the court in *POBRA*, however, K-12 school districts and community college districts are authorized, but not required, to have police departments and employ peace officers. Police protection is not a basic or essential function of K-12 school districts and community college districts. Thus, since K-12 school districts and community college districts are not legally compelled to have police departments, the legal duty to comply with the activities required by Penal Code section 680(c)(1) and (2) is imposed as a result of their own discretionary decisions to have police departments and employ peace officers and is not mandated by the State. Moreover, there is no evidence in the record that K-12 school districts or community college districts are practically compelled to have police departments.

Accordingly, the Commission finds that the test claim statute imposes a state-mandated program on counties and cities, but does not impose a state-mandated program on K-12 school districts and community college districts. K-12 school districts and community college districts are therefore not eligible to claim reimbursement for this program.

2. Penal Code section 680(c)(1) and (2), As Amended by the Test Claim Statute, Imposes A New Program or Higher Level of Service.

For the test claim statute to be subject to subvention pursuant to article XIII B, section 6 of the California Constitution, the statute must impose a new program or higher level of service. A new program or higher level of service is defined as a program that carries out the governmental function of providing services to the public, or, in implementing a state policy, imposes unique

¹⁶⁸ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

requirements on local government that do not apply generally to all residents and entities in the state.

Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing “programs.” But the term “program” itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term – *programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.*¹⁶⁹

The court further held that “the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.”¹⁷⁰

As indicated above, the state-mandated activities are newly imposed on county and city law enforcement agencies and are unique to government. Providing police services and protection to the public is a core governmental function.¹⁷¹ Moreover, the mandated activities relating to the testing sexual assault forensic evidence provide a peculiarly governmental service to the public. In passing the Sexual Assault Victims’ DNA Bill of Rights, the Legislature found and declared that “[t]imely 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 (i) of Section 803.”¹⁷² Furthermore, the test claim statute aims to “to ensure that survivors of rape have equal access to justice by promptly testing all rape kits collected after an assault.”¹⁷³

¹⁶⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis added.

¹⁷⁰ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57, emphasis added.

¹⁷¹ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537 (Police protection is one “of the most essential and basic functions of local government.”); *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

¹⁷² Penal Code section 680(b)(5), as added by Statutes 2003, chapter 537. “Subdivision (i) of Section 803” was later changed to “subdivision (g) of Section 803” to reflect renumbering of that law. See Penal Code section 680(b)(6), as amended by Statutes 2014, chapter 874.

¹⁷³ Exhibit X, Assembly Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), as amended May 17, 2019, page 3.

3. Penal Code Section 680(c)(1) and (2), as Amended by the Test Claim Statute, Results in Increased Costs Mandated by the State Within the Meaning of Article XIII B, Section 6 of the California Constitution and Government Code Section 17514.

In order to be reimbursable, the mandated activities must also result in increased costs mandated by the state. Article XIII B, section 6 of the California Constitution and Government Code section 17561(a) require reimbursement for all costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as any increased costs that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds \$1,000. In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

The claimant alleges that it has incurred increased costs of \$116,139 to comply with the mandated new program or higher level of service in fiscal year 2019-2020 as follows:¹⁷⁴

Activity	Date(s) Performed	Description	Cost
1) SAEK Outsourcing	1/01/2020-6/30/2020	Contract Lab Analysis	\$ 52,670.00
2) Lab/Police Personnel	1/01/2020-6/30/2020	Follow-Up Outsourcing	\$ 985.75
3) Program Manager	1/01/2020-6/30/2020	SAEK Evidence Management	\$ 62,483.20
Total			\$116,138.95

The claimant supports these assertions with invoices,¹⁷⁵ a contract between the claimant and the outsourced crime lab,¹⁷⁶ a hiring memorandum pertaining to the criminalist positions,¹⁷⁷ an itemized spreadsheet of consumable costs,¹⁷⁸ and a declaration from Jeffrey Jordon, Captain of the City of San Diego Policy Department.¹⁷⁹ While the claimant alleges that Penal Code section 680(c)(1) mandates new activities, the claimant asserts that costs stemming from those new activities are de minimis and therefore has not identified them.¹⁸⁰

¹⁷⁴ Exhibit A, Test Claim, filed December 31, 2020, page 16.

¹⁷⁵ Exhibit A, Test Claim, filed December 31, 2020, pages 83-105.

¹⁷⁶ Exhibit A, Test Claim, filed December 31, 2020, pages 56-82.

¹⁷⁷ Exhibit A, Test Claim, filed December 31, 2020, pages 106-108.

¹⁷⁸ Exhibit A, Test Claim, filed December 31, 2020, pages 109-110. The claimant defines “consumables” as “materials needed to test the sexual assault evidence kits,” not the materials that make up the kits themselves. Exhibit A, Test Claim, filed December 31, 2020, page 7. Under Penal Code section 13823.14(d), “[e]very local and state agency shall remain responsible for its own costs in purchasing a standardized sexual assault forensic medical evidence kit.”

¹⁷⁹ Exhibit A, Test Claim, filed December 31, 2020, pages 21-24.

¹⁸⁰ Exhibit A, Test Claim, filed December 31, 2020, page 9.

The record contains sufficient evidence that the claimant's costs to comply with the mandated new program or higher level of service for fiscal year 2019-2020 exceed \$1,000.

Additionally, none of the exceptions specified in Government Code section 17556 apply to this claim. No State funds have been specifically appropriated to fund this program. In fact, the initial draft of the test claim statute included a direct appropriation of \$2 million from the General Fund to DOJ to assist local law enforcement agencies with complying with the new testing requirements, but that language was eventually removed.¹⁸¹ There are, however, several state and federal grant programs and other funding sources that may be used by a claimant to pay for the mandated activities in this program and for other criminal justice programs. These include, but are not limited to:

- Citizens Option for Public Safety Grant (COPS) (state)
- DNA Capacity Enhancement and Backlog Reduction Program (federal)
- DNA Identification Fund (state)
- Sexual Assault Evidence Submission Grant Program (state)

There is nothing in the law, however, that requires the above-described funding sources to be mandatory offsets and there is no evidence that they are sufficient to fully fund the costs of the program. Therefore, the Commission finds that there are costs mandated by the state. The identified funding sources, above, will be identified as potential offsetting revenues in the Parameters and Guidelines.

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this Test Claim and finds that Penal Code section 680(c), as amended by Statutes 2019, chapter 588, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, and requires city and county law enforcement agencies to perform the following mandated activities beginning January 1, 2020:

1. A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 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 booked into evidence; *or*
 - b. Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. (Penal Code 680(c)(1), Stats. 2019, ch. 588.)

¹⁸¹ Exhibit A, Test Claim, filed December 31, 2020, page 42.

2. For any sexual assault forensic evidence received on or after January 1, 2016, the law enforcement's crime lab shall do one of the following:
 - a. Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt; *or*
 - b. Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120 days after the transmitting crime lab initially receives the evidence. (Penal Code 680(c)(2), Stats. 2019, ch. 588.)

All other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed and supported by evidence in the record by the claimant for inclusion in the Parameters and Guidelines pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5, *with the exception* of conducting follow-up investigations on evidence tested pursuant to the test claim statute, which the Commission finds is not a reimbursable activity.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 20, 2021, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued May 20, 2021**

Sexual Assault Evidence Kits: Testing, 20-TC-01

Penal Code Section 680 as added by Statutes 2019, Chapter 588 (SB 22)

City of San Diego, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 20, 2021 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/12/21

Claim Number: 20-TC-01

Matter: Sexual Assault Evidence Kits: Testing

Claimant: City of San Diego

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Manny Alvarez Jr., Executive Director, *Commission on Peace Officer Standards and Training*
860 Stillwater Road, Suite 100, West Sacramento, CA 95605
Phone: (916) 227-3909
Manny.Alvarez@post.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Cindy Black, City Clerk, *City of St. Helena*
1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
ctzaopoulos@cityofsthenela.org

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Jim Grottkau, Bureau Chief, *Commission on Peace Officer Standards and Training*
Basic Training, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605
Phone: (916) 227-3909
Jim.Grottkau@post.ca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Jeffrey Jordon, Captain, *City of San Diego*
Claimant Representative
San Diego Police Department, 1401 Broadway, San Diego, CA 92101
Phone: (619) 756-5264
jjjordon@pd.sandiego.gov

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, *City of Newport Beach*
Revenue Division, 100 Civic Center Drive, Newport Beach, CA 90266
Phone: (949) 644-3199
jkessler@newportbeachca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Alison Leary, Deputy General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200
aleary@cacities.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Amber Lozano, *Department of Justice*
Child Protection Program, Room H122, 4949 Broadway, Sacramento, CA 95820

Phone: (916) 227-3263
amber.lozano@doj.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Corrie Manning, Assistant General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200
cmanning@cacities.org

Brian Marvel, President, *Peace Officers Research Association of California (PORAC)*
4010 Truxel Road, Sacramento, CA 95834
Phone: (916) 928-3777
president@porac.org

Elizabeth McGinnis, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Elizabeth.McGinnis@csm.ca.gov

Jane McPherson, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
JmcPherson@oceansideca.org

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 628-6028
Marilyn.Munoz@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Johnnie Pina, Legislative Policy Analyst, *League of Cities*

1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jai Prasad, *County of San Bernardino*

Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Carla Shelton, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*

Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Michelle Skaggs Lawrence, City Manager, *City of Oceanside*

300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
citymanager@oceansideca.org

Joe Stephenshaw, Director, *Senate Budget & Fiscal Review Committee*

California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Joe.Stephenshaw@sen.ca.gov

Brittany Thompson, Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Brittany.Thompson@dof.ca.gov

Jolene Tollenaar, *MGT Consulting Group*

2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Antonio Velasco, Revenue Auditor, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3143
avelasco@newportbeachca.gov

Matthew Vespi, Chief Financial Officer, *City of San Diego*
Claimant Contact

202 C Street, 9th Floor, San Diego, CA 92101
Phone: (619) 236-6218
mvespi@sandiego.gov

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jeannine Willie, *California Department of Justice (D-01)*
Missing Persons DNA Program, 4949 Broadway, Room A132, Sacramento, CA 95820
Phone: (916) 227-5997
jeannine.willie@doj.ca.gov

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

AB 898
Page 1

Date of Hearing: April 9, 2003

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Darrell Steinberg, Chair

AB 898 (Chu) - As Introduced: February 20, 2003

Policy Committee: Public
SafetyVote: 6-0

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

SUMMARY

_____ This bill creates the "Sexual Assault Victim's" DNA Bill of Rights. Specifically, this bill:

- _____ -
- _____ 1) Requires, upon request of a sexual assault victim, a law enforcement agency investigating specified felony sex offenses to promptly inform the victim of the status of DNA testing of the case evidence.
 - 2) Requires a sexual assault victim be informed whether the DNA profile was obtained, whether the DNA profile developed from the evidence has been entered into the Department of Justice (DOJ) Data Bank, and whether there is a match between the DNA profile developed from the case and a DNA profile contained in the DOJ convicted offender data base.
 - 3) Requires a victim of specified sexual assault offenses be given written notification - unless the victim declines in writing - by the law enforcement agency investigating the case if the agency elects not to perform DNA testing of the case evidence, or if the law enforcement agency intends to dispose of the case evidence prior to the expiration of the statute of limitations, as specified.
 - 4) Requires that the law enforcement agency responsible for providing information under this measure do so in a timely manner and, upon request, advise the victim or victim's designee of any significant changes in the information.

_____ FISCAL EFFECT

Moderate, potentially state-reimbursable local law enforcement costs, potentially up to \$1 million, for providing additional information - upon request - to sexual assault victims and for providing written notification in cases where the agency elects not to pursue DNA testing or intends to dispose of case evidence. More than 300,000 rapes and sexual assault arrests are reported annually in California. If 25% of these cases required an additional 15 minutes of an officer's time, the cost pressure to local law enforcement would exceed the equivalent of about 10 full-time officers, or about \$800,000.

COMMENTS

1)Rationale . According to the sponsor, the L.A. District Attorney's Office, under current law the 10-year statute of limitations for a forcible sex offense case is extended by one year from the date the identity of the suspect is conclusively established through DNA evidence. In order, however, for this one-year extension to apply, the biological evidence collected from the victim must be tested for DNA within two years of the offense.

In rape cases where there is no suspect, the only way to apprehend the rapist is to test DNA evidence and attempt to match that evidence with a person in the DNA data bank. Many suspects have been identified, charged and convicted under this approach. However, this law only works if the DNA evidence is actually tested. And unfortunately, many rape kits have been destroyed and biological evidence has gone untested.

AB 898 is intended to give rape victims the ability to follow their own cases so that they can urge law enforcement to test the evidence and determine if the suspect can be located. This right is similar to other victim's rights, such as the right to be notified of court dates, parole dates, and the disposition of cases.

2)Concerns . Not informing those closest to the crime of the progress of the investigation can be key to a criminal investigation, as family members are often suspects in violent crime cases.

Also, although the bill provides a means for complaints against a system that does have an evidentiary analysis backlog, it provides no actual solution, other than enabling

victims to essentially demand progress reports.

3)Technical amendment . Page 3, line 6 should read "regarding"
not "reading".

Analysis Prepared by : Geoff Long / APPR. / (916) 319-2081

Date of Hearing: June 19, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 22 (Leyva) – As Amended May 17, 2019

Policy Committee: Public Safety

Vote: 8 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill requires law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place. This bill also requires crime labs to either process evidence for DNA profiles and upload them into the Combined DNA Index System (CODIS) or transmit the evidence to another crime lab for processing and uploading.

FISCAL EFFECT:

- 1) Costs (GF/DNA Identification Fund) of approximately \$854,000 annually for the Department of Justice (DOJ) for personnel, operating expenses and equipment.
- 2) Possible state reimbursable costs (local funds/GF) in the hundreds of thousands of dollars annually for local law enforcement agencies. The Los Angeles County Sheriff's Department anticipates additional personnel costs of about \$450,000 to process the evidence within the timeframe required. Local costs to comply with this bill would be subject to reimbursement by the state to the extent the Commission on State Mandates determines this bill imposes a reimbursable state-mandated local program.

COMMENTS:

- 1) **Purpose.** According to the author:

Senate Bill 22 will help to ensure that survivors of rape have equal access to justice by promptly testing all rape kits collected after an assault. It is critically important that any DNA evidence left behind by the attacker is processed quickly so that law enforcement authorities can identify and prosecute rapists and we can put them behind bars—where they belong.

- 2) **Background.** Existing law provides law enforcement agencies should either submit sexual assault forensic evidence to a crime lab within 20 days after it is booked into evidence or ensure a rapid turnaround DNA program in place. This bill would require, rather than encourage, law enforcement to take one of these actions. Existing law also encourages a crime lab that receives sexual assault forensic evidence to either process the evidence, create DNA profiles and upload qualifying DNA profiles into CODIS, or transmit the sexual assault forensic evidence to another crime lab as soon as practically possible but no later than 30 days after receiving the evidence. This bill provides that these actions must be taken.

AB 3118, Chapter 950, Statutes of 2018, required law enforcement agencies or any other agency that possesses sexual assault evidence kits to conduct an audit of all kits in their possession and report the findings to the DOJ. DOJ has yet to report the results of the audit.

- 3) **Related Legislation.** AB 1496 (Frazier) required a law enforcement agency to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place and require a crime lab to either process the evidence or transmit the evidence to another crime lab for processing within existing specified time frames. AB 1496 was held on this committee's Suspense File.
- 4) **Prior Legislation.** SB 1449 (Leyva), of the 2017-2018 Legislative Session, would have required law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure that a rapid turnaround DNA program is in place. It also would have required crime labs to either process the evidence for DNA profiles and upload them into the Combined DNA Index System (CODIS) or transmit the evidence to another crime lab for processing and uploading. SB 1449 was vetoed by Governor pending the outcome of the audit.

Analysis Prepared by: Kimberly Horiuchi / APPR. / (916) 319-2081

Date of Hearing: June 11, 2019
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 22 (Leyva) – As Amended May 17, 2019

SUMMARY: Requires law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure that a rapid turnaround DNA program is in place, and requires crime labs to either process the evidence for DNA profiles and upload them into the Combined DNA Index System (CODIS) or transmit the evidence to another crime lab for processing and uploading. Specifically, **this bill**:

- 1) States that a law enforcement agency in whose jurisdiction a specified sex offense 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; or
 - 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) States that a 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 the Combined DNA Index System (CODIS) as soon as practically possible, but no later than 120 days after initially receiving the evidence; or
 - 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.

EXISTING LAW:

- 1) Provides that in order to ensure that sexual assault forensic evidence is analyzed within the two-year timeframe required and to ensure the longest possible statute of limitations for sex offenses the following should occur:

- a) A law enforcement agency in whose jurisdiction a specified sex offense occurred should do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - i) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence; and
 - ii) 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.
- b) The crime lab should do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016:
 - i) 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; or
 - ii) 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 should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified. (Pen. Code, § 680, subds. (b)(7)(A) and (B).)
- 2) Specifies that crime labs do not need to test all items of forensic evidence obtained in a sexual assault forensic evidence examination. (Pen. Code, § 680, subd. (b)(7)(C).)
- 3) Specifies that a DNA profile need not be uploaded into CODIS if it does not meet the federal guidelines. (Pen. Code, § 680, subd. (b)(7)(D).)
- 4) Encourages DNA analysis of rape kit evidence within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. (Pen. Code § 680 (b)(6).)
- 5) Encourages law enforcement agencies to submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Pen. Code § 680 (b)(7)(A)(i).)
- 6) Encourages the establishment of rapid turnaround DNA programs, where the rape kit is sent directly from the facility where it was collected to the lab for testing within five days. (Pen. Code § 680 (b)(7)(A)(ii) and (E).)
- 7) Defines “rapid turnaround DNA program” as a program for training of sexual assault team personnel in the selection of a 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. (Pen. Code, § 680, subd. (c)(2)(5).)

- 8) Encourages crime labs to do one of the following:
 - a) Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or
 - b) Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA. (Pen. Code § 680 (b)(7)(B).)
- 9) Provides that upon the request of a sexual assault victim, the law enforcement agency investigation of a specified sex offense 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. (Penal Code § 680 (c)(1))
- 10) Establishes the Sexual Assault Victims' DNA Bill of Rights which provides victims of sexual assault with the following rights:
 - a) The right to be informed 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) The right to be informed 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 (DOJ) Data Bank of case evidence; and,
 - c) The right to be informed whether or not there is a 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 DOJ Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation. (Pen. Code § 680 (c)(2).)
- 11) Requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out. (Pen. Code §§ 680 (e) and (f), 803.)
- 12) Provides that a criminal complaint for a registerable sex offense may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing as specified. (Pen. Code, § 803, subd. (g).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "Senate Bill 22 will help to ensure that survivors of rape have equal access to justice by promptly testing all rape kits collected after an assault. It is critically important that any DNA evidence left behind by the attacker is

processed quickly so that law enforcement authorities can identify and prosecute rapists and we can put them behind bars—where they belong. It is unacceptable for a rape kit to ever sit on a shelf somewhere untested, since that rape kit represents a person and testing that kit can also help keep potential victims safe.”

- 2) **Sexual Assault Kits:** After a sexual assault has occurred, victims of the crime may choose to be seen by a medical professional, who then conducts an examination to collect any possible biological evidence left by the perpetrator. To collect forensic evidence, many jurisdictions provide what is called a “sexual assault kit.” Sexual assault kits often contain a range of scientific instruments designed to collect forensic evidence such as swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers. (National Institute of Justice (NIJ), *Sexual Assault Kits: Using Science to Find Solutions*, Sept. 10, 2015, available at: <https://nij.gov/unsubmitted-kits/Pages/default.aspx> [as of June 6, 2019].)

The composition of sexual assault kits vary depending on jurisdiction. For example, according to a report from 2011, the police and sheriff’s department in Los Angeles use identically arranged sexual assault kits, however, the rest of California does not. (NIJ, *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases*, May 2011, at page 2, available at: <https://www.ncjrs.gov/pdffiles1/nij/233279.pdf>, [as of June 6, 2019].)

- 3) **Combined DNA Index System (CODIS):** Analyzing forensic evidence from sexual assault kits assists in linking the perpetrator to the sexual assault. Generally, once a hospital or clinic has conducted a sexual assault kit examination, it transfers the kit to a local law enforcement agency. From here, the law enforcement agency may send the kit to a forensic laboratory. Evidence collected from a kit can be analyzed by crime laboratories and could provide the DNA profile of the offender. Once law enforcement authorities have that genetic profile, they could then upload the information onto CODIS.

Created by the FBI in 1990, CODIS is a national database that stores the genetic profiles of sexual assault offenders onto a software program. By exchanging, testing, and comparing genetic profiles through CODIS, law enforcement agencies can discover the name of an unknown suspect who was in the system or link together cases that still have an unknown offender. The efficacy of CODIS depends on the volume of genetic profiles that law enforcement agencies submit. (FBI website, *Combined DNA Index System (CODIS)*, available at: <https://www.fbi.gov/services/laboratory/biometric-analysis/codis>, [as of June 6, 2019].) At present, more than 190 law enforcement agencies use CODIS. (*Id.*)

- 4) **Unsubmitted Sexual Assault Kits:** California law currently encourages, but does not require any agency to send a sexual assault kit to a crime lab. Recently, however, legislation has been enacted that encourages such transfers. (Pen. Code, § 680, subd. (b)(7)(A).) There are a number of reasons why law enforcement authorities do not submit a kit to a crime lab. For example, identity of the suspect may never have been at issue. Often times, whether or not the victim consented to the sexual activity is the most important issue in the case, not the identity of the suspect. In other cases, charges may be dropped for a variety of reasons, or a guilty plea may be entered rendering further investigation moot. (USDOJ’s National Institute of Justice, *supra*.)

A 2014 report by the State Auditor found that law enforcement rarely documents reasons for not analyzing sexual assault evidence kits. (State Auditor, *Sexual Assault Evidence Kits*, Oct.

2014, at page 17, available at: <https://www.bsa.ca.gov/pdfs/reports/2014-109.pdf>, [as of June 6, 2019].) Specifically, the report found that “[i]n 45 cases . . . reviewed in which investigators at the three agencies we visited did not request a kit analysis, the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed.” (*Id.* at 23.)

Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases. The “decisions not to request sexual assault evidence kit analysis in the individual cases we reviewed appeared reasonable because kit analysis would be unlikely to further the investigation of those cases. We reviewed specific cases at each agency in which investigators did not request analysis. Our review included 15 cases from each of the three agencies we visited with offenses that occurred from 2011 through 2013, for a total of 45 cases. In those cases, we did not identify any negative effects on the investigations as a result of decisions not to request analysis. We based our conclusions on the circumstances present in the individual cases we reviewed, as documented in the files for the 45 cases and as discussed with the investigative supervisors.” (*Id.*)

Although the audit found the explanations for not submitting the sexual assault kits to be reasonable, testing those kits may have identified offenders who had committed another crime for which they were never previously identified. The National Institute of Justice funded Detroit, Michigan and Houston, Texas to test their unsubmitted sexual assault kits. The results revealed that testing unsubmitted kits can lead to convicting hundreds to thousands of serial offenders; such testing identified over 400 serial rapists in Detroit alone. (NIJ, *National Sexual Assault Kit Initiative (SAKI): FY 2017 Competitive Grant Announcement*, Dec. 20, 2016, available at: <https://www.bja.gov/funding/SAKI17.pdf> [as of June 6, 2019].)

Testing unsubmitted kits may be particularly effective in California, which passed Proposition 69 in 2004, requiring all persons arrested or charged of a felony to submit DNA samples. (Pen. Code, § 296.) For example, a serial offender is currently “awaiting trial in Alameda County Superior Court for sexual assaults against five women ranging in age from 15 to 46, and for the 2015 killing of one rape victim, Randhir Kaur, who was a UCSF dental student. All of the cases are linked by DNA evidence.” In one of his earlier cases from 2008, the law enforcement agency did not get the sexual assault kit tested, which, if they had, could have identified him as he was in the national DNA database for a 2005 felony gun conviction. (Gutierrez and Veklerov, *San Francisco Chronicle*, *Efforts to Clear California’s Rape Kit Testing Backlog Fall Short*, Mar. 17, 2018, available at: <https://www.sfchronicle.com/news/article/Efforts-to-clear-California-s-rape-kit-testing-12760627.php> [as of June 6, 2019].)

- 5) **The Need for this Bill:** Existing law provides that law enforcement agencies *should* either submit sexual assault forensic evidence to a crime lab within 20 days after it is booked into evidence or insure that rapid turnaround DNA program in place. This bill would *require* law enforcement to take one of these actions.

Existing law also *encourages* a crime lab that receives sexual assault forensic evidence to either process the evidence, create DNA profiles and upload qualifying DNA profiles into CODIS or transmit the sexual assault forensic evidence to another crime lab as soon as

practically possible but no later than 30 days after receiving the evidence. This bill instead provides that these actions *shall* be taken.

Although this bill will not undo the backlog of untested kits – estimated to be more than ten thousand by the sponsor of the bill (<http://www.endthebacklog.org/california>) – it should prevent additional backlog provided that law enforcement agencies and crime labs have the resource to keep up with the influx of new kits.

AB 3118 (Chiu) Chapter 950, Statutes of 2018 required each law enforcement agency, crime lab, medical facility, or other facility in possession of sexual assault kits to conduct an audit of all the kits in their possession and report specified information about them to the DOJ. In turn, the DOJ is required to compile the information and submit a report to the Legislature. The information to be audited includes the date when the kits were collected, whether they were tested by a crime lab, whether the information from the test was uploaded to CODIS, etc. DOJ's report is due to the Legislature in July, 2020.

- 6) **Governor Brown's Veto Message on SB 1449:** Last year the author introduced SB 1449, which was nearly identical to this bill. SB 1449 was vetoed by Governor Brown, who stated:

"I am returning Senate Bill 1449 without my signature.

"This bill would require the testing of all sexual assault forensic evidence kits within a specified period of time.

"The state budget that I signed this year includes a one-time total of \$7.5 million General Fund to test rape kits-\$1 million to begin conducting an audit of untested kits and \$6.5 million to help test the existing known backlog.

"While I fully support the goal of this bill, I believe that we should allow for the completion of the audit mandated by AB 3118 (Chiu)-which I am signing today-as well as for the Department of Justice to further reduce the existing backlog using the recently approved significant funding increase. I would like to allow time for this year's legislative actions to take effect so we can gauge the appropriate next steps and budget accordingly."

- 7) **Argument in Support:** According to the bill's co-sponsor, the *Joyful Heart Foundation*, "Every 98 seconds, someone is sexually assaulted in the United States. In the immediate aftermath of a sexual assault, a victim may choose to undergo a medical forensic examination to collect evidence left behind in the assault. A doctor or nurse will conduct the examination, which can last between four and six hours, and collect evidence in what is commonly called a rape kit. Survivors—and the public—expect that these kits will be used to apprehend offenders. Far too often, these kits are not submitted to crime labs for testing and are simply shelved in law enforcement storage.

"S.B. 22 amends language of existing California law, which merely encourages law enforcement agencies to submit kits for testing. The Sexual Assault Victims' DNA Bill of Rights states that sexual assault forensic evidence received after January 1, 2016 should be submitted for testing within 20 days, that laboratories should test the kit and submit DNA evidence as soon as possible but within 120 days, and a transferred kit's DNA evidence

should be uploaded as soon as possible but within 30 days.”

- 8) **Argument in Opposition:** According to the *California Public Defender’s Association*, “How crime laboratories allocate their limited resources should not be micromanaged by the state legislature. While the testing of DNA evidence from sexual assault cases is important, it is not more important than DNA testing on items of evidence collected in the investigation of other types of violent crime such as homicides, kidnapping or assaults and not more important than other types of forensic testing such as firearms analysis, fingerprint comparison and trace evidence analysis. Moreover, because this bill would prioritize the testing of evidence from any sexual assault cases over testing from any other serious and violent crimes, regardless of the relative importance of those test results in prosecuting the charged offense, it might actually jeopardize successful prosecutions for serious crimes. Additionally, the need to meet the stringent and categorical time limits imposed by this bill will delay DNA testing which could lead to an incarcerated or imprisoned person’s exoneration and freedom.”

9) **Related Legislation:**

- a) AB 358 (Low), would require the creation of a statewide tracking system to allow a victim of a sexual assault crime to monitor the status of the processing and testing of a sexual assault forensic exam related to their case. AB 358 was held on the Assembly Appropriations Committee Suspense File.
- b) AB 1496 (Frazier), is nearly identical to this bill, but would only require the prompt testing of sexual assault kits as of 2020 and for kits collected prior to then would have a relaxed timeline for submission and testing. AB 1496 was held on the Assembly Appropriations Committee Suspense File.

10) **Prior Legislation:**

- a) AB 3118 (Chiu), Chapter 950, Statutes of 2018, required 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 DOJ, who is then required to submit a report to the Legislature.
- b) SB 1449 (Leyva), of the 2017 – 2018 Legislative Session, was nearly identical to this bill. SB 1449 was vetoed by Governor Brown.
- c) AB 41 (Chiu), Chapter 694, Statutes of 2017, required all local law enforcement agencies investigating a case involving sexual assault to input specified information relating to the administration of a sexual assault kit into the DOJ’s SAFE-T database within 120 days of collection. It also required public laboratories to input an explanation onto SAFE-T if they had not completed DNA testing of a sexual assault kit within 120 days of acquiring the kit.
- d) AB 1312 (Gonzalez Fletcher), Chapter 692, Statutes of 2017, required law enforcement and medical professionals to provide victims of sexual assault with written notification of their rights. Provides additional rights to sexual assault victims, and mandates law

enforcement and crime labs to complete tasks related to rape kit evidence.

- e) AB 1848 (Chiu), of the 2015-2016 Legislative Session, would have required local law enforcement agencies to conduct an audit of sexual assault kits collected during a period of time, as specified by the DOJ, and to submit data regarding the total number of kits, the amount of kits submitted for DNA testing, the amount not submitted and other information, as specified. AB 1848 was held in the Senate Appropriations Committee.
- f) AB 2499 (Maienschein), Chapter 884, Statutes of 2016, required the DOJ to, in consultation with law enforcement agencies and crime victims groups, establish a process giving location and other information to victims of sexual assault upon inquiry.
- g) SB 1079 (Glazer), of the 2015-2016 Legislative Session, would have required the DOJ to maintain a restricted access repository for tracking DNA database hits that local law enforcement agencies could use to share investigative information. SB 1079 was held in the Senate Appropriations Committee.
- h) AB 1517 (Skinner), Chapter 874, Statutes of 2014, provided preferred timelines that law enforcement agencies and crime labs should follow when dealing with sexual assault forensic evidence.
- i) AB 322 (Portantino), of the 2011-2012 Legislative Session, would have established a pilot project administered by the DOJ. The project would have required ten counties to open and test all rape kits collected from July 1, 2012, to December 31, 2014. AB 322 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office (Co-Sponsor)
Joyful Heart Foundation (Co-Sponsor)
Natasha's Justice Project (Co-Sponsor)
Santa Barbara Women's Political Committee (Co-Sponsor)
California District Attorneys Association
California Police Chiefs Association
Change for Justice
National Association of Social Workers, California Chapter
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Stonewall Democratic Club
Students Against Sexual Assault
UCSB Lobby Corps

Oppose

California Public Defenders Association

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744



STATE OF CALIFORNIA
OFFICE of the ATTORNEY GENERAL

BILL LOCKYER

AUGUST 2003

Forensic laboratories are crucial to our criminal justice system. Forensic scientists in California's crime laboratories provide invaluable information that aids in the investigation and prosecution of crime through the scientific examination of physical evidence. Their efforts, carried out to the highest standards of scientific objectivity, integrity and quality, give voice to the "silent witness" of physical evidence and contribute to the cause of justice.

The criminal justice system increasingly relies on forensic science as new technology emerges at an ever-accelerating rate. The limited resources of our forensic delivery system are under increasing strain as the demand for scientific evidence continues to grow. To the extent that our laboratories are unable to meet the needs of their clients in a timely fashion, the efficiency and effectiveness of the entire criminal justice system can be undermined. We must ensure that pressure on the laboratories for more and faster results never reduces the accuracy and quality of their work, for that could result in injustice.

To address these challenges, I created the California Task Force on Forensic Services. The Task Force broadly represented California's criminal justice and forensic science communities. I asked the Task Force to assess the current status of our state's forensic service delivery system and to identify the steps we must take to ensure that California will continue to receive the highest quality crime laboratory service.

I am grateful for the expertise, commitment and hard work of the task force members. I strongly endorse the findings and recommendations outlined in this 2003 California Task Force on Forensic Services Force Report, which will provide a foundation and framework for future policy and funding decisions. I urge other public policy makers to lend their support as well.

A handwritten signature in black ink that reads "Bill Lockyer". The signature is written in a cursive, flowing style.

Bill Lockyer
Attorney General

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OVERVIEW AND HISTORY

Unlike many other states whose forensic services are administered entirely at the state level, California's crime laboratory system is composed of a mosaic of state, county and city level entities. The current configuration of the system was established in the early 1970s. There are 33 state and locally funded laboratories recognized by the California Association of Crime Laboratory Directors (CACLD). Nearly 1,500 forensic science professionals² and nontechnical support personnel serve California's law enforcement and justice agencies. Each jurisdiction is served by only one primary forensic laboratory for any given type of testing. It is clear that there is no redundancy in the current statewide laboratory system.

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STATE LEVEL LABORATORIES

The largest laboratory organization in the state is the Department of Justice's Bureau of Forensic Services (BFS), which has 13 accredited laboratory operations located at 11 sites and provides forensic services to 46 of California's 58 counties. BFS operates two specialized programs that offer services to the entire state – the CODIS databank (called Cal-DNA) and the California Criminalistics Institute (CCI), which trains forensic scientists throughout the state.

The 173 professional staff in the BFS-operated laboratories complete about 63,000 requests for service each year. The vast majority of these requests are for high volume, relatively routine cases (such as controlled substances, blood alcohol, and toxicology) that are far less time consuming than the more complicated BFS cases (such as DNA, firearms and trace evidence) commonly associated with violent crimes. State laboratories handle the bulk of clandestine laboratory ("clan lab") cases in California because illicit drug manufacturing activities tend to locate in the rural areas serviced by BFS.

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COUNTY-MANAGED FORENSIC LABORATORIES

Forensic laboratories managed by counties normally serve all law enforcement agencies within the county, although larger cities within a county may have their own laboratories. The 535 professional staff working in the 12 county-managed laboratories complete about 280,000 case requests per year, most of which (as with the state labs) consist of controlled substances, blood alcohol, and toxicology analysis. There is considerable variation in the level of services offered by the county labs. All provide controlled substances analysis and firearms examination, many offer DNA analysis, some have full-fledged trace evidence units, and only a few offer questioned documents service.

² Professional staff includes laboratory scientists and examiners who analyze evidence, issue reports, and testify as to their findings.

MUNICIPALLY-MANAGED FORENSIC LABORATORIES

Seven municipal forensic labs employ 278 professional staff that complete about 109,000 case requests per year. All the municipally managed laboratories have a heavy controlled substances workload, but they do not have comparable workloads in terms of other types of cases they process. Some provide limited services, such as controlled substances and latent print comparison only, while others offer a full range of forensic testing .

← See page 35

PRIVATE LABORATORIES

Private laboratories in California and throughout the country perform a variety of forensic tests for California law enforcement agencies, prosecutors, and even public laboratories. Private laboratories are most commonly used in blood alcohol and toxicology cases and in a significant portion of DNA cases. With these exceptions, the casework capacity of California's private laboratories is relatively small. Much of their practice is devoted to reviewing the work of public laboratories on behalf of the defense.

← See page 36

FEDERAL LABORATORIES

In general, federal laboratories accept only cases related to investigation or adjudication of crimes involving federal statutes or occurring in federal jurisdictions. There are Drug Enforcement Administration (DEA), Bureau of Alcohol, Tobacco, and Firearms (BATF), U.S. Customs and Naval Criminal Investigative Services forensic laboratories in California. The Federal Bureau of Investigation (FBI) Laboratory is in Quantico, Virginia. California agencies rarely send cases to the FBI. ■

← See page 36

III. California Forensic Laboratory Operations

OVERVIEW AND HISTORY

California's crime laboratories have a rich and varied history. Unlike many other states, whose forensic services are administered entirely at the state level, California's crime lab system is composed of a mosaic of state, county and city level entities. The Los Angeles Police Department Laboratory, established in 1923, is one of the oldest in the country. In 1931, the State established a crime laboratory in its Criminal Information and Identification (CII) bureau in Sacramento. In the 1940s and 1950s, county- and city-funded laboratories began to appear in other urban areas of the state, staffed primarily by alumni of Dr. Paul Kirk's pioneering criminalistics program at the University of California at Berkeley. Later, small drug identification labs were established by the State to support the DOJ's narcotics enforcement efforts.

In the early 1970s, under the auspices of the federal Law Enforcement Assistance Administration (LEAA), the California Department of Justice (DOJ) undertook a study to assess the State's forensic needs. Despite the existence of several well-established and respected crime labs, it became clear that many jurisdictions were severely underserved. As a consequence, there was concern for the consistent quality of justice across the state. Ultimately, the State proposed to establish a statewide system of regional forensic laboratories, incorporating the original CII lab and the drug identification labs and funded initially by the LEAA. Existing local laboratories were invited to participate, and two of them (Riverside and Santa Barbara) joined the new state system. Thus, in 1972, the DOJ Bureau of Forensic Services (BFS) was established and continues to serve 46 of California's 58 counties. Citing the importance of local control, 12 counties (and several cities within those counties) elected to continue to fund and administer their own forensic laboratories.

Today, nearly 1,500 forensic science professionals and nontechnical support personnel serve California's law enforcement and justice agencies. State, county and city-run forensic laboratories are located throughout the state, from Eureka in the Northwest to San Diego in the South. Every jurisdiction has access to good quality forensic science. In general, the less urbanized and inland areas throughout the state are served by the state funded DOJ laboratory system. The more populous urban areas are generally served by county-funded laboratories or by a combination of county and city-run facilities.

In 1972, the DOJ BFS was established and continues to serve 46 of California's 58 counties.

Citing the importance of local control, 12 counties (and several cities within those counties) elected to continue to fund and administer their own forensic laboratories.

The forensic laboratories located throughout the state have wide ranges in size and breadth of their operations. There are 33 state and locally funded laboratories recognized by the California Association of Crime Laboratory Directors (CACLD), 26 of which are accredited by the American Society of Crime Laboratory Directors/ Laboratory Accreditation Board (ASCLD/LAB). They range in size from very large laboratory operations managed by the City of Los Angeles, the County of Los Angeles, and the State DOJ, down to small laboratories serving only one city, such as El Cajon or Huntington Beach. Thirteen of the 33 recognized labs are DOJ managed laboratories, each of which serves a multi-county region. The maps on pages 32 and 33 show the locations of service of the various laboratories.

Table 1 **Overview: Forensic Laboratories in California - 2001⁶**

2001 Statistics	State (DOJ)	County	Municipal	Total
Population Served	8 million	19 million	7 million	34 million
Part I Crimes ⁷	280,000	675,000	315,000	1.27 million
Percent of Total	(22%)	(53%)	(25%)	
Sworn Officers Served	17,000	23,407	15,784	56,191
Percent of Total	(30%)	(41%)	(28%)	
Professional Staff ⁸ (FTE's) ⁹	173	535	278	986
Percent of Total	(17.5%)	(54.3%)	(28.2%)	
Cases per FTE	363	524	391	458
Total Cases Processed	62,705	280,117	108,691	451,513
Percent of Total	(13.9%)	(62%)	(24.1%)	
Total Budget	\$38 million	\$68 million	\$25 million	\$131 million ¹⁰

The number of cases completed per professional FTE varies significantly depending on the number of cases falling into a limited number of highly automated high-volume categories, which are not proportionally distributed between the various lab systems.

Table 2 **Overview: Types of Cases (2000 -2001)**

Case Category	State (DOJ)	County	Municipal	Total
Blood/Breath Alcohol	21,288	59,593	5,067	85,948
Percent of Total	(25%)	(69%)	(6%)	
Latent Print Comparison	2,649	14,431	10,684	27,764
Percent of Total	(10%)	(52%)	(38%)	
Toxicology	9,852	85,264	2,170	97,286
Percent of Total	(10%)	(88%)	(2%)	
TOTAL CASES	33,789	159,288	17,921	210,998
Percent of Total	(16%)	(75.5%)	(8.5%)	

6 Comparisons among laboratories of total tests per staff member are not particularly meaningful because there is significant variation in how work is counted, different laboratories perform a different mix of test types, and some tests take substantially more resources than others. The ratio between Part I crimes and completed cases is not very comparable either.

7 PART I Crimes reported in the FBI's Uniform Crime Report (UCR) are murder, forcible rape, robbery, aggravated assault, burglary, larceny, auto theft, and arson. UCR statistics are commonly used to compare the relative levels of crime between jurisdictions.

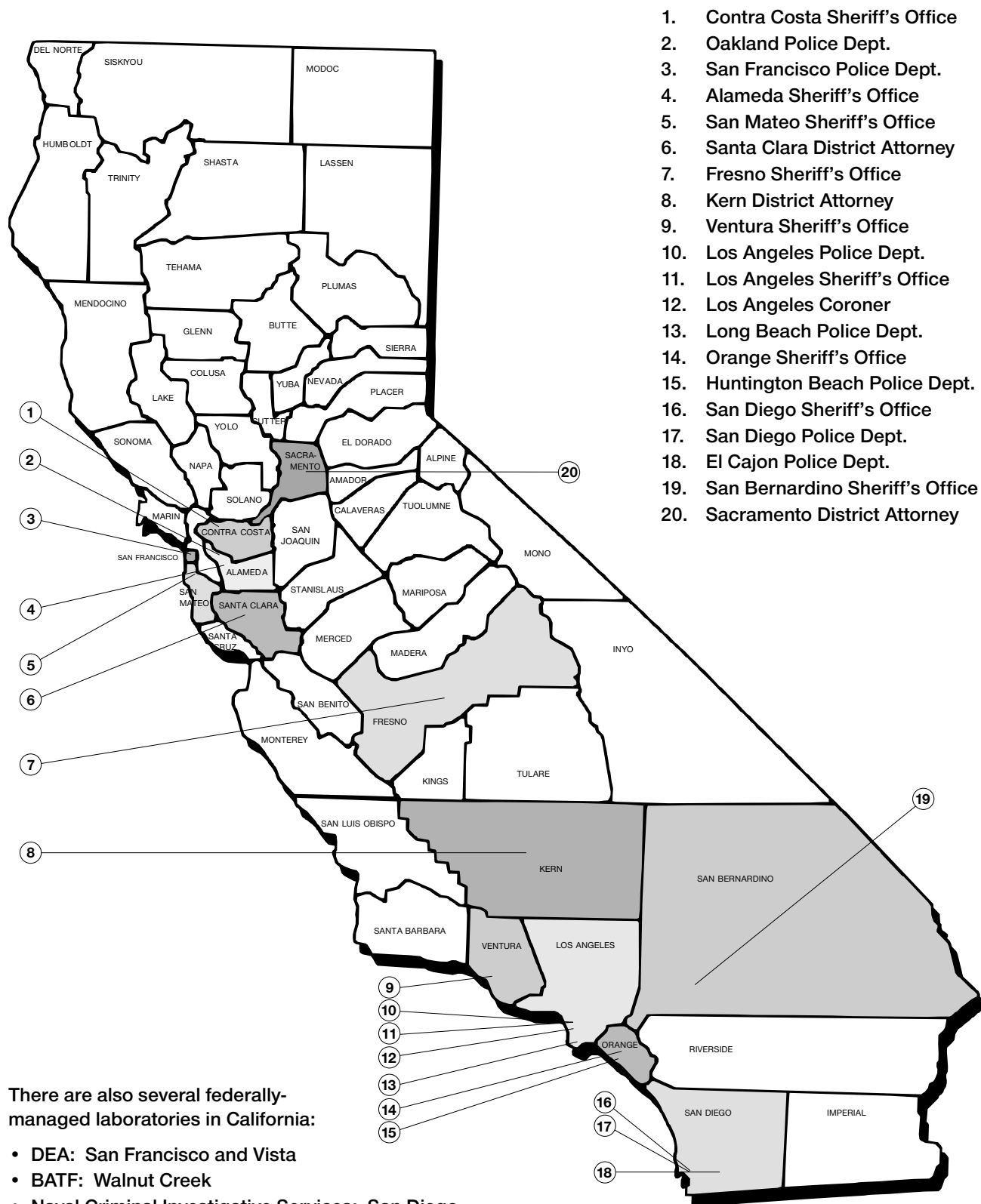
8 Professional staff includes laboratory scientists and examiners who report the results of evidence examination and testify in court and supervisors, if they do casework.

9 FTE = Full Time Equivalent staff.

State BFS Forensic Laboratory Locations in California



County and Municipal Forensic Laboratory Locations in California



COUNTY-MANAGED LABORATORIES

Forensic laboratories managed by counties normally serve all law enforcement agencies within the county, although larger cities within a county may have their own laboratories (discussed under municipal labs, in the next section). In California, there are 12 county laboratories.¹⁴ Nine counties have sheriff-managed laboratories, while three are run by district attorneys.

The 12 county laboratories are shown on the map on page 33. The approximate number of cases, staff (full-time equivalent or FTE), and Part I crimes associated with each laboratory are as follows:

Table 3 **County Labs in California**

County	Managed By	Cases Completed per Year	Professional FTEs	Part I Crimes
Alameda ^{15, 16}	Sheriff	7,000	10	7,000
Contra Costa ¹⁶	Sheriff	20,000	42	55,000
Fresno ¹⁵	Sheriff	No data	5	14,000
Kern	District Attorney	28,000	20	26,000
Los Angeles ¹⁵	Sheriff	76,000	159	200,000
Orange	Sheriff/Coroner	30,000	103	77,000
Sacramento	District Attorney	16,000	28	46,000
San Bernardino	Sheriff	23,000	50	66,000
Santa Clara ¹⁶	District Attorney	38,000	37	49,000
San Diego ¹⁵	Sheriff	18,000	42	45,000
San Mateo	Sheriff	20,000	18	19,000
Ventura	Sheriff	6,000	20	18,000
TOTAL		282,000	534¹⁷	622,000

The county laboratories are responsible for processing tests for county and municipal law enforcement agencies. Roughly half of all Part I crimes in the state occur in the jurisdictions served by these laboratories. The county laboratories employ approximately 55% of all forensic professionals in public laboratories and processed about 280,000 cases in 2000-2001 (62% of all the tests conducted in the state), approximately 524 cases per FTE. The weighted average turnaround time per case at county laboratories is about 12 calendar days. However, the turnaround time for DNA tests, which in this instance was driven by the exceptionally long turnaround reported by one laboratory with a very large caseload, is over 212 days (30 weeks).

Again, as noted in the state laboratory system, the vast majority (82%) of county crime lab cases are of the less complex variety (e.g. controlled substances, toxicology and blood alcohol) which have a low turnaround time and greatly skew this average. Likewise, there is considerable variation in the level of services offered by these laboratories. All provide controlled substances analysis and firearms examination, many offer DNA analysis, some have full-fledged trace evidence units, and only a few offer questioned documents service.

¹⁴ The Los Angeles Coroner also maintains a forensic laboratory specifically to work on death investigation. This accredited laboratory was inadvertently omitted from this survey.

¹⁵ Alameda, Los Angeles and San Diego County statistics do not include cities of Oakland, Los Angeles and San Diego respectively, which are serviced by municipal laboratories. The Fresno County statistics include only the unincorporated areas of the county, as all the municipalities in Fresno County are served by the BFS Fresno Regional Laboratory.

¹⁶ Alameda, Contra Costa and Santa Clara Counties all have fee-for service programs, which charge municipalities for all or part of their services.

¹⁷ The total number of staff derived from the numbers assigned to different services (Table 6, page 38) was 535.

MUNICIPALLY-MANAGED LABORATORIES

In addition to State- and County-managed laboratories, seven individual Police Departments administer their own laboratories. These are: Los Angeles, San Diego, San Francisco, Long Beach, Oakland, Huntington Beach, and El Cajon.

Approximately 315,000 Part I crimes occur annually in these seven cities (about 25% of the statewide total), and 278 forensic professionals work for municipal laboratories (about 27% of the total working in governmentally managed laboratories in the state). In 2000-01, these seven laboratories processed about 109,000 cases (or about 24% of all cases processed in all laboratories), equivalent to 391 cases per FTE.

Table 4 **Municipal Labs in California**

City	Cases Completed per Year	Professional FTEs	Part I Crimes
El Cajon (No response)			
Huntington Beach ¹⁸	5,000	8.0	5,000
Long Beach	15,000	16.0	18,000
Los Angeles	62,000	169.5	166,000
Oakland	5,000	13.0	31,000
San Diego	10,000	53.0	50,000
San Francisco	12,000	18.5	45,000
TOTAL	109,000	278.0	315,000

Although all the municipally-managed laboratories have a heavy controlled substances workload, they do not have comparable workloads in terms of other types of cases they process. For example, 2/3 of Long Beach's 15,000 cases are latent comparisons, latent fieldwork, or questioned documents. On the other hand, Los Angeles reports only 30% of its total caseload in these three categories; San Diego only about 17%; and San Francisco less than 1/2 of 1% (San Francisco's latent print unit is not housed within its forensic laboratory).

Since cases from some disciplines, such as DNA or trace evidence, take much longer to process, comparing average turnaround time between laboratories is not very meaningful. For all municipal laboratories, the weighted turnaround for the "average" test is 9.4 calendar days and turnaround time on DNA tests is about 50 days – the lowest in the state.

¹⁸ Since this survey was completed, Huntington Beach has reduced services provided at its municipal laboratory, transferring much of the workload to the Orange County Sheriff/Coroner Laboratory.

BUREAU OF FORENSIC SERVICES

Headquarters (916) 210-7460

REGIONAL LABORATORIES

Chico	(530) 801-2080
Eureka	(707) 382-4000
Freedom (Watsonville)	(831) 740-0125
Fresno	(559) 862-2600
Redding	(530) 351-0211
Central Valley (Ripon)	(209) 924-6000
Riverside	(951) 361-5000
Sacramento	(916) 227-3777
Santa Barbara	(805) 699-9200
Santa Rosa	(707) 570-4000

SPECIAL FORENSIC PROGRAMS

California Criminalistics Institute (Training)	(916) 695-1800
Digital Evidence	(916) 227-3623
Jan Bashinski DNA Laboratory	(510) 620-3300
CAL-DNA Data Bank	(510) 620-3300
DUI/EPAS/ISU (FAIRIT)	(916) 227-5605
Latent Prints	(916) 227-3797
Missing Persons DNA Program	(510) 620-3300
Quality Assurance Unit	(916) 210-7443
Toxicology	(916) 227-3620



CALIFORNIA DEPARTMENT OF JUSTICE
DIVISION OF LAW ENFORCEMENT
BUREAU OF FORENSIC SERVICES
BARRY MILLER, BUREAU DIRECTOR

Rev. 8 09/2019

BUREAU of FORENSIC SERVICES



Accredited by the American Society
of Crime Laboratory Directors
Laboratory Accreditation Board
(ASCLD/LAB-International)

DIVISION OF LAW ENFORCEMENT



REGIONAL LABORATORY SERVICE AREAS



The Bureau of Forensic Services (BFS) regional laboratory system was established in 1972 to provide assistance to local law enforcement agencies that did not have access to local crime laboratory services. Today, BFS is a comprehensive, state-of-the-art system accredited by the American Society of Crime Laboratory Directors, Laboratory Accreditation Board – International (ASCLD/LAB). The BFS system serves 46 of the state's 58 counties. BFS operates 10 regional crime laboratories for which forensic scientists collect, analyze, interpret, and compare physical evidence from suspected crimes. In addition, the Jan Bashinski Laboratory in Richmond houses the DNA Databank, Missing Persons DNA Program, method validation, and a DNA casework section. DNA casework analysis also is currently performed at six BFS laboratories: Central Valley in Ripon, Fresno, Redding, Riverside, Sacramento and Santa Barbara.

OVERVIEW

The Bureau of Forensic Services (BFS) is the scientific arm of the Division of Law Enforcement that serves the people of California on behalf of the Attorney General's Office. Forensic scientists collect, analyze, and compare physical evidence from suspected crimes. They provide analysis of evidence in toxicology, including alcohol, controlled substances and clandestine drug labs, biology and DNA, firearms, impression evidence such as shoeprints, tire marks or fingerprints, trace evidence including hair, fibers, and paint, and crime-scene analysis of blood spatter patterns and evidence collection, and they testify in state and federal court cases about their analyses in criminal trials. <http://oag.ca.gov/bfs>

MISSION

The California Department of Justice Bureau of Forensic Services provides high quality, impartial forensic service in the interest of public safety and justice.

VISION

- BFS seeks excellence in forensic science services by:
- Implementing efficient, effective, and high-quality forensic techniques.
 - Meeting or exceeding the highest forensic professional standards.
 - Delivering to employees the highest level of training.
 - Providing state-of-the-art facilities and equipment.

AWARD-WINNING LABORATORY SYSTEM

The BFS Rapid DNA Service (RADS) Team received a U.S. Department of Justice Award for Professional Innovation in Victim Services in April 2014. RADS began as a pilot test in four counties in 2011 to decrease the time needed to analyze DNA collected from victims of suspected sexual assaults to 15 days or less and to increase the number of cases analyzed. The DNA profiles were uploaded into the FBI's Combined DNA Index System (CODIS) for searching against offender DNA profiles or to DNA from other crimes. The rapid analysis at the BFS lab in Richmond, and later at the Santa Barbara lab, helped police agencies to respond to the evidence in less time, thus allowing for improved public safety.

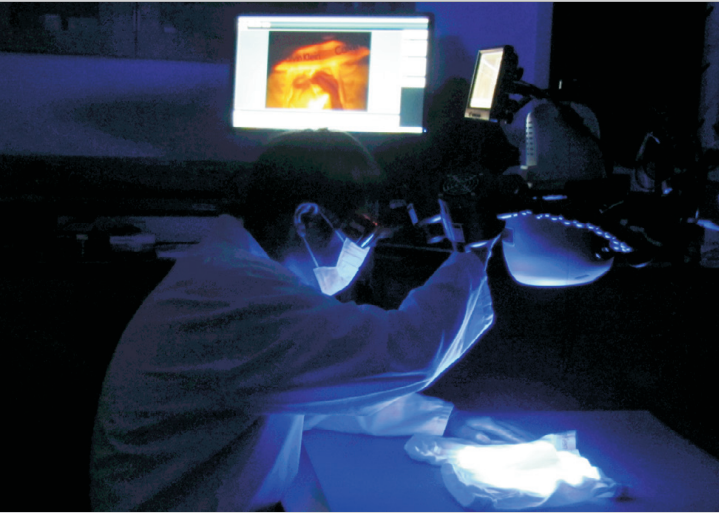
CAREER OPPORTUNITIES IN THE ATTORNEY GENERAL'S OFFICE

Criminalists and Minimum Qualifications

These forensic scientists apply scientific techniques and the scientific method to the examination and analysis of physical evidence, and they testify as experts in courts on their findings. Their education is equivalent to graduation from college with a major in one of the physical or biological sciences, including the equivalent of eight semester hours of general chemistry and three semester hours of quantitative analysis. See our web site for more details and application guidelines. <http://oag.ca.gov/careers/exams>

INFORMATIONAL FORENSIC WEBSITES:

- | | | |
|---|---|---|
| http://cacnews.org/ | http://aafs.org/ | http://www.asclcd-lab.org/ |
| http://cacld.net/ | http://www.asclcd.org/ | |



CRIMINALISTICS LABORATORIES

BFS operates a network of laboratories throughout the state in areas not served by a city or county forensic laboratory, providing the services below:

Alcohol	DNA Data Bank	Gunshot Residue Analysis
Biology	DNA Missing Persons	Impressions
Controlled Substances	Field Investigations: Clandestine Labs	Latent Prints
Digital Evidence	Crime Scenes	Toxicology
DNA Casework	Firearms/Toolmarks	Trace

CONTROLLED SUBSTANCES, CLANDESTINE LABS

All regional laboratories provide analytical support to law enforcement agencies to identify seized drugs. BFS also provides technical support in the examination of illicit drug labs, including the analysis of source chemicals and finished products.

DIGITAL EVIDENCE

In response to the proliferation of the use of technology in all aspects of commerce and communication, BFS has added a Digital Evidence program to examine computers, cell phones and other such devices for forensic evidence of human trafficking, drug trafficking, child pornography and other crimes.



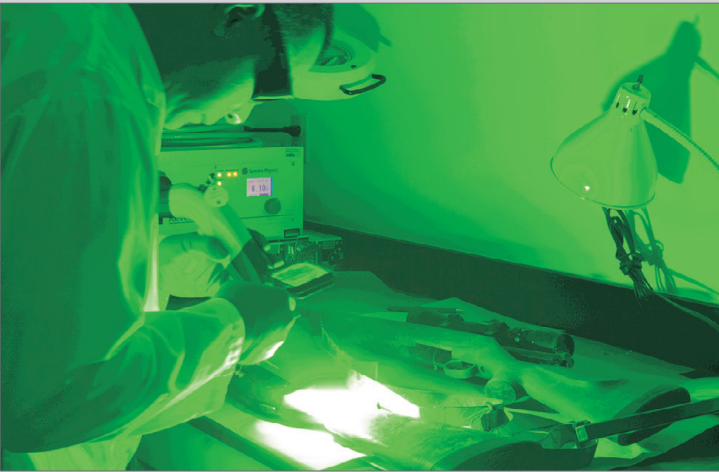
DNA ANALYSIS

Several BFS labs focus on DNA by analyzing biological evidence seized by law enforcement in criminal cases: Central Valley, Fresno, Redding, Riverside, Sacramento, Santa Barbara and the Jan Bashinski DNA Laboratory in Richmond.

The Jan Bashinski Laboratory in Richmond conducts research to advance DNA typing and coordinates the development of statewide standards on forensic DNA analysis. The laboratory has established CAL-DNA, a computerized DNA identification data bank to which evidence analysis results can be compared to identify unknown offenders. This database works in conjunction with the National DNA Index System (NDIS) as part of the Combined DNA Index System (CODIS). For the latest numbers, go to <http://oag.ca.gov/bfs/prop69>

LATENT PRINTS

Latent print analysts provide field response by processing major crime scenes and clandestine drug labs. They also process submitted evidence to look for latent (invisible) prints and perform print comparisons.



BLOOD, BREATH, AND URINE ANALYSIS

The Alcohol/Toxicology program analyzes blood, breath, and urine samples taken from drivers suspected of driving under the influence (DUI). Analysts provide testimony on their findings, as well. The program analyzes samples from non-driving cases by special request.

FIELD INVESTIGATION SUPPORT

BFS criminalists and latent print examiners provide local law enforcement agencies with crime-scene investigation support. These services include evidence collection and processing and crime-scene reconstruction.

FORENSIC SCIENCE TRAINING

The California Criminalistics Institute (CCI) is a training facility that offers state-of-the-art training to criminalists in all public laboratories in California. Created by statute in 1986 to advance public safety by offering training in the latest evidence analysis techniques, CCI has offered as many as 89 classes per year in all areas of analysis, including DNA and biology, impression evidence, controlled substances and alcohol and firearms. CCI also trains criminalists in effective courtroom testimony and the ethics of handling evidence and working in a public laboratory. For more information or for course offerings, see: <http://oag.ca.gov/ccl>



Senate Appropriations Committee Fiscal Summary
Senator Kevin de León, Chair

AB 1517 (Skinner) – DNA evidence.

Amended: May 23, 2014

Urgency: No

Hearing Date: August 14, 2014

Policy Vote: Public Safety 5-0

Mandate: Yes

Consultant: Jolie Onodera

SUSPENSE FILE. AS AMENDED.

Bill Summary: AB 1517 would establish timelines within which both law enforcement agencies and crime laboratories should perform DNA testing of rape kit evidence, as specified.

Fiscal Impact (as approved on August 14, 2014): Potentially major ongoing state, local, and special fund costs to meet the timeframes specified to submit and process forensic evidence, as follows:

- Potentially significant annual costs (Special Fund*) to the Department of Justice (DOJ) of less than \$2 million for new staffing to handle the expedited workload and crime lab functions for 46 counties. As the DNA Identification Fund revenue stream is insufficient to support the potential cost increase, General Fund or another fund source would be required to support these costs. In addition, major cost pressure for additional facility space to accommodate the additional staffing.
- Potentially significant non-reimbursable costs to local crime labs of less than \$750,000 to meet the testing timeframes in the bill. The LA Crime Lab had indicated costs of about \$500,000 to complete all sexual assault evidence in 60 days. Extending the time period to 120 days should significantly reduce these costs. Assuming LA County accounts for 30 percent of cases statewide, with DOJ processing another 25 percent, the remaining counties would account for the remaining 45 percent of cases, with total statewide costs estimated at less than \$1 million.
- Potentially significant ongoing non-reimbursable local law enforcement agency costs in the hundreds of thousands of dollars to meet the 20-day turnaround time for submittal of evidence to crime labs (current law does not specify a timeframe).
- Potential ongoing state-reimbursable costs in excess of \$50,000 to \$100,000 (General Fund) to inform all sexual assault victims, regardless if the identity of the perpetrator is at issue, if the law enforcement agency does not analyze DNA evidence within six months prior to the time limits established under existing law (current law only requires notification when the identity of the perpetrator is at issue, and does not require notification if analysis has not been done six months prior to the two-year time limit). Costs would be dependent on the volume of notifications and method of notification (verbal or written) provided.
- Unknown, potential future increase in state incarceration costs (General Fund) to the extent the expedited turnaround time of DNA testing enables additional prosecutions of sex offenses that would have otherwise been time barred under

the existing statute of limitations. Additional commitments to prison could also prevent the commission of future crimes by these defendants.

*DNA Identification Fund

Background: Existing law establishes the Sexual Assault Victims' DNA Bill of Rights which provides victims of sexual assault with the following:

- The right to be informed whether or not the DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from the case;
- The right to be informed 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 DOJ data bank of case evidence;
- The right to be informed whether or not there is a 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 DOJ Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation.

Existing law provides that notwithstanding any other limitation of time described, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met: (1) the offense was committed on or after January 1, 2001, and, (2) biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense. (Penal Code § 803(g)(1).)

Existing law states the intent of the Legislature that a law enforcement agency assigned to investigate specified sexual assault offenses should perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner, but does not specify a set timeframe, in order to assure the longest possible statute of limitations. Existing law provides that if a law enforcement agency elects not to analyze DNA evidence within the two-year timeframe established under existing law, a victim of sexual assault, where the identity of the perpetrator is in issue, shall be informed orally or in writing of that fact by the law enforcement agency.

This bill seeks to establish timelines within which both law enforcement agencies and crime labs should adhere in order to ensure the longest possible statute of limitations for sex offenses.

Proposed Law: This bill would establish timelines within which law enforcement agencies and crime laboratories should perform DNA testing of rape kit evidence. Specifically, this bill:

- Provides that a law enforcement agency in whose jurisdiction a specified sex offense occurred *should* do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - Submit sexual assault forensic evidence to the crime lab within 10 days after it is booked into evidence.
 - 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.

- Provides that the crime lab *should* do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016:
 - 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 60 days after initially receiving the evidence.
 - 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 should upload the profile into CODIS as soon as practically possible but no longer than 30 days after being notified about the presence of DNA.
- Provides that a crime lab is not required to test all items of forensic evidence obtained in a sexual assault forensic evidence examination, and that a crime lab is considered in compliance with the bill's guidelines when representative samples of the evidence are processed by the lab in an effort to detect foreign DNA of the perpetrator.
- Defines "rapid turnaround DNA program" as 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 via a written agreement between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is based.
- Requires a law enforcement agency to inform a victim of sexual assault, either orally or in writing, if the agency does not analyze DNA evidence within six months prior to the time limits established under existing law, irrespective if the identity of the perpetrator is an issue.

Prior Legislation: AB 322 (Portantino) 2011 would have established a three-year pilot program in 10 counties, commencing July 1, 2012, in which all rape kits collected in those counties after that date will be processed by the DOJ in department laboratories. This bill was vetoed by the Governor with the following message:

I am returning Assembly Bill 322 without my signature. This measure would establish a new pilot program and require the Department of Justice to test all rape kits collected from 10 specified counties. These counties, however, don't wish to participate in the program.

I don't see why we would mandate counties to participate in a program they don't want, especially when the state is cutting back on so many programs that are needed and wanted. Local officials are in the best position to determine whether to participate in such a program.

Staff Comments: The DOJ has indicated both one-time and ongoing costs to meet the timeframes outlined in this measure. As DOJ currently does not have the capacity to expand existing laboratories to accommodate the required increase in staff necessitated by the bill's provisions, DOJ has indicated the need for a new facility at a cost of \$14.5 million, as well as ongoing costs of about \$3 million for new staffing to continue to handle the crime lab functions for 46 counties. Although special funds from the DNA

Identification Fund would be an appropriate fund source for these costs, the existing revenue stream is insufficient to support the potential cost increase, and General Fund or another fund source would be required to support these costs. Local crime labs would also incur significant ongoing non-reimbursable local costs to meet the timeframes specified in this bill.

Local law enforcement agencies would likely incur ongoing significant costs potentially in the low millions of dollars statewide to meet the 10-day turnaround time for submittal of evidence to crime labs. Additionally, local law enforcement agencies could incur significant ongoing state-reimbursable costs in excess of \$50,000 to \$100,000 (General Fund) to inform all sexual assault victims, regardless if the identity of the perpetrator is at issue, if the law enforcement agency does not analyze DNA evidence within six months prior to the time limits established under existing law. As current law only requires notification when the identity of the perpetrator is at issue, and does not require notification if analysis has not been done six months prior to the two-year time limit, this provision could be determined to be a higher level of service by the Commission on State Mandates. Costs would be dependent on the volume of notifications and method of notification (verbal or written) provided.

To the extent the expedited turnaround time for DNA evidence processing results in additional prosecutions for sex offenses that otherwise would have been time barred by the existing statute of limitations, could result in additional state incarceration costs (General Fund) of an unknown amount. Staff notes any additional commitments to prison could also prevent the commission of future crimes by these defendants, thereby reducing the number of future victims.

Author amendments:

- Extend the guidelines from 10 days to 20 days for law enforcement to send a DNA sample to the laboratory.
- Extend the guidelines from 60 days to 120 days for the laboratory to process the sample.
- Add codified, clarifying intent language.

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 22 **Hearing Date:** March 26, 2019
Author: Leyva
Version: December 3, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Rape Kits: Testing*

HISTORY

Source: Alameda County District Attorney
Joyful Heart Foundation
Natasha's Justice Project

Prior Legislation: SB 1449 (Leyva) Vetoed 2018
AB 1312 (Gonzalez Fletcher) Chapter 692, Stats. 2017
AB 1517 (Skinner) Chapter 874, Stats. 2014
AB 322 (Portantino) Vetoed 2011
AB 558 (Portantino) Vetoed 2010
AB 1017 (Portantino) Vetoed 2009
AB 898 (Chu) Chapter 537, Stats. 2003

Support: Change for Justice; Los Angeles Indivisible; National Association of Social Workers, California Chapter; Riverside Sheriffs' Association; Santa Barbara Women's Political Committee

Opposition: California Public Defenders Association

PURPOSE

The purpose of this bill is to require a law enforcement agency to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place and require a crime lab to either process the evidence or transmit the evidence to another crime lab for processing within existing specified time frames.

Existing law provides that notwithstanding any other limitation of the time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA if specified conditions are met. (Penal Code § 803(g).)

Existing law encourages DNA analysis of rape kits within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. (Penal Code § 680 (b)(6).)

Existing law encourages law enforcement agencies to submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Penal Code § 680 (b)(7)(A)(i).)

Existing law encourages the establishment of rapid turnaround DNA programs, where the rape kit is sent directly from the facility where it was collected to the lab for testing within five days. (Penal Code § 680 (b)(7)(A)(ii) and (E).)

Existing law encourages crime labs to do one of the following:

- 1) Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or
- 2) Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA. (Penal Code § 680 (b)(7)(B).)

Existing law provides that upon the request of a sexual assault victim, the law enforcement agency investigation a specified sex offense 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. (Penal Code § 680(c)(1))

Existing law establishes the Sexual Assault Victims' DNA Bill of Rights which provides victims of sexual assault with the following rights:

- 1) The right to be informed 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;
- 2) The right to be informed 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 (DOJ) Data Bank of case evidence; and,
- 3) The right to be informed whether or not there is a 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 DOJ Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation. (Penal Code, § 680 (c)(2).)

Existing law requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out. (Penal Code §§ 680 (e) and (f), 803.)

Existing law provides that in order to ensure that sexual assault forensic evidence is analyzed within the two year time frame required and to ensure the longest possible statute of limitations for sex offenses the following should occur:

- 1) A law enforcement agency in whose jurisdiction a specified sex offense occurred should do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.

- 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 should do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016.
 - 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.
 - 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 should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified.
 - 3) This subdivision does not require a lab to test all items of forensic evidence obtained in a sexual assault forensic evidence examination.
 - 4) This section does not require a DNA profile to be uploaded into CODIS if it does not meet the federal guidelines.
 - 5) A rapid turnaround DNA program is a program for training of sexual assault team personnel in the selection of a 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. (Penal Code § 680 (b)(7))

This bill provides instead that in order to ensure that sexual assault forensic evidence is analyzed within the two year time frame required and to ensure the longest possible statute of limitations for sex offenses the following ***shall*** occur:

- 1) A law enforcement agency in whose jurisdiction a specified sex offense 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:
 - Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.
 - 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.
- 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.
 - 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.

This bill provides that the sum of two million dollars is hereby appropriated from the General Fund to the Department of Justice to allocate to local law enforcement agencies to assist them with complying with Penal Code Section 680.

COMMENTS

1. Need for This Bill

According to the author:

Following a sexual assault, survivors in California may elect to undergo a forensic medical examination to collect evidence in a rape kit. If the survivor chooses to report the crime, the law enforcement agency with jurisdiction over the offense will take the kit into custody and submit it to a forensic laboratory for DNA analysis.

To maximize evidentiary value and standardize investigation of sexual assault crimes, federal best practices issued by the United States Department of Justice Bureau of Justice Assistance recommend that all rape kits connected to reported crimes be swiftly submitted to laboratories and tested for DNA. Testing DNA evidence in rape kits can identify an unknown assailant, link crimes, identify serial perpetrators, and exonerate the wrongfully convicted.

As amended by Chapter 874, Statutes of 2014, California law states that law enforcement agencies “should” transfer rape kit evidence to the appropriate forensic laboratory within 20 days and that laboratories “should” process such evidence as soon as possible, but no later than 120 days, following receipt. Due to the current language of the law, this guidance is not currently being followed by a number of law enforcement agencies in the state.

Findings from public records requests filed by the Joyful Heart Foundation demonstrate significant variation in how law enforcement agencies have interpreted and implemented this legislative guidance. Only two jurisdictions of eight surveyed in 2017 reported full compliance with the intent of the law.

Across California, sexual assault survivors are not receiving equal access to justice. Depending on the jurisdiction in which the crime occurred, the timeframe for submission and analysis of their rape kits may vary widely, slowing the criminal justice process.

By amending the language of Penal Code Section 680 from “should” to “shall,” Senate Bill 22 will require all law enforcement agencies and crime labs across the state to follow federal best practices and the intent of existing law. With this change, victims reporting sexual assault across California will have equal access to the swift submission and analysis of forensic evidence associated with their cases. Rape kits must be submitted within 20 days and tested no later than 120 days after receipt, preventing the development of rape kit backlogs in evidence rooms or laboratories throughout California.

2. Should to Shall

California established the Sexual Assault Victims' Bill of Rights in 2003. (AB 898 (Chu), Chapter 537, Statutes of 2003.) In passing that law, the Legislature found and declared that “[l]aw 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.” Upon the request of the survivor, law enforcement agencies investigating the sexual assault may inform the survivor of the status of the DNA testing. Specifically, the California DNA Bill of Rights provides that subject to sufficient resources to respond to requests, survivors have a right to be informed whether or not the assailant's DNA profile was developed from the rape kit evidence, whether or not that profile was uploaded to the DNA database and whether or not a hit resulted from the upload.

The Sexual Assault Victims' Bill of Rights was amended by AB 1517 (Skinner), Chapter 874, Statutes of 2014. Those amendments encouraged law enforcement and crime labs to handle and process sexual assault forensic evidence within specific time frame.

Specifically, existing law provides that law enforcement agencies should either submit sexual assault forensic evidence to a crime lab within 20 days after it is booked into or evidence or insure that rapid turnaround DNA program is in place. This bill would provide instead that law enforcement shall take one of these actions.

Existing law also encourages a crime lab that receives sexual assault forensic evidence to either process the evidence, create DNA profiles and upload qualifying DNA profiles into CODIS or transmit the sexual assault forensic evidence to another crime lab as soon as practically possible but no later than 30 days after receiving the evidence. This bill instead provides that these actions shall be taken.

What is the real impact of changing should to shall? If entities are not currently able to do cases in these time frames, or prioritize other DNA cases over some rape kits, such as those where the perpetrator is known, will changing should to shall result in cases being done more quickly?

3. Veto of SB 1449 (Leyva) 2018

A bill identical to this one was vetoed last year with the Governor saying:

I am returning Senate Bill 1449 without my signature.

This bill would require the testing of all sexual assault forensic evidence kits within a specified period of time.

The state budget that I signed this year includes a one-time total of \$7.5 million General Fund to test rape kits-\$1 million to begin conducting an audit of untested kits and \$6.5 million to help test the existing known backlog.

While I fully support the goal of this bill, I believe that we should allow for the completion of the audit mandated by AB 3118 (Chiu)-which I am signing today-as well as for the Department of Justice to further reduce the existing backlog using the recently approved significant funding increase. I would like to allow time for this year's legislative actions to take effect so we can gauge the appropriate next steps and budget accordingly.

-- END --

**XAVIER BECERRA***Attorney General*

Sexual Assault Kits/Evidence FAQs

Sexual Assault Kits/Evidence FAQs

Sexual Assault Kit/Evidence Handling and Processing

Sexual Assault Forensic Evidence Tracking (SAFE-T) Database

Sexual Assault Kit/Evidence Handling and Processing

1. What is the effective date of Senate Bill (SB) 22?

SB 22 (2019-2020 Regular Session), which establishes new mandatory requirements for the submission and testing of sexual assault forensic evidence by law enforcement agencies and public crime labs, went into effect on January 1, 2020.

2. Does SB 22 only apply to sexual assault evidence (SAE) kits?

No. While parts of SB 22 specifically mention “rape kit” evidence, the law more broadly addresses the timely analysis of “sexual assault forensic evidence.” The intent of the law is to ensure, in sexual assault cases, that a probative DNA sample is processed and uploaded to the Combined DNA Index System

(CODIS) in a timely manner. Thus, if a sexual assault kit is not collected in a case, representative and probative samples of any other types of sexual assault evidence (e.g., the victim's clothing, bedding from the assault scene, etc.) must be sent to the crime lab for timely processing to meet the sample processing and DNA profile upload requirements of SB 22.

3. **Do the processing mandates specified under Penal Code section 680, subdivision (c), apply only to untested sexual assault forensic evidence that is booked into evidence by a law enforcement agency (LEA) or received by a crime lab on or after SB 22's effective date of January 1, 2020?**

No. The time frames for submitting, processing, and uploading sexual assault evidence under Penal Code section 680 became mandates on January 1, 2020, and these mandates apply to sexual assault forensic evidence that was received on or after January 1, 2016.

Regardless of the date of the alleged offense, if an LEA receives sexual assault forensic evidence on or after January 1, 2016, and none of the case evidence has ever been submitted to a crime lab for analysis, SB 22 requires the LEA to submit sexual assault evidence from the case to a crime lab within 20 days of booking the evidence. The crime lab is required to process the evidence and upload a qualifying DNA profile to CODIS within 120 days of receipt of the evidence by the crime lab.

4. **SB 22 imposes mandates for sexual assault forensic evidence received by an LEA or crime lab on or after January 1, 2016. How do these mandates apply to untested sexual assault forensic evidence that, as of January 1, 2020, had been booked at an LEA for more than 20 days or had not been**

processed by a crime lab within 120 days of receipt by the crime lab? How can LEAs and crime labs that have already exceeded the mandated timelines comply with these new requirements?

By default, untested evidence that falls within the mandates of SB 22, but already has been in inventory longer than the time allotted to the LEA or crime lab, became non-compliant with the mandates of SB 22 as of January 1, 2020. LEAs and crime labs should process this evidence as expeditiously as possible.

5. **A crime lab has 120 days to process sexual assault evidence and upload qualifying profiles to CODIS or 30 days to transmit the evidence to another lab. How much time does the second lab have to process the evidence?**

The first lab's 120-day deadline applies even if the evidence is transferred to a second lab. The first lab has 30 days to transmit the evidence to a second lab, and must upload a qualifying DNA profile to CODIS within 30 days after test results are obtained. (Pen. Code, § 680, subd. (c)(2)(B).) Therefore, if the first lab takes 30 days to transmit the evidence to a second lab, the second lab should take no longer than 60 days to process the evidence in order to ensure that the first lab has 30 days to upload a qualifying probative DNA profile into CODIS.

6. **For cases in which the identity of the suspect is not in question or cases that have already been adjudicated or otherwise closed, do LEAs have to submit to the crime lab untested sexual assault forensic evidence that the LEA received on or after January 1, 2016?**

Yes. SB 22 applies to cases with sexual assault forensic evidence that has never been tested. Cases that have already been solved are not excluded. If none of the sexual assault forensic evidence from a sexual assault case has ever been tested, the evidence must still be submitted to a crime lab and a qualifying DNA profile, if found, must be uploaded to CODIS. Even if the DNA evidence is not necessary to identify the suspect or to adjudicate or close the case for which it was collected, it may link the suspect to another case where the offender has not yet been identified.

7. **Is a rapid turnaround DNA program compliant if sexual assault forensic evidence samples are sent directly from the medical facility to the crime lab on a weekly basis?**

Under Penal Code section 680, subdivision (c)(1)(B), where a rapid turnaround DNA program is in place, forensic evidence collected from the victim of a sexual assault must be submitted 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. A rapid turnaround DNA program that transmits sexual assault forensic evidence directly from the medical facility to a crime lab more than five calendar days after the evidence was collected from the victim would not meet this requirement.

8. **If, under a rapid turnaround DNA program, selected samples from a victim sexual assault kit are sent directly from a medical facility to a crime lab, is the LEA's portion of the kit considered untested under SB 22?**

Under Penal Code section 680, subdivision (c)(3), a crime lab is not required to test all items of forensic evidence obtained in a sexual assault forensic evidence examination, and if representative samples of the evidence are processed by the crime lab in an effort to detect the foreign DNA of the perpetrator, the crime lab would be considered to be in compliance with the requirements of SB 22.

9. **Do the requirements of SB 22 apply to VAWA (A.K.A. "restricted") kits/evidence?**

Yes. The Violence Against Women Act (VAWA) affords sexual assault victims the right to obtain a medical examination and to have forensic evidence collected without being required to immediately, or ever, report the sexual assault to law enforcement. However, VAWA evidence that an LEA has booked into evidence or that has been submitted to a crime lab is not exempt from the processing mandates set by SB 22. Even if a victim has chosen to remain anonymous and/or does not wish to cooperate with an investigation, sexual assault forensic evidence from their case that is received by an LEA or crime lab on or after January 1, 2016, must be tested and any qualifying DNA profiles uploaded to CODIS.

10. **If sexual assault forensic evidence has been screened by a crime lab, is the evidence considered tested under SB 22?**

This depends on the type of screening that was performed. Penal Code section 680, subdivision (c)(2), requires crime labs to "[p]rocess sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS" or transmit the evidence to another lab "for processing of the evidence for the presence of DNA."

Crime labs are considered to be in compliance with the testing mandate when they have processed representative samples of sexual assault evidence “in an effort to detect the foreign DNA of the perpetrator.” (Pen. Code, § 680, subd. (c)(3).)

Sexual assault evidence that has only been screened for biological fluids (e.g., semen or seminal fluid), and has not been processed in an effort to detect the perpetrator’s DNA, would not be considered tested. However, in the case of a female victim and male perpetrator, sexual assault forensic evidence that has screened negative for the presence of male DNA would be considered tested.

11. **How long do LEAs have to retain sexual assault evidence?**

For unsolved cases, LEAs must retain sexual assault evidence for at least 20 years or until the victim’s 40th birthday if the victim was under the age of 18 on the date of the alleged offense. (Pen. Code, § 680, subd. (f)(2).)

For solved cases, sexual assault evidence must generally be retained as long as any person remains incarcerated in connection with the case. (Pen. Code, § 1417.9, subds. (a), (b).)

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Sexual Assault Forensic Evidence Tracking (SAFE-T) Database

1. **What is SAFE-T?**

SAFE-T is a database created by the California Department of Justice, Bureau of Forensic Services to track the status and disposition of victim sexual assault kits collected statewide and in the possession of California’s law enforcement

agencies (LEA) and crime labs. The SAFE-T database tracks only victim sexual assault kits. It does not track sexual assault evidence in cases where a victim kit was not collected or in cases where only other types of sexual assault evidence (e.g., suspect kits, items of clothing, bedding, etc.) were collected.

2. **Who has access to SAFE-T?**

Access to SAFE-T is strictly limited to designated users from LEAs, public crime labs, and district attorneys' offices.

3. **What kind of information is in SAFE-T?**

The SAFE-T database tracks, among other things, information related to the status, location, and processing milestones of victim sexual assault kits, including: whether evidence samples from the kit were submitted to a crime lab for analysis; if a sample from the kit yielded a potentially probative DNA profile; the reason kit samples were not submitted to a crime lab for processing, if applicable; and the reason a crime lab has not completed analysis of kit samples within 120 days of submission to the crime lab. It does not include actual DNA profiles, identifying information about the victim or suspect, or any information that would impair a pending criminal investigation.

4. **What sexual assault kits are required to be entered into SAFE-T?**

Kits collected from victims of suspected sexual assault (known as "victim kits") must be entered into SAFE-T; this includes coroner/homicide kits collected in cases where sexual assault is suspected. SAFE-T does not track suspect kits or coroner/homicide kits collected in cases where sexual assault is not suspected.

5. **Are the records in the SAFE-T database available to the public?**

No. The California Department of Justice summarizes aggregate data from SAFE-T in an annual report to the Legislature. The public may access the report on the California Department of Justice's website at <https://oag.ca.gov/publications>. (Pen. Code, § 680.3, subd. (e).) Apart from this report and any disclosures that may be required by Brady v. Maryland (1963) 373 U.S. 83, the contents of the SAFE-T database are confidential. (Pen. Code, § 680.3, subd. (f).)

6. **How can a victim find out the status of their sexual assault kit?**

To learn the location and status of their kit, a sexual assault victim may contact the California Department of Justice's Victims' Services Unit (VSU) by phone at (877) 433-9069 or by email at victimservices@doj.ca.gov. VSU requires a police report number or kit number to conduct this search. VSU will only indicate the current general location and status of the kit as recorded in SAFE-T (for example, the kit was received by law enforcement, sent to a crime lab, or received by the crime lab, or DNA analysis is in progress or DNA analysis is completed) and the name and contact information of the assigned law enforcement agency's investigator, if that information is available. If VSU is unable to locate the kit in SAFE-T, or if the victim would like details about the case or testing outcomes, the victim must contact the investigating law enforcement agency for additional information.

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OFFICE OF THE ATTORNEY GENERAL
XAVIER BECERRA

Statewide Audit of Untested
Sexual Assault Forensic Evidence Kits
2020 Report to the Legislature



DIVISION OF LAW ENFORCEMENT
BUREAU OF FORENSIC SERVICES

Executive Summary

DNA evidence from sexual assault evidence (SAE) kits is often a key factor in attaining justice for survivors/victims of sexual assault. When tested, DNA evidence contained in SAE kits can be a powerful tool to solve and prevent crime by identifying unknown offenders and linking multiple crimes to repeat offenders. Unfortunately, there are still challenges in the way this evidence is collected, stored and tracked. A primary example is that California has no comprehensive data on the total number of SAE kits that remain untested.

Untested SAE kits are stored at various law enforcement agencies (LEAs), laboratories and medical facilities throughout the state. Some of these kits are the subject of ongoing investigations, some are waiting to be tested or the cases investigated as resources become available, and some kits may never be tested at all. While the existence of a backlog of untested SAE kits in California is generally unquestioned, the exact scope of the backlog is unknown. A lack of data regarding the number and distribution of the state's untested SAE kits, and uncertainty about the reasons kits remain untested, have posed challenges for policymakers who must decide how best to address the backlog.

The purpose of this report is to summarize the data generated by a one-time audit of the untested SAE kits in the possession of California's LEAs, crime laboratories, medical facilities and others, as mandated by Assembly Bill (AB) 3118, (Stats. 2018, ch. 950).

Reporting Requirement

This report presents a summary of the information collected by the Department of Justice pursuant to AB 3118 (2018). AB 3118 added section 680.4 to the Penal Code mandating a one-time statewide audit of untested SAE kits in the possession of LEAs, medical facilities, crime laboratories, and any other facility that maintains, stores, or preserves SAE kits. This mandate required affected entities to conduct internal audits and report specified information to the Department of Justice by July 1, 2019, and the Department to summarize the audits received in a report to the Legislature by July 1, 2020.

Section 680.4, subdivision (a)(2) specifies that the audit reports submitted to the Department of Justice must include, in addition to the total number of untested sexual assault kits, the following information for each kit:

- (A) Whether or not the assault was reported to a law enforcement agency.
- (B) For kits other than those described in subparagraph (C), the following data, as applicable:
 - (i) The date the kit was collected.
 - (ii) The date the 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 kit was delivered to a crime laboratory.

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

(C) For kits where the victim has chosen not to pursue prosecution at the time of the audit, only the number of kits.

Specially trained medical personnel conduct adult, adolescent and pediatric sexual assault exams at hospitals and clinics in each of California's 58 counties. As noted previously, the SAE kits they collect may be stored at the medical facility or transmitted to an LEA or crime laboratory.

The most comprehensive listing of California LEAs may be found on the California Commission on Peace Officer Standards and Training's (POST) website¹, although not every LEA handles SAE kits. The 690 agencies currently listed by POST include city police departments, county sheriffs' departments, district attorneys, state investigators, coroners, probation departments, school districts and universities, airport police and others.

In addition, there are 18 public crime laboratories or laboratory systems that handle SAE kits. These laboratories participate in the FBI's Combined DNA Index System (CODIS) and are accredited to provide forensic DNA services. Analysis of SAE kits may also be outsourced to accredited private DNA laboratories in California or other states.

Data Collection

Data collection for this report was conducted between November 6, 2018, and July 1, 2019, although the Department continued to accept late submissions until the release of this report in the interest of providing the most comprehensive response.

This audit was supported by a \$1 million appropriation in the Fiscal Year 2018-2019 budget, Senate Bill (SB) 862 (Stats. 2018, ch. 449), which was allocated to the Department of Justice to be distributed as grants to help cities and counties inventory their untested SAE kits. Shortly after SB 862 took effect, the Department issued a Request for Applications (RFA) to solicit grant applications and notify affected entities of the requirement to audit and report on their untested SAE kits. The Department shared the RFA with all senators, assembly members, chiefs of police, sheriffs, congressional offices, county supervisors, mayors, councilmembers and approximately 65 different organizations throughout the state, and asked them to encourage qualifying grantees to apply for funding to complete this mandatory audit.

The Department developed a spreadsheet template to help reporting agencies uniformly capture the information required by statute. Further, information bulletins, with this template attached, were transmitted to law enforcement and crime laboratory executives via email in November 2018 and March 2019. The bulletins and templates were also emailed to users of the

¹ <https://post.ca.gov/le-agencies>

Department's SAFE-T database in an effort to directly reach the LEA and crime laboratory employees that handle sexual assault evidence. This information was also publicly available on the Attorney General's website and posted to the California Law Enforcement Web (CLEW).

Overview of SAE Kits

When a survivor/victim of a sexual assault undergoes a medical examination and consents to the collection of forensic evidence, specially-trained medical professionals prepare an SAE kit. The entire process can take four to six hours. Medical facilities may store the SAE kit, send the kit to the LEA with jurisdiction over the assault, or, if a rapid turnaround DNA program is in place, send selected samples from the kit directly to a public crime laboratory.

A number of legislative changes have affected the way sexual assault evidence is handled in California. See Appendix A for a brief summary of the bills mentioned in this report and other relevant legislation.

Kit Composition and Handling

Prior to 2019, the composition of SAE kits varied throughout California. Although they were similar, the exact SAE kit used by a medical facility was determined by the crime laboratory serving that jurisdiction. AB 1744 (Stats. 2016, ch. 857) required the Department of Justice's Bureau of Forensic Services (BFS), the California Association of Crime Laboratory Directors and the California Association of Criminalists to collaborate with public crime laboratories and the California Clinical Forensic Medical Training Center (CCFMTTC) to develop a standardized SAE kit to be used by all California jurisdictions. The basic components were to be established by January 30, 2018, and guidelines pertaining to the use of the kit components were to be issued on or before May 30, 2019. The new standardized kit² was finalized and ready for production in September 2019.

A standard SAE kit contains multiple body swabs that may contain the perpetrator's DNA, other potential evidence such as underwear, hairs, and fingernail scrapings, and reference buccal swabs collected from the survivor/victim's cheek.

Many crime laboratories in California, including those in BFS, have instituted rapid turnaround DNA programs to expedite processing of selected samples from SAE kits. Where a rapid turnaround DNA program is in place, the participating medical facility creates a subset of the standard SAE kit by selecting the swabs most likely to contain the perpetrator's DNA and sends these, along with a reference buccal swab from the survivor/victim, directly to the crime laboratory. The rest of the standard SAE kit is then sent to the LEA.

Searches of DNA Profiles

The purpose of conducting laboratory testing of sexual assault evidence is to establish whether there is evidence that the alleged sexual contact occurred, which may be accomplished by

² The components of the new SAFE Kit, with photographs, can be viewed at <https://www.ccfmtc.org/training-products/standardized-sexual-assault-forensic-evidence-safe-kit/>.

screening for the expected biological materials, and to identify the individual(s) who contributed those biological materials, which may be accomplished through DNA testing if a suitable DNA profile is developed from the evidence and a match to a suspect is found.

Qualifying evidence DNA profiles developed from SAE kits can be searched against the DNA profiles of evidence from other cases, convicted offenders, and arrestees by uploading the profiles to CODIS. CODIS is the Federal Bureau of Investigation's program and software used to store and search DNA profiles in its Local DNA Index System (LDIS), State DNA Index System (SDIS), and National DNA Index System (NDIS) databases. The three main criminal indices in CODIS are the Forensic Index, which contains perpetrator DNA profiles developed from forensic evidence, the Convicted Offender Index, and the Arrestee Index. DNA profiles may be uploaded as far as the LDIS, the SDIS, and the NDIS, provided they meet the criteria for each level and index.

Once uploaded, the DNA profiles in the three criminal indices are regularly searched against each other to identify potential matches. To link forensic evidence to a known convicted offender or arrestee, the Forensic Index is searched against the Convicted Offender Index and the Arrestee Index. The Forensic Index is also searched against itself to link evidence from different crimes to the same perpetrator (referred to as case-to-case hits).

Overview of the Issue

Until 2015, California did not have a system in place for collecting comprehensive data on the number of SAE kits collected from survivors/victims of sexual assault and the status of untested kits. SAE kit records were only maintained at the agency level and were not centrally tracked or reported.

In an effort to collect and centralize data regarding the status and disposition of SAE kits in the possession of LEAs and crime laboratories, the Department created the Sexual Assault Forensic Evidence Tracking (SAFE-T) database in 2015. Access to SAFE-T is strictly limited to designated users from LEAs, public crime laboratories, and district attorneys' offices. Although strongly encouraged, LEAs and crime laboratories were not legally mandated to use SAFE-T to track their SAE kits until 2017 when AB 41 (Stats. 2017, ch. 694) went into effect. This bill required that all survivor/victim SAE kits collected as of January 1, 2018, be reported in the SAFE-T database. However, because the mandate does not extend retroactively to include kits that were collected from a survivor/victim prior to January 1, 2018, SAFE-T does not provide a comprehensive view of the current size and distribution of, or reasons for, California's SAE kit backlog.

This report is a first step in a larger effort to work with other agencies that handle SAE kits to fill the information gaps. Addressing the backlog issue requires knowing the number of untested kits across the state and understanding the reasons they remain untested.

Challenges to SAE Kit Management and Analysis

LEAs, prosecutors and crime laboratories face various challenges in processing evidence and completing investigations. As a result, not all SAE kits are tested, which means that eliminating the SAE kit backlog requires looking at the problem from multiple points of view.

Victim's Wishes

This audit found that just over one third (35%) of the reported untested SAE kits were collected from survivors/victims who chose not to pursue prosecution.

Pursuant to the provisions of the Violence Against Women Act (VAWA), survivors/victims of sexual assault have the right to obtain a medical examination free-of-charge and to have forensic evidence collected without being required to immediately, or ever, report the sexual assault to law enforcement. These kits, which are sometimes referred to as “restricted,” “anonymous” or “Jane Doe” kits, may be retained by the medical facilities that collected them or they may be submitted to LEAs or crime laboratories.

Prior to the passage of SB 22 (Stats. 2019, ch. 588), California’s LEAs and crime laboratories did not uniformly test or store the VAWA kits they received from medical facilities. Some jurisdictions would test all kits, while others would store the kits to potentially be acted upon later as decided by the survivor/victim. As of January 1, 2020, SB 22 established mandatory deadlines for the transfer and processing of *all* SAE kits. While medical facilities may still retain VAWA kits indefinitely, LEAs and crime laboratories that receive VAWA kits no longer have the option of not processing them for DNA.

Arguments exist for and against mandatory testing of VAWA kits. While the DNA profile developed from a VAWA kit may link the perpetrator to another case and help bring serial offenders to justice, mandatory testing could further discourage already reluctant survivors/victims from obtaining a medical examination or consenting to the collection of physical evidence. That presents a challenge as sexual assault is already a vastly underreported crime. The Bureau of Justice Statistics estimates that 40.4 percent of sexual assaults were reported to law enforcement in 2017 and only 24.9 percent were reported in 2018³. In both years, among all categories of violent crimes, sexual assaults were reported to law enforcement at the lowest rate compared to total self-reported victimizations.

When the decision is made to test a VAWA kit, there are limitations to how the DNA profiles developed from VAWA kits can be searched against other DNA profiles in CODIS. The NDIS Operational Procedures Manual, issued by the FBI pursuant to the DNA Identification Act of 1994, sets forth eligibility criteria for the acceptance and inclusion of a DNA record in NDIS. In order for an evidence DNA profile developed from an SAE kit to be eligible for inclusion, NDIS rules require documentation that (1) a crime has been committed, (2) the DNA sample was recovered directly from the crime scene and is attributed to the putative perpetrator; and (3)

³ Bureau of Justice Statistics, “Criminal Victimization, 2018,” September 2019, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=6686>, accessed April 13, 2020.

that elimination sample(s) have been requested, if applicable (see section 3.1.1.1). Due to these eligibility guidelines, foreign DNA profiles developed from VAWA kits are not accepted for upload into NDIS. These foreign DNA profiles are only uploaded as far as California's SDIS and searched against other profiles in that database.

The FBI's requirements are intended to ensure that any DNA profile uploaded to NDIS is truly eligible and, in the case of sexual assault evidence, is not a consensual partner's DNA profile. If the survivor/victim is uncooperative or unidentified, investigators may not be able to determine if they had any consensual partners around the time of the alleged assault and obtain elimination samples from those partners, if any.

Resources

Availability of resources is often a limiting factor in the processing of SAE kits. To be effective, any concerted effort to eliminate the backlog of untested SAE kits and support rapid turnaround times must include adequate staffing and financial resources for LEAs and crime laboratories. As DNA technology evolves and the demand for expensive, time-consuming DNA testing and re-testing increases, laboratories can expect to see an increased workload, including a greater rate of SAE kit submissions driven by the SB 22 mandate to test all SAE kits. This could prove problematic for under-resourced public crime laboratories that may find themselves accruing backlogs in the other forensic services they provide as they take on requests for more services than they can absorb.

Ample financial resources are required for evidence testing. DNA analysis, in particular, is a costly service to provide. LEAs in fee-for-service areas may be more judicious when deciding which evidence to submit for analysis depending upon their agency's budget for laboratory services. Conversely, LEAs that are not charged for crime laboratory services have the discretion to submit any and all forensic evidence they believe should be tested. Effective January 1, 2020, SB 22 requires that all California LEAs submit every SAE kit received on or after January 1, 2016, without exception, to a crime laboratory within 20 days of booking the kit into evidence. The crime laboratory that receives the kit is responsible for ensuring the kit is fully processed within 120 days of receipt. Due to financial restraints, this mandate may inadvertently result in a future decrease in the submission and testing of evidence from other types of crimes.

Agency Discretion

Prior to January 1, 2020, LEAs had the ability to exercise discretion in determining whether or not to submit SAE kits for laboratory testing. Depending upon the circumstances of the case, the investigating LEA or the prosecutor could decide against testing an SAE kit. Reasons for not testing kits varied. In some cases, testing could have been unnecessary to the investigation or prosecution, while in others, prosecution may not have been possible or pursued regardless of the results of testing. Some agencies also reported not testing SAE kits that they concluded were unlikely to yield probative DNA profiles, such as kits collected after a significant period of time had elapsed since the occurrence of the alleged assault.

It is important to note that in the case of known suspects, an LEA's or prosecutor's decision to not test a kit does not necessarily mean that the suspect's DNA profile was never uploaded to CODIS to potentially link the suspect to other crimes. If a suspect is arrested for or convicted of a qualifying offense, a DNA sample is collected pursuant to Penal Code section 296 and the DNA profile uploaded to the Arrestee Index or the Convicted Offender Index in CODIS. That profile is then regularly searched against evidence profiles in CODIS.

Retention Requirements and Statutes of Limitations

Penal Code section 680, subdivision (f)(2) requires LEAs to retain evidence from unsolved sexual assault cases for at least 20 years or, if the victim was under the age of 18 on the date of the alleged offense, until the victim's 40th birthday.

Penal Code section 1417.9, subdivision (a) requires governmental entities to retain biological evidence from a criminal case, in a condition suitable for DNA testing, for as long as any person remains incarcerated in connection with that case.

SB 813 (Stats. 2016, ch. 777) eliminated statutes of limitations for specified sex crimes committed on or after January 1, 2017, and for crimes already committed if the statute of limitations previously in effect had not run as of January 1, 2017.

Report

The Department received responses from a total of **149** LEAs and crime laboratories, including all 23 agencies that applied for and received grant funding to complete their audits: **134** agencies reported at least one untested SAE kit and **15** reported no untested SAE kits⁴. The Department's own crime laboratories process all SAE kits within 120 days of receipt and had no inventory of untested SAE kits to report.

No medical facilities provided information for this report.

Total Untested SAE Kits

LEAs and crime laboratories reported a combined total of **13,929** untested SAE kits.

Assaults Reported to Law Enforcement

Responding entities indicated that the assault had been reported to law enforcement in the case of **11,654** (84%) of the 13,929 untested kits; no assault had been reported for **345** kits (3%), and the reporting status for **1,930** kits (14%) was unknown or the response was unclear.

680.4 (a)(2)(C): Kits Where the Survivor/Victim Has Chosen Not to Pursue Prosecution

As discussed above and acknowledged in the statutory mandate for this report, survivors/victims of sexual assault may decide not to report the assault to law enforcement or seek prosecution of the offender. Some survivors/victims who initially report the assault may later decide not to pursue prosecution, while others may have their SAE collected anonymously under VAWA and never choose to pursue prosecution.

A total of **4,834** SAE kits (35%) were not tested because the survivor/victim had chosen to not pursue prosecution as of the time of the audit (see Figure 2). This includes kits where the survivor/victim may have initially desired prosecution, but later discontinued cooperation with investigators or prosecutors. Pursuant to Penal Code section 680.4 (a)(2)(C), the Department is reporting only the total number of these kits and they are excluded from further analysis.

Survivor/Victim's Decision to Pursue Prosecution

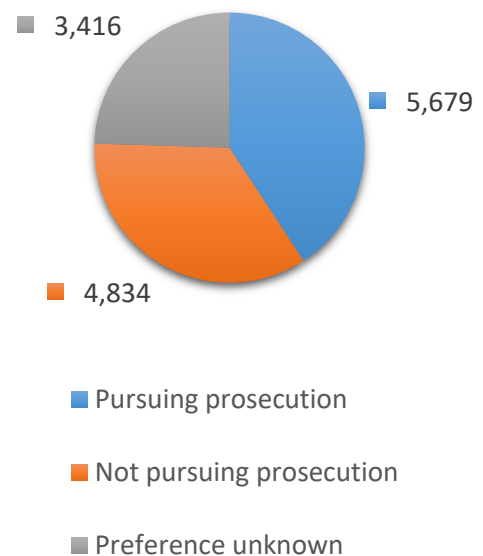


Figure 2. Victim's decision to pursue prosecution.

⁴ For the many agencies that did not comply with AB 3118 and submit the required kit audit report, nothing can be inferred with regard to whether or not these agencies have untested kits in their possession.

680.4 (a)(2)(B): Kits Other Than Those Described in Subparagraph (C)

Of the remaining **9,095** untested SAE kits, agencies reported **5,679** (62%) from cases where the survivor/victim had desired prosecution and **3,416** (38%) where the survivor/victim's preference for prosecution was unknown or the question was inapplicable (e.g., homicide, suicide, juvenile victim).

Pursuant to subparagraph (C), this portion of the report provides further details concerning only the 9,095 untested kits where the survivor/victim did not decline to pursue prosecution.

Reasons SAE Kits Were Not Tested

A variety of factors can affect whether a kit was tested prior to January 1, 2020⁵. The template distributed to reporting entities provided a picklist of pre-defined reasons and a column to record notes. Wherever possible, narrative responses were re-categorized to facilitate aggregate reporting. The categories reflect the primary reason given for not testing a kit (see Figure 2).

The case could not be investigated or prosecuted (2,955 kits).

A total of **2,659** kits (29%) were not tested because the assault allegations could not be substantiated, the case was not investigatable, or the prosecutor determined that the case was not prosecutable, and **176** kits (2%) were not tested because the allegations were determined to be unfounded. Another **120** investigations (1%) were reported to be inactive/suspended or closed.

Testing the kit was not necessary for prosecution/the case was already adjudicated (2,658 kits).

In cases where other evidence was sufficient to pursue prosecution, the LEA or prosecutor may have determined that laboratory analysis of a particular SAE kit was unnecessary. Prior to the passage of SB 22, investigators and prosecutors had the discretion to elect to not test SAE kits that were unnecessary to the prosecution of the case. Agencies

Reasons Kits Were Not Tested

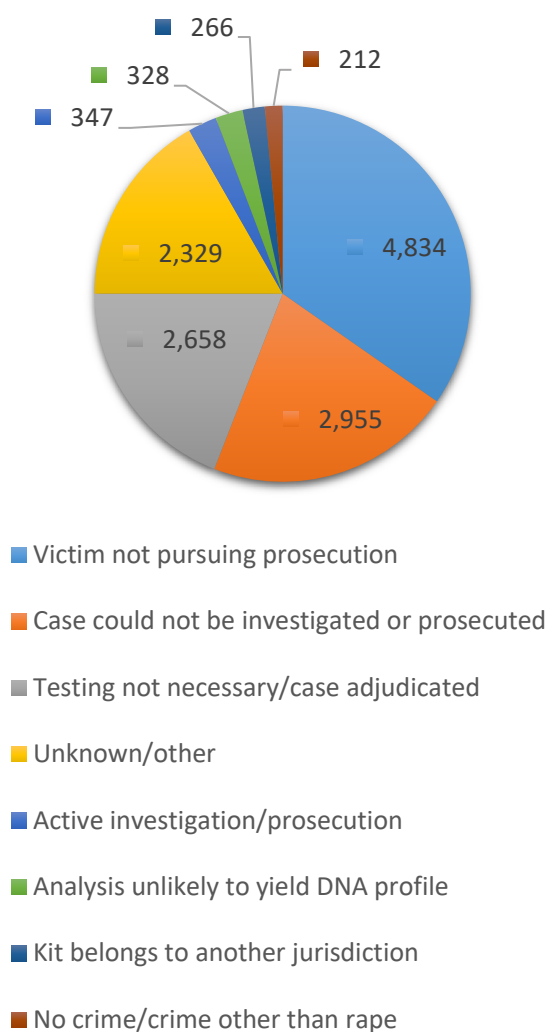


Figure 3. Reasons kits were not tested.

⁵ As of January 1, 2020, LEAs and crime laboratories may no longer delay or opt against testing the SAE kits they receive (as mandated by SB 22).

reported that **2,534** SAE kits (28%) had not been tested because they were not needed for prosecution. Another **124** kits (1%) were not tested because other case evidence was tested instead.

The kits reported in this category may include cases involving suspects who had already been arrested or convicted and, as such, would already have had a DNA sample collected for CODIS pursuant to the provisions of Penal Code section 296.

Unknown or other reason (2,329 kits).

LEAs and crime laboratories were unable to determine the reasons why **575** kits (6%) had not been tested, usually because the records had been sealed or purged, were incomplete, or could not be located. Agencies listed “other” with no further explanation, or provided another explanation that did not fit within the categories above, for **605** kits (7%). No reason was given for **1,149** (13%) of the reported untested SAE kits.

The investigation or prosecution was active (347 kits).

A total of **92** untested kits (1%) were connected to investigations or prosecutions that were ongoing at the time of the audit. Another **255** SAE kits (3%) were either being prepared for submission to a crime laboratory or already in a laboratory’s queue.

The kit was expected to be unlikely to yield a probative DNA profile (328 kits).

Time is of the essence when collecting sexual assault forensic evidence because the likelihood of obtaining a perpetrator’s DNA profile decreases rapidly in the days following the assault. **One-hundred and thirty-eight** SAE kits (2%) were not tested because the time lapse between the date of the alleged assault and the date of the medical examination was excessive. In one extreme case, the agency noted that the kit had been collected three years after the alleged assault. Although sperm cells have been shown to persist in the cervix for seven to ten days after intercourse, normally few remain after three days⁶. Their increasing scarcity reduces, and eventually eliminates, the possibility that a late-collected SAE kit will have recovered any of the perpetrator’s DNA.

In some cases, the medical examination of a survivor/victim may not find any physical evidence of sexual assault. LEAs reported **19** SAE kits (<1%) that were not submitted to a crime laboratory for analysis because there were no physical findings in the medical exam report and another **15** (<1%) from cases that involved digital penetration or penetration with a foreign object, but no intercourse.

Once an SAE kit is submitted to a crime laboratory, the laboratory’s analysis may begin with tests that screen for the presence of specific biological fluids (e.g., semen). The laboratory may determine that no further analysis is warranted if samples in the kit screen negative for these

⁶ Ashley Hall and Jack Ballantyne: “Novel Y-STR typing strategies reveal the genetic profile of the semen donor in extended interval post-coital cervicovaginal samples,” *Forensic Science International* 136, issues 1-3 (2003).

biological fluids. There were **139** SAE kits (2%) that had been screened by a laboratory and were not tested further.

Another **17** kits (<1%) were not tested for reasons including improper collection or handling of the kit and the unavailability of a reference sample from the survivor/victim.

A courtesy report was taken by one LEA on behalf of another (266 kits).

If a survivor/victim undergoes a sexual assault examination in a jurisdiction other than the one where the assault occurred, the kit may be delivered to, and a courtesy report taken by, an LEA that does not have jurisdiction over the case. The courtesy LEA will hold the kit in their inventory until it is retrieved by the investigating agency that does have jurisdiction. This scenario applied to **266** kits (3%).

There was no crime, or the crime was not sexual assault (212 kits).

An SAE kit may be collected as a precautionary measure under circumstances other than alleged or suspected sexual assault. LEAs reported **45** untested SAE kits that had been collected from victims of homicides or suspicious deaths. In these cases, the SAE kit may have been taken to preserve potential evidence even if no sexual assault was suspected. Fewer than one percent, **15** kits, were collected in cases that involved crimes other than sexual assault and **152** (2%) were reported as non-crimes.

Dates of Collection and Submission

The date of collection was reported for **8,439** (93%) of the 9,095 kits collected in cases other than those where the survivor/victim did not desire prosecution at the time of the audit. The date of receipt by the LEA was reported for **8,162** kits (90%), and the date of receipt by a crime laboratory was reported for **2,657** kits (29%).

As previously noted, 15 of the 149 responding LEAs and crime laboratories reported no untested SAE kits in their inventories⁷. Table 1 lists the remaining 134 agencies that reported *at least one* untested kit and the total number of kits reported by each agency. The table also reflects the approximate division between the untested kits that are subject to the provisions of SB 22 and those that predate its mandate.

AB 3118 did not require reporting agencies to provide dates of collection for kits collected from survivors/victims who did not desire prosecution at the time of the audit. However, relevant date information was provided with, or could be inferred from, enough of the responses to illustrate the approximate quantity and distribution of kits subject to mandatory testing. For kits that did not include a date of receipt by the LEA or laboratory, the date of collection or the year-based numbering convention of the kit identifier were used to estimate whether the kit

⁷ The agencies that reported no untested kits are the Berkeley Police Department, Capitola Police Department, Ceres Police Department, Clayton Police Department, CSU Humboldt Police Department, CSU San Francisco Police Department, Humboldt County Sheriff's Office, Los Angeles County Sheriff's Department, Riverside County Sheriff's Department, San Francisco Police Department, Santa Barbara Police Department, Stallion Springs Police Department, Stockton Police Department, UC Santa Cruz Police Department, and California Department of Justice.

was likely to have been received by an LEA or crime laboratory before or after January 1, 2016. The date of receipt was not provided with, and could not be inferred from, 1,692 (12%) of the records.

All kits, including those from cases where the survivor/victim did not desire prosecution, are included in Table 1.

Next Steps

The Legislature has allocated funding to the Department to administer three grant programs, all of which are intended to address backlogs of untested sexual assault evidence by offsetting the costs incurred by LEAs and crime laboratories. Following the publication of this report, the Department will release Requests for Applications for all three grant programs to allow eligible entities to apply for funding.

Table 1: Reported Untested Kits

REPORTING AGENCY	KIT 2015 OR EARLIER	KIT 2016 OR LATER	KIT DATE UNCLEAR	TOTAL KITS
ALAMEDA COUNTY				
Albany Police Department	24	-	-	24
Dublin Police Services	1	2	-	3
Emeryville Police Department	52	9	1	62
Newark Police Department	29	10	-	39
Oakland Police Department Laboratory	1,156	41	-	1,197
UC Berkeley Police Department	23	1	-	24
TOTAL ALAMEDA	1,285	63	1	1,349
BUTTE COUNTY				
Butte County Sheriff's Office	5	-	-	5
Cal. State University Chico Police Department	1	1	-	2
Chico Police Department	152	4	-	156
TOTAL BUTTE	158	5	-	163
COLUSA COUNTY				
Colusa County Sheriff's Department	6	2	-	8
TOTAL COLUSA	6	2	-	8
CONTRA COSTA COUNTY				
Hercules Police Department	-	2	-	2
Richmond Police Department	747	94	-	841
TOTAL CONTRA COSTA	747	96	-	843

REPORTING AGENCY	KIT 2015 OR EARLIER	KIT 2016 OR LATER	KIT DATE UNCLEAR	TOTAL KITS
DEL NORTE COUNTY				
Crescent City Police Department	-	-	1	1
TOTAL COLUSA	-	-	1	1
FRESNO COUNTY				
Fresno County Sheriff-Coroner's Office	532	62	-	594
Fresno Police Department	54	9	-	63
TOTAL FRESNO	586	71	-	657
KERN COUNTY				
Bakersfield Police Department	411	-	-	411
California City Police Department	-	5	-	5
Kern County Sheriff's Office	524	31	-	555
Shafter Police Department	2	-	-	2
Tehachapi Police Department	4	1	-	5
TOTAL KERN	941	37	-	978
KINGS COUNTY				
Kings County Sheriff's Office	7	1	-	8
TOTAL KINGS	7	1	-	8
LAKE COUNTY				
Lakeport Police Department	9	1	-	10
TOTAL LAKE	9	1	-	10

REPORTING AGENCY	KIT 2015 OR EARLIER	KIT 2016 OR LATER	KIT DATE UNCLEAR	TOTAL KITS
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LOS ANGELES COUNTY

Alhambra Police Department	74	27	-	101
Bell Gardens Police Department	6	-	-	6
Beverly Hills Police Department	22	11	-	33
City of San Fernando	37	8	-	45
El Monte Police Department	21	10	-	31
Hawthorne Police Department	60	15	-	75
La Verne Police Department	-	2	-	2
Los Angeles Police Department	374	115	-	489
Montebello Police Department	7	7	-	14
West Covina Police Department	-	2	-	2
TOTAL LOS ANGELES	601	197	-	798

MADERA COUNTY

Chowchilla Police Department	25	1	-	26
Madera Police Department	31	21	-	52
TOTAL MADERA	56	22	-	78

MARIN COUNTY

Novato Police Department	1	-	-	1
TOTAL MARIN	1	-	-	1

MENDOCINO COUNTY

Fort Bragg Police Department	5	-	-	5
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REPORTING AGENCY	KIT 2015 OR EARLIER	KIT 2016 OR LATER	KIT DATE UNCLEAR	TOTAL KITS
Mendocino County Sheriff's Office	53	-	-	53
TOTAL MENDOCINO	58	-	-	58

MONO COUNTY

Mammoth Lakes Police Department	-	3	-	3
TOTAL MONO	-	3	-	3

MONTEREY COUNTY

Carmel by the Sea Police Department	-	-	2	2
Gonzales Police Department	15	-	-	15
Greenfield Police Department	10	2	-	12
Marina Police Department	8	3	-	11
Monterey County Sheriff's Office	-	3	-	3
Monterey Police Department	10	-	-	10
Pacific Grove Police Department	13	-	-	13
Seaside Police Department	-	2	1	3
Watsonville Police Department	2	1	-	3
TOTAL MONTEREY	58	11	3	72

NEVADA COUNTY

Truckee Police Department	-	-	1	1
TOTAL NEVADA	-	-	1	1

ORANGE COUNTY

Anaheim Police Department	239	27	-	266
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REPORTING AGENCY	KIT 2015 OR EARLIER	KIT 2016 OR LATER	KIT DATE UNCLEAR	TOTAL KITS
Costa Mesa Police Department	21	15	-	36
Cypress Police Department	74	-	1	75
Huntington Beach Police Department	163	9	-	172
Irvine Police Department	45	8	-	53
Laguna Beach Police Department	20	2	-	22
Los Alamitos Police Department	-	1	-	1
Orange County Crime Laboratory	-	227	-	227
Orange County Sheriff's Department	106	3	-	109
Placentia Police Department	68	8	-	76
Santa Ana Police Department	505	35	-	540
UC Irvine Police Department	17	4	-	21
TOTAL ORANGE	1,258	339	1	1,598

PLACER COUNTY

Placer County Sheriff's Office	33	6	-	39
Roseville Police Department	71	2	1	74
TOTAL PLACER	104	8	1	113

RIVERSIDE COUNTY

Beaumont Police Department	2	-	-	2
Blythe Police Department	19	5	-	24
Cathedral City Police Department	2	-	-	2
Desert Hot Springs Police Department	24	-	-	24
Hemet Police Department	76	9	-	85

REPORTING AGENCY	KIT 2015 OR EARLIER	KIT 2016 OR LATER	KIT DATE UNCLEAR	TOTAL KITS
Murrieta Police Department	17	24		41
Riverside Police Department	20	21		41
TOTAL RIVERSIDE	160	59	-	219

SACRAMENTO COUNTY

Elk Grove Police Department	17	2	-	19
TOTAL SACRAMENTO	17	2	-	19

SAN BENITO COUNTY

San Benito County Sheriff's Office	25	3	1	29
TOTAL SAN BENITO	25	3	1	29

SAN BERNARDINO COUNTY

Fontana Police Department	53	53	-	106
Montclair Police Department	6	2	-	8
Ontario Police Department	38	74	-	112
San Bernardino County Sheriff's Department	608	195	-	803
San Bernardino Police Department	481	156	-	637
TOTAL SAN BERNARDINO	1,186	480	-	1,666

SAN DIEGO COUNTY

Carlsbad Police Department	3	7	-	10
Chula Vista Police Department	2	1	-	3
Coronado Police Department	-	1	-	1
El Cajon Police Department	1	3	-	4

REPORTING AGENCY	KIT 2015 OR EARLIER	KIT 2016 OR LATER	KIT DATE UNCLEAR	TOTAL KITS
Escondido Police Department	3	-	12	15
National City Police Department	9	4	-	13
Oceanside Police Department	6	6	-	12
San Diego Police Department	-	-	1,627	1,627
San Diego Sheriff's Department Crime Lab	311	77	-	388
San Diego State University Police Department	3	2	-	5
TOTAL SAN DIEGO	338	101	1,639	2,078

SAN JOAQUIN COUNTY

Lodi Police Department	10	-	-	10
Manteca Police Department	77	-	-	77
San Joaquin County Sheriff's Office	3	2	-	5
Taft Police Department	6	-	-	6
TOTAL SAN JOAQUIN	96	2	-	98

SAN LUIS OBISPO COUNTY

Arroyo Grande Police Department	15	-	-	15
Atascadero Police Department	5	-	-	5
Paso Robles Police Department	61	-	-	61
San Luis Obispo Police Department	74	1	-	75
TOTAL SAN LUIS OBISPO	155	1	-	156

SAN MATEO COUNTY

Atherton Police Department	2	3	-	5
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REPORTING AGENCY	KIT 2015 OR EARLIER	KIT 2016 OR LATER	KIT DATE UNCLEAR	TOTAL KITS
Daly City Police Department	50	22	1	73
Menlo Park Police Department	31	4	-	35
Redwood City Police Department	95	43	-	138
San Mateo County Sheriff's Office	281	42	-	323
San Mateo Police Department	9	21	-	30
South San Francisco Police Department	29	19	2	50
TOTAL SAN MATEO	497	154	3	654

SANTA BARBARA COUNTY

UC Santa Barbara Police Department	15	-	-	15
TOTAL SANTA BARBARA	15	-	-	15

SANTA CLARA COUNTY

Campbell Police Department	17	1	-	18
Gilroy Police Department	22	6	-	28
Los Altos Police Department	8	2	-	10
Los Gatos-Monte Sereno Police Department	20	2	-	22
Milpitas Police Department	29	5	-	34
Morgan Hill Police Department	9	1	10	20
Mountain View Police Department	17	20	-	37
Palo Alto Police Department	14	17	-	31
San Jose State University Police Department	10	1	-	11
Santa Clara County Sheriff's Office*	39	50	-	89

*The Santa Clara County Sheriff's Office was erroneously listed as the Santa Clara County Crime Laboratory when this report was initially released. The report has been updated to reflect the correct agency.

REPORTING AGENCY	KIT 2015 OR EARLIER	KIT 2016 OR LATER	KIT DATE UNCLEAR	TOTAL KITS
Santa Clara Police Department	-	-	26	26
Sunnyvale Department of Public Safety	140	2	-	142
TOTAL SANTA CLARA	325	107	36	468

SHASTA COUNTY

Redding Police Department	133	9	-	142
Shasta County Sheriff's Office	19	-	-	19
TOTAL SHASTA	152	9	-	161

SOLANO COUNTY

Fairfield Police Department	253	2	-	255
Solano County Sheriff's Office	26	11	-	37
Suisun City Police Department	3	-	-	3
TOTAL SOLANO	282	13	-	295

SONOMA COUNTY

Petaluma Police Department	26	2	-	28
Rohnert Park Department of Public Safety	18	2	-	20
Sonoma State University Police Department	12	-	-	12
TOTAL SONOMA	56	4	-	60

STANISLAUS COUNTY

Modesto Police Department	29	5	-	34
Stanislaus County Sheriff's Department	18	-	-	18
TOTAL STANISLAUS	47	5	-	52

REPORTING AGENCY	KIT 2015 OR EARLIER	KIT 2016 OR LATER	KIT DATE UNCLEAR	TOTAL KITS
TEHAMA COUNTY				
Tehama County Sheriff's Office	4	1	-	5
TOTAL TEHAMA	4	1	-	5
TULARE COUNTY				
Exeter Police Department	43	5	-	48
Tulare County Sheriff's Office	78	5	5	88
TOTAL TULARE	121	10	5	136
VENTURA COUNTY				
Oxnard Police Department	186	28	-	214
Port Hueneme Police Department	46	8	-	54
Ventura County Sheriff's Office	338	84	-	422
Ventura Police Department	76	51	-	127
TOTAL VENTURA	646	171	-	817
YOLO COUNTY				
West Sacramento Police Department	190	4	-	194
Yolo County Sheriff's Office	45	22	-	67
TOTAL YOLO	235	26	-	261
STATE AGENCY				
California Highway Patrol	-	1	-	1
TOTAL STATE AGENCY	-	1	-	1
STATEWIDE TOTAL UNTESTED KITS	10,232	2,005	1,692	13,929

Appendix A: Relevant Legislation

- 2003 **Assembly Bill 898** established the *Sexual Assault Victims' DNA Bill of Rights*. This bill authorized or required LEAs to share specified information with victims of sexual assault crimes.
- 2014 **Assembly Bill 1517** amended the *Sexual Assault Victims' DNA Bill of Rights* to recommend processing times for sexual assault evidence received by LEAs and crime laboratories on or after January 1, 2016, and to revise victim notification requirements regarding the destruction or disposal of sexual assault evidence from an unsolved case.
- 2016 **Assembly Bill 1744** required a standardized SAE kit to be developed for statewide use by 2019.
- Senate Bill 813** eliminated the statute of limitations for specified sexual assault crimes that were committed on or after January 1, 2017, as well as those for which the previous statute of limitations had not run as of January 1, 2017.
- 2017 **Assembly Bill 1312** prohibited discouraging victims from receiving sexual assault examinations. It also prohibited LEAs from destroying or disposing of rape kit or other evidence from an unsolved sexual assault case before at least 20 years, or before the victim's 40th birthday if the victim was under the age of 18 at the time of the assault.
- Assembly Bill 41** amended the *Sexual Assault Victims' DNA Bill of Rights* to require LEAs and crime laboratories to enter specified SAE kit data into the Department's SAFE-T database starting January 1, 2018.
- 2018 **Assembly Bill 3118** required a statewide audit of untested SAE kits by July 1, 2019, and a report from the Department of Justice [this report] summarizing the results of the audit by July 1, 2020.
- 2019 **Senate Bill 22** amended the *Sexual Assault Victims' DNA Bill of Rights* to mandate, as of January 1, 2020, sexual assault evidence processing times for evidence received by LEAs and crime laboratories on or after January 1, 2016.