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California Lawmakers approve bill on handling of DNA evidence

The legislation would require law enforcement agencies to keep detailed records of all genetic material gathered in rape and sexual assault cases. The bill now goes to the governor.

By Joel Rubin, Los Angeles Times

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State lawmakers concerned that police are failing to analyze crucial DNA evidence in rape and sexual assault crimes approved legislation last week requiring law enforcement agencies to keep detailed records of all genetic material gathered in such cases.

The bill, which won support from all but one state senator, now goes to Gov. Arnold Schwarzenegger for his approval or veto.

Victims of rape or sexual assault who contact authorities are typically taken to a hospital where semen, saliva or other genetic material left by the assailant is collected and packaged for use by police in their investigations. Laboratory analysts can often extract the unique DNA profile contained in the material, which can then be used to identify the suspect, link him to other crimes or clear the wrongly accused. If investigators fail to have the analysis done before state statutes of limitation expire, the evidence cannot be used to prosecute a suspect.

Under the terms of the proposed bill, law enforcement agencies would be required to submit an annual report to the state Department of Justice detailing, among other things, the number of evidence kits collected that year and how many of those were submitted to laboratories for analysis.

"If you have physical evidence against the perpetrator of a heinous crime, you should be processing that evidence," said the bill's author, Assemblyman Anthony Portantino (D-La Cañada Flintridge). "The hope is that by requiring law enforcement to show how they're performing, it will highlight where the deficiencies are and will bring public scrutiny to the table."

The impetus for the bill came in late 2008 when the Los Angeles Police Department and the L.A. County Sheriff's Department, under pressure from victim advocacy groups and elected officials, acknowledged that several thousand untested evidence kits were sitting in storage freezers — some of them dating back more than a decade.

The two agencies launched efforts to inventory and analyze untested material, and announced that, going forward, evidence from all new cases would be processed. Both have eliminated nearly all of their backlogs by contracting with private laboratories to do the analysis. The departments' in-house laboratories, however, have been unable to keep pace with demands for

analysis of evidence from new cases. LAPD Chief Charlie Beck and Sheriff Lee Baca have said it will take until next year to hire and train the additional analysts needed to stay current.

Both agencies have also continued to chafe against federal regulations that prohibit private labs from performing the final steps of DNA analysis. Private labs have extracted DNA profiles of potential suspects in about 2,300 cases, but the profiles are waiting to be uploaded to state databases by LAPD and Sheriff's Department personnel for potential matches to known felons and arrestees. The LAPD, which is responsible for about two-thirds of these cases, has taken steps to increase its rate of uploading and plans to have the delay eliminated in six months, said Assistant Chief Michel Moore.

Portantino's bill would not require agencies to undertake the painstaking and costly process of inventorying untested genetic samples from old cases and would not identify departments with backlogs.

Nonetheless, the bill has garnered opposition. The California State Sheriffs' Assn. has come out against it and has been joined by groups representing laboratory directors and police department records supervisors. In letters to the governor, and other lobbying efforts, the groups have expressed concern that the measure would add a serious burden to staffs already hit hard by the state's fiscal crisis.

"In a different time we wouldn't be opposed to this, but we're in a position where we're having to prioritize service in very painful ways," said Nick Warner, legislative director for the sheriffs' and records supervisors' associations. "It is just fiscal."

The sheriffs' association took a similar stance last year when the Legislature passed a similar bill. The governor vetoed that bill, despite receiving calls from several friends and personal advisors who urged him to sign it, according to a person who helped orchestrate the behind-the-scenes campaign. The source spoke on the condition that her name not be used out of concern that her comments could jeopardize the current bill's chances.

A spokesperson for the governor said he had not yet made up his mind on the bill. Schwarzenegger has until the end of September to sign or veto it. If he does nothing, the bill automatically becomes law.

Gail Abarbanel, director of the Rape Treatment Center at Santa Monica-UCLA Medical Center, expressed frustration that lawmakers have failed to increase funding to science labs that process the DNA evidence.

Sarah Tofte, who pressured the LAPD, Sheriff's Department and agencies in other states to address the backlog issue as a researcher at Human Rights Watch, agreed with Abarbanel that the proposed law falls far short of being a cure-all but called on the governor to sign it.

"Certainly, there are other things the state will have to do in the future to fix the problem, but we've got to take reform where we can get it," said Tofte, who now is policy director for the Joyful Heart Foundation, a nonprofit group that advocates for rape victims. "The more light you can shed on police practices when it comes to rape kit testing, the better."