



## SEXUAL ASSAULT KIT TESTING REPORTS IN SAN MATEO COUNTY: WHAT ARE WE MISSING?

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### ISSUE

Public reporting of sexual assault kit testing matters -- because it leads to public trust. Do the content and timing of San Mateo County's annual Sexual Assault Kit Testing Report accurately inform the public? Is it conducted with transparency and timeliness?

### SUMMARY

By its very nature, sexual assault is a violent crime often hidden from society by both its perpetrators and its survivors. "Rape and sexual assault are serious offenses. So why aren't they reported? Survivors cite several reasons. Twenty percent, according to DOJ reporting, worry about retaliation — not just from the perpetrator, but from society at large. Thirteen percent said they think the police would not do anything to help. Tragically, eight percent said they didn't think the rape or sexual assault was important enough to report."<sup>1</sup>

It will never be known how many actual sexual assaults occur in SMC in any given year.

**Context is key to understanding reported sexual assaults in San Mateo County.** Merely knowing that there is no backlog in the testing of sexual assault kits (SAKs) is no longer enough. With statistics easily available to law enforcement agencies, expanding the Sheriff's Office annual Sexual Assault Kit Testing Report to include more meaningful information is an essential step toward transparency of sexual assault reporting in our County.

This Grand Jury report will identify ways in which the Sheriff's Office's annual Sexual Assault Kit Testing Report should be enhanced to improve understanding by the public.

The 2020-21 San Mateo County Civil Grand Jury reinvestigated the status of SAK testing in the County. A previous grand jury concluded that the County's Forensic Laboratory had eliminated its test kit backlog.<sup>2</sup> That report also concluded that the Forensic Laboratory was adhering to California's 120-day recommended guideline for SAK testing.<sup>3</sup> In its inquiry, the current Grand Jury concluded that the Forensic Laboratory tests SAKs within 120 days, but it is unclear whether there is any backlog, due to the timing of reporting.

In response to a recommendation in the 2016 Grand Jury report, the Sheriff's Office said it would "... annually publish a report to the County Manager's Office of San Mateo County by

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<sup>1</sup> Brennan Center for Justice, "Sexual Assault Remains Dramatically Underreported," October 4, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/sexual-assault-remains-dramatically-underreported>

<sup>2</sup> "Rape Kit Processing in San Mateo," 2016, pg.1

<sup>3</sup> "Rape Kit Processing in San Mateo," 2016, pg.8

January 15 of each year....”<sup>4</sup> In November 2020, the current Grand Jury was unable to locate these reports on the Sheriff’s Office website or on any other County website. During the Grand Jury’s inquiry, in December 2020, the reports were published on the Forensic Laboratory page of the Sheriff’s Office website.<sup>5</sup>

In response to another 2016 Grand Jury recommendation, the Sheriff’s Office declined to identify the law enforcement agencies submitting the sexual assault kits, nor the reason why kit processing requests were cancelled:

“This report will not publish the law enforcement agency from which the sexual assault kit is associated or the reason why a processing request was canceled. The reason that this information will not be part of the report is due to the confidential nature of this casework and the fact that until the statute of limitations has expired on these cases, the case is considered open, and analysis may be re-initiated at a future date”<sup>6</sup>

Public availability of crime statistics by locality, expectations for greater transparency, and the publication of a 2017 audit by the California Office of the Attorney General, demonstrate that the Sheriff’s Office could include more contextual information in its report and make it more informative.

This Grand Jury recommends the San Mateo County Sheriff’s Office:

- 1) **Adjust the timing** of the release of the annual SAK Testing Report to May of each year so the report accurately reflects the entirety of prior calendar year’s statistics.
- 2) **Increase transparency** by announcing the availability of the annual Sexual Assault Kit Testing Report in a manner designed to maximize public awareness.
- 3) **Expand the content** of the annual SAK Testing Report to inform and educate the public and provide context by including:
  - the total number of sexual assaults in the County as reported to the FBI;
  - the number of sexual assaults in each city as reported to the FBI; and
  - the reasons sexual assault kits were not processed.

## GLOSSARY

**BJA** – Bureau of Justice Assistance (Federal) - helps make American communities safer by strengthening the nation’s criminal justice system through community grants, training and technical assistance as well as policy development services. Provides state, local, and tribal governments with cutting-edge tools and best practices they need to reduce violent and drug-related crime, support law enforcement, and combat victimization.

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<sup>4</sup> <https://www.smcsheriff.com/multi-jurisdictional-division/forensic-laboratory>

<sup>5</sup> <https://www.smcsheriff.com/multi-jurisdictional-division/forensic-laboratory>

<sup>6</sup> SMCSO response to “Rape Kit Processing in San Mateo”

**CAG** – California Office of the Attorney General.

**CODIS** - The FBI’s Combined DNA Index System is a software platform that blends forensic science and computer technology. Analysts use CODIS to search DNA profiles obtained from crime scene evidence against DNA profiles from other crime scenes and from convicted offenders as well as certain arrestees.<sup>7</sup>

**KELLER CENTER FOR FAMILY VIOLENCE INTERVENTION** (Keller Center) - Founded in 2001 and located at the San Mateo Medical Center, the Keller Center provides comprehensive services such as emergency medical treatment and forensic examinations to victims of child abuse, elder abuse, sexual assault, and domestic violence. In San Mateo County all sexual assault victims are taken to the Keller Center for a forensic examination following a medical examination if needed. Local law enforcement utilizes the offices at the Keller Center for their interviews with victims. The Keller Center has served as a model for other such centers throughout the state, and it remains the only center that serves adults, adolescents, and children in the Bay Area.

**LEA** – Law Enforcement Agency – a government agency responsible for enforcing the law.

**NIJ** – National Institute of Justice - the research, development and evaluation agency of the U.S. Department of Justice, dedicated to improving knowledge and understanding of crime and justice issues through science.

**RAPE** – a subset of sexual assault with a specific legal definition. The FBI’s revised Uniform Crime Reports (UCR) definition of rape is: “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”<sup>8</sup>

**SAFE-ITR**- Sexual Assault Forensic Evidence – Inventory, Tracking, and Reporting – a BJA program that provides funding for agencies to gain insight into the scope of unanalyzed Sexual Assault Kits (SAKs) and for managing the status of the workflow of the SAKs. This program assists agencies in addressing the inventory, tracking and reporting of SAKs.<sup>9</sup>

**SAK** – Sexual Assault Kit (also known as a “rape kit,” “Sexual Evidence Kit,” or “Sexual Assault Response Team (SART) kit”) – is a collection of evidence gathered from the victim by a medical professional, often a specially trained Sexual Assault Nurse Examiner. The contents of a kit vary by jurisdiction, but generally include swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers; the type of evidence collected depends on the circumstances of the assault.<sup>10</sup>

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<sup>7</sup> <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet>

<sup>8</sup> [ucr.fbi.gov](https://ucr.fbi.gov); The California statute defining Rape is Penal Code Section 261. While it is much longer than the UCR definition, the difference is not important for this report.

<sup>9</sup> <https://bja.ojp.gov/program/safe-ittr/overview>

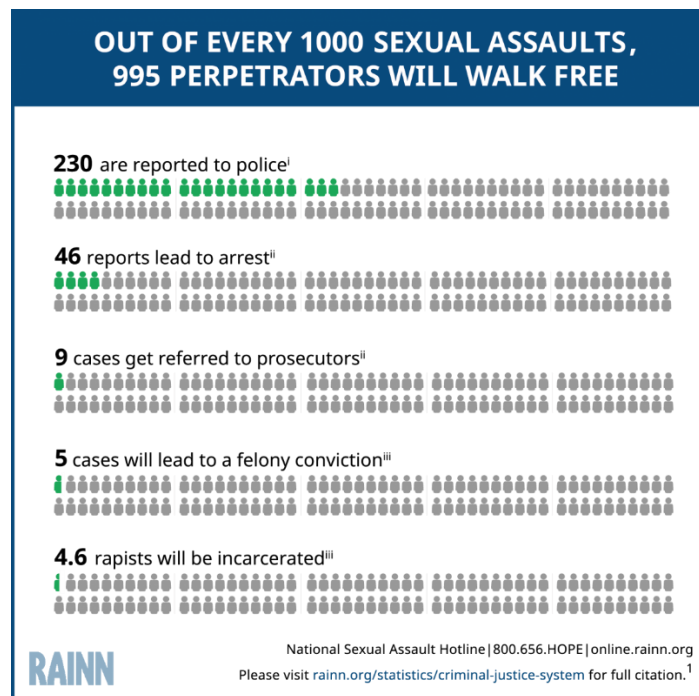
<sup>10</sup> <https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/unsubmitted-kits.pdf>

**SAK TESTING REPORT** – an annual report published by the SMC Sheriff’s Office and currently released by January 15<sup>th</sup>.<sup>11</sup>

## BACKGROUND

### National Sexual Assault Statistics

National concern on the status of unprocessed sexual assault kits (SAKs) persists.<sup>12</sup> On average, there are 433,648 victims (age 12 or older) of sexual assault crimes reported each year in the United States.<sup>13</sup> Most sexual assaults are not reported, making it difficult to accurately estimate the scope of the problem. Determining the pervasiveness of sexual assault in our society is challenging. By one estimate, only 230 out of every 1,000 sexual assaults are reported to police, indicating that about three out of four go unreported.<sup>14</sup> The table below uses Bureau of Justice statistics for 2019 to illustrate the very low number of successful prosecutions.



<sup>11</sup> Interview with SMC Sheriff’s Office personnel

<sup>12</sup> <https://abcnews.go.com/US/massive-backlog-rape-kits-public-safety-issue/story?id=60540635>

<sup>13</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, National Crime Victimization Survey, 2018 (2019). *Note: RAINN applies a 5-year rolling average to adjust for changes in the year-to-year NCVS survey data.*

<sup>14</sup> <https://www.rainn.org/statistics/criminal-justice-system>

Even for reported sexual assaults, statistical difficulties and reporting issues exist for several reasons, such as: varying definitions of rape in different states,<sup>15</sup> and, disparities between jurisdictions in coding, prosecution, and conviction for sexual assault or rape.<sup>16</sup> Sexual assault and rape are not the same crime; rape is one form of sexual assault.<sup>17</sup> National and individual state sexual assault statistics vary widely from state to state and can also be influenced by factors such as demographics, culture, economics, law enforcement procedures, and criminal offense selection.<sup>18</sup>

### **Sexual Assault Reporting Legislation**

The U.S. Congress enacted the “Survivors’ Bill of Rights Act of 2016”<sup>19</sup> which provided a first ever definition of basic rights for crime victims and specifically included language to preserve the rights of sexual assault survivors.<sup>20</sup>

Shortly thereafter, the California legislature also expanded the rights of sexual assault victims, enacting laws addressing the timeliness of testing SAKs, and promoting a victim’s access to that information.<sup>21</sup> California Penal Code Section 680 (Appendix B), known as the “Sexual Assault Victims’ DNA Bill of Rights,” *recommended* time frames and encouraged law enforcement agencies to test SAKs within 120 days of receipt. The law’s intent was to prevent ongoing backlogs by requiring that all SAKs be tested quickly.

In 2018, California Penal Code Section 680.4 required “all law enforcement agencies, medical facilities, crime laboratories, and other facilities that receive, maintain, store, or preserve sexual assault evidence kits to conduct a one-time audit of all untested sexual assault evidence kits in their possession and report specified data to the California Department of Justice by July 1, 2019.”<sup>22</sup> The legislation is intended to determine the status of the testing of a known backlog of SAKs in the state.<sup>23</sup>

In 2020, the CAG released its report analyzing the data collected and concluded there were at least 13,929 untested kits in California. The report explained there were multiple reasons why sexual assault kits were not tested as shown in the following graphic:<sup>24</sup>

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<sup>15</sup> See Appendix A = list of codes from a variety of offenses classified as rape

<sup>16</sup> L. P. Gordon (2002). Violence Against Women. Nova Publishers. pp. 4–6. ISBN 978-1-59033-455-3; [https://en.wikipedia.org/wiki/Rape\\_statistics](https://en.wikipedia.org/wiki/Rape_statistics).

<sup>17</sup> [ucr.fbi.gov](http://ucr.fbi.gov)

<sup>18</sup> <https://worldpopulationreview.com/state-rankings/rape-statistics-by-state>

<sup>19</sup> <https://uscode.house.gov/statutes/pl/114/236.pdf>

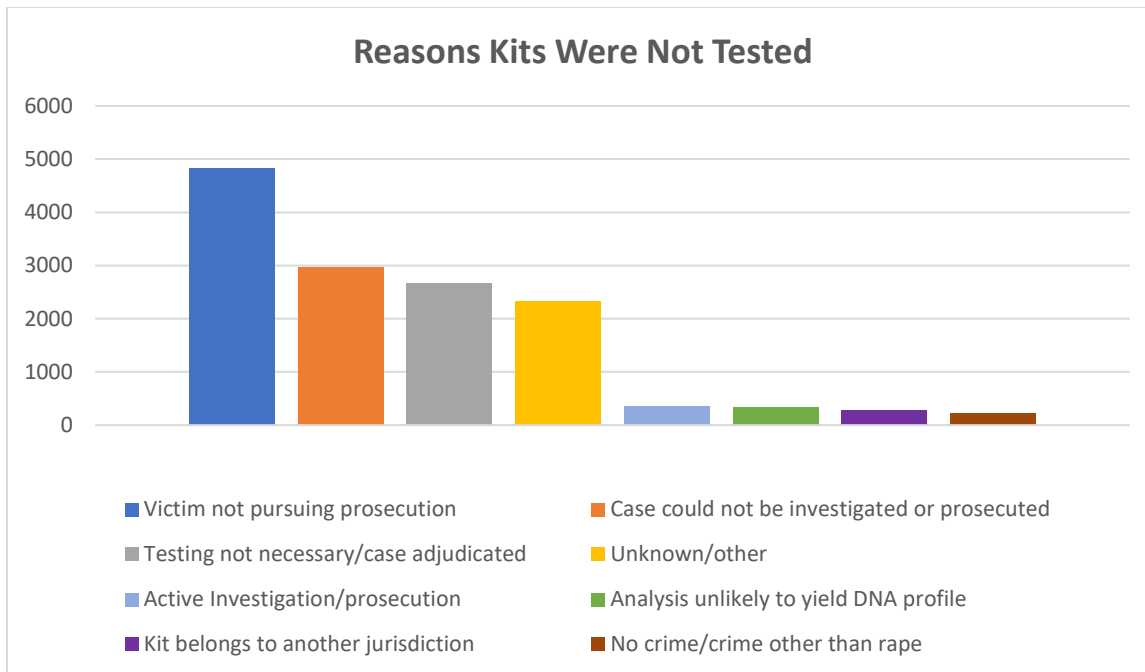
<sup>20</sup> 18 USC 3772

<sup>21</sup> Penal Code Section 680

<sup>22</sup> Penal Code Section, <https://codes.findlaw.com/ca/penal-code/pen-sect-680-4.html>

<sup>23</sup> <http://law.onecle.com/california/penal/680>

<sup>24</sup> <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/ag-rpt-audit-usasfe-kits-2020.pdf>



There is a significant difference between the number of untested kits and a *backlog* of kits. Kits that are not tested may not be part of a *backlog*. Some kits will not be tested at all for the reasons shown above. In 2019, for example, less than half of reported sexual assaults in San Mateo County resulted in a SAK being tested. The results of the 2019 CAG audit confirmed that many California counties appeared to struggle with the timely testing of sexual assault kits.

In October 2019, the Governor of California signed legislation (SB 22 – PC 680, 680.3 and 13823.14)<sup>25</sup> in an effort to reduce time delays for SAK testing. Instead of *recommending* timelines for testing as the 2016 legislation had done, the new law began *requiring* law enforcement agencies to submit newly collected SAKs for testing within 30 days and *compelled* crime laboratories to test the evidence within 120 days.<sup>26</sup>

In response to that legislation, and as an example that other California counties could emulate, Santa Clara County took a progressive approach by setting new guidelines that reduced kit *testing* time. “Our policy<sup>27</sup> calls for them to be *tested* within 30 days,” a Santa Clara County official said. “That policy has been very helpful at establishing very clear-cut guidelines for both law enforcement and [the] crime lab, and also letting the public know and letting victims of crime know what is going to happen with their [sexual assault test] kit.” The official went on to

<sup>25</sup> An act to amend Sections 680, 680.3, and 13823.14 of the Penal Code, relating to evidence. [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB22](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB22)

<sup>26</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB22](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB22)

<sup>27</sup> [https://www.sccgov.org/sites/owp/gbv/Documents/SA/SCLARACOUNTY\\_SEXUALASSAULTPROTOCOL\\_FINAL\\_Sep2019.pdf](https://www.sccgov.org/sites/owp/gbv/Documents/SA/SCLARACOUNTY_SEXUALASSAULTPROTOCOL_FINAL_Sep2019.pdf) pg. 44

report that Santa Clara County “used to process a kit within 94 days” but “as of December 2020 has been processing kits in 16 days.”<sup>28</sup>

## **San Mateo County**

Recognizing sexual assault kit backlog as a potential issue in San Mateo County, the 2015-16 Grand Jury reported on the status of processing the County’s sexual assault kits in their report, “*Rape Kit Processing in San Mateo County*” and recommended:

*“The Sheriff’s Forensic Laboratory should annually produce a publicly available report concerning its processing of rape kits that includes but is not limited to the number of rape kits received from the Keller Center, the law enforcement agency associated with each kit, the number of kits tested and analyzed by the Lab, the number of DNA profiles uploaded to CODIS, the number of rape kits not tested at law enforcement request, and the reasons for not testing. Statistics should also include the number of days from login at the Lab to completion of processing”.*

The Sheriff’s Office responded, in part:

*“The Sheriff’s Office Forensic Laboratory does maintain most of the above-mentioned data for internal case tracking purposes and will annually publish a report to the County Manager’s Office of San Mateo County by January 15th of each year, detailing the following:*

- The number of sexual assault kits received from the Keller Center*
- The number of sexual assault kits analyzed by the Forensic Laboratory*
- The number of DNA profiles uploaded to the CODIS database*
- The number of sexual assault kits not tested per law enforcement agency request*
- The average number of days to complete the analysis”*

## **DISCUSSION**

### **Timing of the SAK Testing Report**

From 2016 through 2020, the Sheriff’s Office has prepared an annual SAK Testing Report. The reports verified that the Sheriff’s Office tested the kits within 120 days after receipt, and that there was no backlog of untested kits. The Grand Jury commends the Sheriff’s Office for its compliance with Penal Code Section 680 and for following select recommendations of the previous Grand Jury.

But, in November 2020, the current Grand Jury was unable to locate these reports on a publicly available website. Further research revealed that the Sheriff’s Office only sent the reports to the County Manager’s Office with copies to the Board of Supervisors. In December 2020, the reports appeared on the San Mateo County Forensic Laboratory website for the first time,

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<sup>28</sup> <https://www.nbcbayarea.com/news/local/santa-clara-county-clears-backlog-of-unttested-rape-kits/2232194/>

without accompanying comment. When SAK testing reports are published and easy to locate on the Sheriff’s website, the public will be better informed of any backlog status.

Penal Code Section 680 *requires* a 120-day window for completion of SAK testing. As a result, the current annual January 15<sup>th</sup> release date of the report set by the Sheriff’s Office means that the report does not necessarily reflect a full calendar year of SAKs, which could result in confusion. SAKs received for processing late in the year may not have been completed by December 31<sup>st</sup> due to the time required for current processing standards or testing delays. Kits may have been withdrawn or cancelled by LEA or victims for many reasons (refer to the chart “Reasons Kits Were Not Tested”<sup>29</sup> in the Background section).

The current format of the SAK Testing Report may unintentionally mislead a reader as to the scope of sexual assaults in the County in a given year. This may be compounded by the fact the number of kits ultimately tested are a small percentage of the kits received, and the kits entered into the CODIS database are an even smaller percentage of reported sexual assaults. As noted above, the actual number of sexual assaults is difficult to determine as the majority/most remain unreported.

### SMC 2019 Statistics

In 2019, a total of 288 sexual assaults were reported to the Federal Bureau of Investigation by the LEAs in San Mateo County.<sup>30</sup> Only 11% of those SAKs collected qualified<sup>31</sup> for entry into CODIS in 2019.

To improve the public’s understanding of why so few SAKs are tested, the Grand Jury took a single year, 2019, and compiled and calculated the attrition at each stage of the SAK processing, as shown in the following table:

<b>SMC SAK Testing Attrition Resulting in low CODIS entry, 2019</b>		
<b>Stage in Testing Process</b>	<b>Number</b>	<b>%</b>
2019 SMC sexual assaults reported to FBI	288	100%
SAKs not collected	-150	52%
SAKs collected and sent to Forensic Lab	138	48%
SAKs cancelled or recalled by LEAs	-21	7%
SAKs submitted for testing	117	40%
SAKs qualifying for CODIS entry	31	11%

<sup>29</sup> <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/ag-rpt-audit-usasfe-kits-2020.pdf>

<sup>30</sup> FBI crime statistics [ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-10/10-state-cuts/California.xls](http://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-10/10-state-cuts/California.xls)

<sup>31</sup> If DNA is present, the crime laboratory determines if the quality is sufficient to produce a DNA profile. If the DNA profile is obtained, crime analysts must verify that the profile is “CODIS eligible,” sometimes referred to as “CODIS Ready” (i.e., the profile is good enough to be uploaded into CODIS).

<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/ag-rpt-audit-usasfe-kits-2020.pdf>



By shedding light on a single year, 2019, the attrition of SAK testing statistics demonstrate how few DNA results were able to be uploaded to CODIS.

### Expanding the SAK Testing Report

Two key recommendations of the 2016 Grand Jury report were not accepted by the Sheriff’s Office, thus relevant important information is not included in the annual Sheriff’s Office report:

1. *The law enforcement agency associated with each kit,*
2. *The reason(s) for not testing at law enforcement agency request.”<sup>32</sup>*

In its response, the Sheriff’s Office wrote:

*“... (the) report will not publish the law enforcement agency from which the sexual assault kit is associated or the reason why a processing request was canceled. The reason that this information will not be part of the report is due to the confidential nature of this casework and the fact that until the statute of limitations has expired on these cases, the case is considered open and analysis may be re-initiated at a future date.”*

The annual number of reported sexual assaults in San Mateo County is readily available public information, published by the FBI.<sup>33</sup> That information comes from every LEA in San Mateo County. It could readily be incorporated into the Sheriff’s Office annual SAK Testing Report to make the report more informative, transparent, and allow for improved public awareness.

<b>San Mateo County Reported Sexual Assaults, 2019</b>		
<b>Reporting LEA</b>	<b>Population<sup>34</sup></b>	<b>Sexual Assaults Reported to FBI</b>
Atherton	7,222	2
Belmont	26,941	8
Brisbane	4,671	2
Burlingame	30,899	15
Colma	1,489	0
Daly City	106,280	44
East Palo Alto	29,314	22
Foster City	33,901	10
Half Moon Bay	12,932	4
Hillsborough	11,387	0
Menlo Park	34,871	16
Millbrae	22,394	9
Pacifica	39,938	22
Portola Valley	4,568	1
Redwood City	87,427	32
San Bruno	43,499	11

<sup>32</sup> 2015-16 San Mateo Civil Grand Jury report “*Rape Kit Processing in San Mateo County*” <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/ag-rpt-audit-usafe-kits-2020.pdf>

<sup>33</sup> <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-6/table-6-state-cuts/california.xls>

<sup>34</sup> Estimated population for 2019 from [www.census.gov](http://www.census.gov)

San Carlos	22,394	10
<b>San Mateo County Reported Sexual Assaults, 2019</b>		
<b>Reporting LEA</b>	<b>Population</b>	<b>Sexual Assaults Reported to FBI</b>
San Mateo	104,306	11
South San Francisco	68,251	19
Woodside	5,287	1
All other areas*	62,499	49
Total	766,573	288
*Includes unincorporated areas and incidents reported to the Transit Bureau.		

The Grand Jury recommends the inclusion of:

- annual sexual assault statistics as reported to the FBI for San Mateo County with each city listed, including those who contract for services with the Sheriff’s Office;<sup>35</sup>and
- the reasons kits are cancelled and/or not tested at the LEA’s request, by utilizing the categories from the OAG report of 2020<sup>36</sup> as shown in the graphic “Reasons Kits Were Not Tested” on page 6. The information should not include the victims’ information or city of origin and only include the number of kits cancelled by category.

## FINDINGS

- F1. Beginning in January 2017, and each year thereafter, the Sheriff’s Office generated a Sexual Assault Kit Testing Report and sent it to the County Manager, with a copy to the Board of Supervisors, detailing select data points in the analysis and testing of sexual assault kits.
- F2. The annual Sexual Assault Kit Testing Report has been released by the Sheriff’s Office too early in the calendar year to comprehensively reflect the status of all of the previous (calendar) year’s sexual assault kits, some of which are shown as “currently in progress” on the report.
- F3. The annual Sexual Assault Kit Testing Report only reports information about sexual assault kits received by the Forensic Laboratory; as a result, it may mislead the reader because the number of kits is only a small subset of how many sexual assaults occur in the County.
- F4. The prior Grand Jury’s recommendation to include the originating agency or the reason a sexual assault kit was not tested has not been part of the Sheriff’s Office report.
- F5. The annual Sexual Assault Kit Testing Reports were added to the Forensic Laboratory’s webpage in December 2020, during the Grand Jury inquiry.

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<sup>35</sup> “(The Sheriff’s Office) provides contract law enforcement services for the cities of Half Moon Bay, Millbrae, San Carlos, Eichler Highlands, the towns of Portola Valley and Woodside, as well as for the Peninsula Corridor Joint Powers Board and the San Mateo County Transit District,” <https://www.smcsheriff.com/patrol-services>

<sup>36</sup> See page 7

## RECOMMENDATIONS

- R1. Beginning in May 2022, the Sheriff's Office should adjust the timing of the release of the annual Sexual Assault Kit Testing Report from January to May of each year so that the report reflects complete data from the previous calendar year.
- R2. Beginning in May 2022, the Sheriff's Office should expand the content of the annual Sexual Assault Kit Testing Report to include:
- the total number of sexual assaults in the County as reported to the FBI;
  - the number of sexual assaults in each city as reported to the FBI; and
  - the reasons sexual assault kits were not processed. The information should not include the victims' information or city of origin and only include the number of kits cancelled by category.
- R3. To increase public transparency, the Sheriff's Office should, commencing no later than May 2022, announce the availability of the annual Sexual Assault Kit Testing Report in a manner designed to maximize public awareness.

## REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows:

- San Mateo County Sheriff's Office (all Findings and Recommendations)

## RESPONSE REQUIREMENTS

California Penal Code Section 933.05, provides (emphasis added):

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall report one of the following:

(1) The respondent **agrees** with the finding.

(2) The respondent **disagrees** wholly or partially with the finding; in which case the response shall **specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.**

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, **with a summary regarding the implemented action.**

(2) The recommendation has not yet been implemented, but will be implemented in the future, **with a timeframe for implementation.**

(3) The recommendation requires further analysis, **with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This**

**timeframe shall not exceed six months from the date of publication of the grand jury report.**

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, **with an explanation therefor.**

## **METHODOLOGY**

Information in this report is based on Grand Jury interviews as specified below. Additionally, the Grand Jury reviewed reports, articles in publications, and websites related to sexual assault kit processing.

## **DOCUMENTS**

Multiple reports, policy documents, board minutes, law enforcement procedures, and victims' resource materials, as listed in the bibliography below, were reviewed.

## **INTERVIEWS**

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

The Grand Jury interviewed representatives from agencies and departments within San Mateo County who had special training, knowledge or experience related to sexual assault and its reporting.

## **BIBLIOGRAPHY**

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- Office of the Attorney General, Xavier Becerra, California Department of Justice; California Justice Information Services Division; Justice Data and Investigative Services Bureau; Criminal Justice Statistics Center; *CRIME in California*, 2019; <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Crime%20In%20CA%202019.pdf>

- San Mateo County Sheriff’s Office, table of rape offense codes
- Santa Clara County Board of Supervisors – District Attorney report on rape kits (2-11-2020):Agenda Item #11, page 5  
<http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=14&ID=11288&Inline=True>
- Full report:  
[http://sccgov.iqm2.com/Citizens/Detail\\_LegiFile.aspx?Frame=SplitView&MeetingID=12188&MediaPosition=9972.339&ID=100241&CssClass=](http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=SplitView&MeetingID=12188&MediaPosition=9972.339&ID=100241&CssClass=)
- U.S. Department of Justice; Office of Justice Programs; Bureau of Justice Statistics; *Criminal Victimization*; September 2020, NCJ 255113 Bulletin;  
<https://www.bjs.gov/content/pub/pdf/cv19.pdf>
- U.S. Department of Justice; Office of Justice Programs; National Institute of Justice, *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, 2017,  
<https://www.ncjrs.gov/pdffiles1/nij/250384.pdf>
- U.S. Department of Justice; Victim of Crime Act, 2017; *Sexual Assault Victim’s Bill of Rights (pamphlet)*;2017; <https://oag.ca.gov/sites/all/files/agweb/pdfs/victimservices/ab1312-card.pdf>

## APPENDIX A: Rapes – Offense Codes and Description

Source: Codes provided by San Mateo County Sheriff's Office

Offense Code	Description	Offense Level	UCR Index
220(A)(2) PC	Assault:Under 18 w-Intent to Commit Rape	F	Rape
261(A)(1) PC	Rape:vict Incpbl Of Cnsnt	F	Rape
261(A)(2) PC	Rape By Force/Fear/Etc	F	Rape
261(A)(3) PC	Rape Of Drugged Victim	F	Rape
261(A)(4) PC	Rape:vict Unconsc Of Act	F	Rape
261(A)(5) PC	Rape:vict Thinks Spouse	F	Rape
261(A)(6) PC	Rape:threat Retaliation	F	Rape
261(A)(7) PC	Rape:threat:auth:arst/Etc	F	Rape
262(A)(1) PC	Rape Spouse By Force/Etc	F	Rape
262(A)(2) PC	Rape Spouse Und C/Sub/Etc	F	Rape
262(A)(3) PC	Rape Spouse Unconscious of Nature Act	F	Rape
262(A)(4) PC	Rape Spouse by Threat of Retaliation	F	Rape
262(A)(5)	Rape Spouse by Threatening use Auth to Arrest	F	Rape
264.1 PC	Rape/Etc:cncrt Force/Viol	F	Rape
286(a) PC	Sodomy - defined	F	Rape
286(b)(1) PC	Sodomy:person Under 18	F	Rape
286(b)(2) PC	Sodomy:person Under 16	F	Rape
286(c)(1) PC	Sodomy:V under 14-S 10 yrs older	F	Rape
286(c)(2) PC	Sodomy: By Force or Threat	F	Rape
286(d) PC	Sodomy In Concert W/Force	F	Rape
286(e) PC	Sdmy:while In Prison/Jail	F	Rape
286(f)(1) PC	Sodomy:V unconscious/asleep	F	Rape
286(f)(2) PC	Sodomy:V not aware/cognizant	F	Rape
286(f)(3) PC	Sodomy:V not aware/cognizant etc	F	Rape
286(g) PC	Sdmy:vict Incapbl:consent	F	Rape
286(h) PC	Sdmy:vic/Def In Mntl Inst	F	Rape
286(i) PC	Sodomy:no Ok:vict Drugged	F	Rape
286(k) PC	Sod:auth Thret Arest/Dprt	F	Rape
287(B)(1) PC	Oral Copulation:Person Under 18- Misd	M	Rape
287(B)(1) PC	Oral Copulation:Person Under 18-Fel	F	Rape
287(B)(2) PC	Oral Copulation: Person Under 16	F	Rape

Offense Code	Description	Offense Level	UCR Index
287(C)(1) PC	Oral Copulation:Person Under 14/Etc	F	Rape
287(C)(2)(A) PC	Oral Copulation:By Use of Force/Injury	F	Rape
287(C)(2)(B) PC	Oral Copulation:Under 14 By Force/Injury	F	Rape
287(C)(2)(C) PC	Oral Copulation:14 or Older by Force/Injury	F	Rape
287(C)(3) PC	Oral Copulation:Force/Threat Retaliate	F	Rape
287(D)(1)(A) PC	Oral Copulation in Concert w/Force/Etc	F	Rape
287(D)(1)(B) PC	Oral Copulation in Concert: Threat	F	Rape
287(D)(1)(C) PC	Oral Copulation in Concert:Vic Incapable of Consent	F	Rape
287(D)(2) PC	Oral Copulation:Concert:Threat Force w/Vic Under 14	F	Rape
287(D)(3) PC	Oral Copulation:Concert:Threat Force w/Vic Over 14	F	Rape
287(E) PC	Oral Copulation While Confind Prison/Jail - Fel	F	Rape
287(E) PC	Oral Copulation While Confind Prison/Jail - Mis	M	Rape
287(F) PC	Oral Copulation: Vic Unconscious Nature of Act	F	Rape
287(F)(1) PC	Oral Copulation: Victim Unconscious or Asleep	F	Rape
287(F)(2) PC	Oral Copulation: Victim Unaware Act Occurred	F	Rape
287(F)(3) PC	Oral Copulation: Vic of Act due to Perpetrators Fraud	F	Rape
287(F)(4) PC	Oral Copulation:Fraudulent Serves Professional Purpose	F	Rape
287(G) PC	Oral Copulation: Vic Incapable of Consent	F	Rape
287(H) PC	Oral Copulation:No Consent: Vic State Hospital - Fel	F	Rape
287(H) PC	Oral Copulation:No Consent: Vic State Hospital - Mis	M	Rape
287(I) PC	Oral Copulation:Vic Intox/Under Infl of Contr Subst	F	Rape
287(J) PC	Oral Copulation:By Impersonation	F	Rape
287(K) PC	Oral Copulation: Threat Arrest/Deport	F	Rape
288 A (A) PC	Oral Copulation	F	Rape
288(a) PC	Lewd act w/Child Under 14	F	Rape
288(b)(1) PC	Lewd act w/Child under 14w/force	F	Rape
288(b)(2) PC	Lewd act w/child by caretaker	F	Rape
288(c)(1) PC	Lewd w/Child 14/15 w/Susp 24+	F	Rape
288(c)(2) PC	Lewd w/Dep Adlt By Caretrk	F	Rape
288A(B)(1) PC	Oral Cop:person Under 18	F	Rape
288a(b)(2) PC	Oral Cop: V under 16/S over 21	F	Rape
288A(C) PC	Orl Cop:-14/Etc O/Frc/Etc	F	Rape
288A(D)(1) PC	Oral Cop In Concrct W/Forc	F	Rape
288A(D)(2) PC	Oral Cop:cnrcrt:threat:ret	F	Rape

Offense Code	Description	Offense Level	UCR Index
288A(E) PC	Oral Cop:in Prison	F	Rape
288A(F) PC	Oral Cop:vic Uncon Of Act	F	Rape
288A(G) PC	Oral Cop:vict Incap Cnsnt	F	Rape
288A(H) PC	Orl Cop:vic/Def In St Hos	F	Rape
288A(I) PC	Oral Cop:victim Intox/Etc	F	Rape
288A(J) PC	Oral Copulation Vic Believes Person is Spouse	F	Rape
288A(K) PC	Oral Cop:thrt:arst/Deport	F	Rape
289 (A)(1)(B) PC	Sexual Penetration w-Force/Etc Under 14 Years Old	F	Rape
289(A) PC	Sex Pentr:forn Obj W/Forc	F	Rape
289(a)(1)(A) PC	Sex Penetration: Force/Etc	F	Rape
289(B) PC	Sex Pen W/Frgn Obj:incapb	F	Rape
289(C) PC	F/Obj:vic/Def:mntl Inst	F	Rape
289(D) PC	Sex Pen:f/Obj:vic Unaware	F	Rape
289(E) PC	Sex Pen:f/Obj:vic Drg/Etc	F	Rape
289(F) PC	Sex Pen:f/Obj:belev Spous	F	Rape
289(G) PC	Sex W/F/Obj:thrt Arst/Etc	F	Rape
289(H) PC	Sex W/Frgn Obj:victim -18	F	Rape
289(I) PC	Sex Pen W/F/Obj:vict -16	F	Rape
289(J) PC	Sex Pen:f/Obj:victim -14	F	Rape
289.6(A) PC	Emp:hav Sex:conf Cons Adl	M	Rape
289.6(A) PC	Emp:sex:conf Cons Adlt:pr	F	Rape



## **APPENDIX B: Penal Code Section 680-680.4 and Senate Bill No. 22**

**CA Penal Code § 680** (2017) (superseded by version of Penal Code § 680 enacted in SB 22, *infra*.)

(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 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:

(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 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, 288a, or 289 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, 288a, or 289 shall be 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, 288a, or 289 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).

*(Amended by Stats. 2017, Ch. 692, Sec. 3. (AB 1312) Effective January 1, 2018.)*

**CA Penal Code § 680.1 (2017)**

The Department of Justice, on or before July 1, 2018, and in consultation with law enforcement agencies and crime victims' groups, shall establish a process by which victims of sexual assault may inquire regarding the location and information regarding their sexual assault evidence kits.

*(Added by Stats. 2016, Ch. 884, Sec. 2. (AB 2499) Effective January 1, 2017.)*

**CA Penal Code § 680.2 (2017)**

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

(1) A clear statement that a sexual assault victim is not required to participate in the criminal justice system or to receive a medical evidentiary or physical examination in order to retain his or her rights under law.

(2) Telephone or Internet Web site contact information for a nearby rape crisis center and sexual assault counselor.

(3) Information about the types of law enforcement protection available to the sexual assault victim, including a temporary protection order, and the process to obtain that protection.

(4) Instructions for requesting the results of the analysis of the victim's sexual assault forensic evidence.

(5) Information about state and federal compensation funds for medical and other costs associated with the sexual assault and information on any municipal, state, or federal right to restitution for sexual assault victims if a criminal trial occurs.

(6) A clear statement that the victim has the right to have a sexual assault counselor and at least one other support person of the victim's choosing present at any initial medical evidentiary examination, physical examination, or investigative interview arising out of a sexual assault, and that a sexual assault counselor can be contacted 24 hours a day.

(7) Information about the rate of potential evidence degradation.

(8) A clear statement that if sexual assault forensic evidence will be tested, it should be transported to the crime laboratory and analyzed within the time limits imposed by subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of Section 803.

(9) A clear statement that the law enforcement agency or crime laboratory will retain the sexual assault forensic evidence for at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, at least until the victim's 40th birthday.

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

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

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

*(Added by Stats. 2017, Ch. 692, Sec. 4. (AB 1312) Effective January 1, 2018.)*

**CA Penal Code § 680.3** (2017) (superseded by version of Penal Code § 680.3 enacted in SB 22, *infra*.)

(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 (f) 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.

(h) Money received by the Office of Emergency Services from the federal Office on Violence Against Women that may be used for the testing of sexual assault kit evidence shall be used before appropriating money from the General Fund for purposes of reimbursing any costs determined by the Commission on State Mandates to be mandated by the state to a local law enforcement agency by this section.

*(Added by Stats. 2017, Ch. 694, Sec. 2. (AB 41) Effective January 1, 2018.)*

**680.4. amended 2019**

(a) Each law enforcement agency, medical facility, crime laboratory, and any other facility that receives, maintains, stores, or preserves sexual assault evidence kits shall conduct an audit of all untested sexual assault kits in their possession and shall, no later than July 1, 2019, submit a report to the Department of Justice containing the following information:

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

(2) For each kit, the following information:

(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.

(b) The Department of Justice shall, by no later than July 1, 2020, prepare and submit a report to the Legislature summarizing the information received pursuant to subdivision (a).

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

(d) Pursuant to Section 10231.5 of the Government Code, this section is repealed on July 1, 2024.

*(Added by Stats. 2018, Ch. 950, Sec. 1. (AB 3118) Effective January 1, 2019. Repealed as of July 1, 2024, by its own provisions.)*

**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.

**DIGEST KEY**

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=680](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=680).



COUNTY OF SAN MATEO  
**OFFICE OF THE SHERIFF**

A TRADITION OF SERVICE SINCE 1856

CARLOS G. BOLANOS, SHERIFF  
MARK C. ROBBINS, UNDERSHERIFF

September 16, 2021

Honorable Amarra A. Lee  
Judge of the Superior Court, County of San Mateo  
C/O Jenarda Dubois  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

**RE: Grand Jury Report – “Sexual Assault Kit Testing Reports in San Mateo County: What Are We Missing?”**

Dear Judge Lee:

The San Mateo County Sheriff's Office (Sheriff's Office) would like to thank the Civil Grand Jury for its report titled "Sexual Assault Kit Testing Reports in San Mateo County: What Are We Missing?" Furthermore, we would like to acknowledge the obvious time and effort reflected in this report. As a follow up to the Grand Jury's findings and recommendations, the Sheriff's Office is providing you with its response as follows:

**FINDINGS**

*Finding #1 – Beginning in January 2017, and each year thereafter, the Sheriff's Office generated a Sexual Assault Kit Testing Report and sent it to the County Manager, with a copy to the Board of Supervisors, detailing select data points in the analysis and testing of sexual assault kits.*

**The respondent agrees with the finding.**



*Finding #2 – The annual Sexual Assault Kit Testing Report has been released by the Sheriff's Office too early in the calendar year to comprehensively reflect the status of all of the previous (calendar) year's sexual assault kits, some of which are shown as "currently in progress" on the report.*

**The respondent agrees with the finding. This annual report was generated in response to the recommendation of the 2015-2016 Grand Jury. In the Sheriff's Office response to the 2015-2016 Grand Jury, the Sheriff's Office stated the report would be produced by January 15<sup>th</sup> of each year.**

*Finding #3 – The annual Sexual Assault Kit Testing Report only reports information about sexual assault kits received by the Forensic Laboratory; as a result, it may mislead the reader because the number of kits is only a small subset of how many sexual assaults occur in the County.*

**The respondent agrees with the finding. This annual report was generated in response to the recommendation of the 2015-2016 Grand Jury that the Sheriff's Office Forensic Laboratory annually produce a publicly available report concerning its processing of sexual assault kits.**

*Finding #4 – The prior Grand Jury's recommendation to include the originating agency or the reason a sexual kit was not tested has not been part of the Sheriff's Office report.*

**The respondent agrees with the finding.**

*Finding #5 – The Annual Sexual Assault Kit Testing Reports were added to the Forensic Laboratory's webpage in December 2020, during the Grand Jury inquiry.*

**The respondent agrees with the finding.**

## **RECOMMENDATIONS**

*Recommendation #1 – Beginning in May 2022, the Sheriff's Office should adjust the timing of the release of the annual Sexual Assault Kit Testing Report from January to May of each year so that the report reflects complete data from the previous calendar year.*

**This recommendation will be implemented; however, we will adjust the timing of the release of the annual report to August of each year in order to include the information requested in Recommendation #2.**

*Recommendation #2 – Beginning in May 2022, the Sheriff's Office should expand the content of the annual Sexual Assault Kit Testing Report to include:*

- *the total number of sexual assaults in the county as reported to the FBI;*
- *the number of sexual assaults in each city as reported to the FBI; and*

- *the reasons sexual assault kits were not processed. The information should not include the victims' information or city of origin and only include the number of kits cancelled by category.*

**The first two bullet points in this recommendation will be implemented; however, we will use the crime statistics reported to the State of California Department of Justice, as they are published sooner than the FBI statistics, and should be available in July of each year.**

**As to the third bullet point, the decision not to test a sexual assault kit is made by investigators for the jurisdiction in which the crime occurred. This decision is not made by the San Mateo County Sheriff's Office Forensic Laboratory. The Forensic Laboratory will attempt to collect this information from the individual agencies beginning January 1, 2022, and will include the information obtained in the annual report beginning in August 2023.**

*Recommendation #3 – To increase public transparency, the Sheriff's Office should, commencing no later than May 2022, announce the availability of the annual Sexual Assault Kit Testing Report in a manner designed to maximize public awareness.*

**This recommendation will be implemented; however, we will adjust the timing of the release of the annual report to August of each year in order to include the information requested in Recommendation #2.**

The San Mateo County Sheriff's Office appreciates the efforts of the Civil Grand Jury and has cooperated fully with its requests.

Sincerely,



Carlos G. Bolanos  
Sheriff