

COUNTY OF NEVADA  
STATE OF CALIFORNIA

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BOARD OF SUPERVISORS



Ed Scofield  
Supervisor, 2nd District  
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<http://mynevadacounty.com/boardofsupervisors>

July 13, 2011

The Honorable Board of Supervisors  
950 Maidu Avenue  
Nevada City, CA 95959

**DATE OF MEETING:** July 19, 2011

**SUBJECT:** Letter stating the Board's opposition to Assembly Bill 322 (Portantino) relating to forensic testing of rape kits.

**RECOMMENDATION:** Approve the attached letter.

**FUNDING:** None.

**BACKGROUND:**

Assembly Bill 322 (Portantino, D-Pasadena) would require local law enforcement agencies responsible for taking or collecting rape kit evidence to annually report to the Department of Justice (DOJ) statistical information pertaining to the testing and submission for DNA analysis of rape kits, with the initial report due on July 1, 2013. Recent amendments to the bill included a two-and-a-half-year pilot project to test all rape kits in California counties that make arrests in fewer than 12% of the forcible rapes reported in that county. Nevada County is one of the counties named.

These reporting requirements will result in new workload and costs for the Sheriff's office, already working at skeletal staffing levels, to do the reports. The focus should not be on requiring new reports about the processing of kits. Instead, the focus should be on proper resourcing and building capacity locally to ensure that the personnel is funded to be able to process the kits. The bill was amended to now apply to nine counties as a pilot project. The fact that Nevada County is named among these, without any clear assurance of reimbursement, creates exceptional urgency for us to oppose this bill.

Respectfully submitted,

Edward C. Scofield, Chairman  
Supervisor, District 2

# COUNTY OF NEVADA

STATE OF CALIFORNIA

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July 19, 2011

The Honorable Christine Kehoe, Chair  
Senate Committee on Appropriations  
California State Senate  
State Capitol, Room 2206  
Sacramento, CA 95814

**Subject: Assembly Bill 322 (Portantino) – Oppose**

Dear Senator Kehoe:

At a special meeting on July 19, 2011, the Board of Supervisors agreed to oppose AB 322, which would require local law enforcement agencies responsible for taking or collecting rape kit evidence to annually report to the Department of Justice (DOJ) statistical information pertaining to the testing and submission for DNA analysis of rape kits, with the initial report due on July 1, 2013. It would also establish a two-and-a-half-year pilot project to test all rape kits in California counties that make arrests in fewer than 12% of the forcible rapes reported in that county. Nevada County is one of the counties named.

First, it is unfortunate that the Board was not previously notified that Nevada County would be included in this pilot project. The Board would have welcomed the opportunity to discuss the bill author's concerns regarding rape kit testing in Nevada County.

We recognize and share the intent to ensure that rape kits are analyzed and processed in order to identify and convict offenders of these heinous crimes. However, doing so by requiring law enforcement agencies to provide statistics to DOJ would place significant cost burdens on these agencies in terms of resources and personnel and consequently, and would inadvertently hamper our ability to process these kits. The focus should be on building the capacity and resources for processing these kits rather than using very limited resources to fulfill reporting requirements.

Counties and local law enforcement agencies are grappling with significant budget cuts over the last several years while trying to maintain critical services. Adding an additional reporting requirement would divert limited resources away from providing current services. Additionally, ongoing budget discussions and the potential realignment of state services to counties will further exacerbate limited resources.

Due to the fiscal and workload implications of this bill, and without a clear provision for reimbursement, we must respectfully oppose AB 322.

Sincerely,

Edward C. Scofield  
Chairman, Board of Supervisors

Copied to:

Senator Doug LaMalfa

Senator Ted Gaines

Assembly Member Dan Logue

Assembly Member Anthony Portantino

Paul McIntosh, Executive Director, California State Association of Counties

Greg Norton, President/CEO, Regional Council of Rural Counties

Paul Yoder, Shaw/Yoder/Antwih, Inc.

BILL NUMBER: AB 322        AMENDED  
BILL TEXT

AMENDED IN SENATE    JUNE 28, 2011  
AMENDED IN ASSEMBLY    MAY 27, 2011  
AMENDED IN ASSEMBLY    APRIL 26, 2011

INTRODUCED BY    Assembly Member Portantino  
(Coauthor: Assembly Member Fuentes)

FEBRUARY 9, 2011

An act to add and repeal ~~Section 680.1~~  
Sections 680.1 and 680.2 of the Penal Code, relating to  
forensic evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 322, as amended, Portantino. Forensic evidence: rape kits.

Existing law, the Sexual Assault Victims' DNA Bill of Rights, authorizes a law enforcement agency investigating certain felony sex offenses, upon the request of the victim, and subject to the commitment of resources, to inform the victim whether or not a DNA profile was obtained from the testing of the rape kit evidence or other crime scene evidence from the case, whether or not that information has been entered into the Department of Justice Data Bank of case evidence, and whether or not there is a match between the DNA profile 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, as specified. Existing law also requires that the victim be given written notification by the law enforcement agency if the law enforcement agency elects not to perform DNA testing of the rape kit evidence or other crime scene evidence, or intends to destroy or dispose of the rape kit evidence or other crime scene evidence prior to the expiration of the statute of limitations, as specified.

This bill would require local law enforcement agencies responsible for taking or collecting rape kit evidence to annually report to the Department of Justice statistical information pertaining to the testing and submission for DNA analysis of rape kits, as specified. The initial report would be due by July 1, 2013. The reports received by the department would be subject to inspection under the California Public Records Act.

The bill would provide that ~~its~~ those provisions would become inoperative on July 1, 2017, and would be repealed on January 1, 2018.

By imposing additional reporting duties on local law enforcement agencies, this bill would impose a state-mandated local program.

*The bill would establish a pilot program in 9 counties, commencing July 1, 2012, in which all rape kits collected in those counties after that date will be processed by the Department of Justice in department laboratories. The pilot program would be operative until January 1, 2015, provided however, the department may extend the pilot program for one year. The bill would provide that these provisions would be repealed on January 1, 2016.*

*By imposing additional burdens on local law enforcement entities,*

*this bill 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 these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

SECTION 1. Section 680.1 is added to the Penal Code, to read:

680.1. (a) Each local law enforcement agency responsible for taking or collecting rape kit evidence shall collect the following information for rape kits collected on or after January 1, 2012:

(1) The total number of rape kits collected during the preceding calendar year and, of that total, the number of rape kits for which the identity of the assailant is unknown.

(2) The total number of rape kits tested during the preceding calendar year and, of that total, the number of rape kits for which the identity of the assailant is unknown.

(3) The total number of rape kits submitted for DNA analysis and, of that total, the number of rape kits for which the identity of the assailant is unknown.

(4) The number of rape kits that law enforcement has submitted for DNA analysis that remain untested and, of that number, the number of rape kits for which the identity of the assailant is unknown.

(5) The total number of untested rape kits that were not submitted for DNA analysis in its possession as of January 1 of the reporting year.

(b) Each local law enforcement agency responsible for taking or collecting rape kit evidence shall report, by July 1 of each year, the information collected pursuant to this section during the preceding year to the Department of Justice. The initial report to the department pursuant to this subdivision shall be made by July 1, 2013.

(c) The reports received by the department pursuant to subdivision (b) are subject to inspection under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(d) This section shall remain operative only until July 1, 2017, and shall be repealed on January 1, 2018, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 2. Section 680.2 is added to the Penal Code, to read:

680.2. (a) The Legislature finds and declares the following:

(1) Existing law requires local law enforcement agencies in California to report to the Department of Justice the number of specified violent crimes reported in their jurisdictions in the prior year. These law enforcement agencies are also required to report the number of arrests for these crimes that occur in their jurisdictions in the prior year.

(2) It is the intent of the Legislature to establish a pilot project in California to determine whether testing of all rape kits in California counties with low arrest rates for the crime of

forcible rape will improve the number of arrests in these counties for that crime.

(3) In 2009, forcible rapes accounted for 5 percent of all violent crimes reported statewide but only 1.7 percent of the arrests for violent crime. As reported on the Attorney General's Internet Web site, in 2009 there were 174,579 violent crimes reported. Of these crimes, 8,698 or 5 percent were for forcible rape. Of the arrests for violent crime reported in 2009, only 1.7 percent or 2,050 arrests were for the crime of forcible rape.

(4) In 2009, the Department of Justice reported 8,698 forcible rapes in California. The number of arrests reported for 2009 was 2,050. This is a statewide arrest rate of 23.6%. In 1999, the arrest rate was 30.6; there were 2,887 arrests for forcible rape of the 9,443 forcible rapes that were reported.

(b) The Department of Justice shall establish a pilot project, commencing July 1, 2012, in nine California counties to open and test all rape kits collected in those counties after the start of the pilot project.

(c) The nine counties chosen for inclusion in this pilot project shall be counties with an arrest rate of less than 12 percent for the crime of forcible rape as reported to the Attorney General's office for the reporting periods 2007 to 2009, inclusive. The arrest rate shall be determined by adding the number of arrests for the crime of forcible rape reported in the county for this three-year period and dividing this amount by the number of forcible rapes reported during this time period.

(d) The following counties shall be included in the pilot project based upon 2007 to 2009, inclusive, statistics reported to the Attorney General's office for the crime of forcible rape as follows:

(1) Alpine County: 4 forcible rapes, 0 arrests, 0 percent arrest rate.

(2) Amador County: 52 forcible rapes, 3 arrests, 5.8 percent arrest rate.

(3) Colusa County: 20 forcible rapes, 2 arrests, 10 percent arrest rate.

(4) El Dorado County: 118 forcible rapes, 12 arrests, 10.2 percent arrest rate.

(5) Nevada County: 69 forcible rapes, 5 arrests, 7.2 percent arrest rate.

(6) Plumas County: 46 forcible rapes, 2 arrests, 4 percent arrest rate.

(7) Shasta County: 363 forcible rapes, 17 arrests, 4.7 percent arrest rate.

(8) Tehama County: 42 forcible rapes, 1 arrest, 2.4 percent arrest rate.

(9) Tuolumne County: 62 forcible rapes, 7 arrests, 11.3 percent arrest rate.

(e) The Department of Justice shall, in cooperation with the pilot project county, establish a process regarding the collection, storage, and testing of rape kits collected in the pilot project county. It is the intent of the Legislature that all rape kits that are collected in the county after a date established by the department, shall be sent to a forensic laboratory of the department for analysis and testing. The department shall test every rape kit collected by a pilot project county for a crime committed during the period of the pilot project.

(f) The purpose of this pilot project is to determine whether counties with the lowest arrest rates in California for the crime of forcible rape can bring justice to victims by increasing their arrest rates for this violent crime by having all rape kits that are

*collected in the county tested for evidence of crime. The effectiveness of this pilot project shall be measured by examining county statistics submitted to the Attorney General's office pursuant to existing law that requires the reporting of the number of forcible rapes committed in that county and the number of arrests for forcible rape committed in that county.*

*(g) The pilot project shall be inoperative on January 1, 2015, provided however, that the department may extend the operation of the program by one year, until January 1, 2016. If the department extends the program, the department shall post a notice on its Internet Web site that the program has been extended, and shall provide written notice to the counties in the pilot program prior to January 1, 2015, that the program will be extended.*

*(h) This section shall be repealed on January 1, 2016.*

~~SEC. 2.~~ SEC. 3. 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.

## COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 322  
AUTHOR : Portantino  
TOPIC : Forensic evidence: rape kits.

TYPE OF BILL :  
Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
State-Mandated Local Program  
Fiscal  
Non-Tax Levy

## BILL HISTORY

2011

July 6 From committee: Do pass and re-refer to Com. on APPR. (Ayes 7. Noes 0.) (July 5). Re-referred to Com. on APPR.

June 28 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on PUB. S.

June 16 In committee: Set, first hearing. Hearing canceled at the request of author.

June 8 Referred to Com. on PUB. S.

June 1 In Senate. Read first time. To Com. on RLS. for assignment.

June 1 Read third time. Passed. Ordered to the Senate. (Ayes 61. Noes 13. Page 1718.)

May 31 Read second time. Ordered to third reading.

May 27 From committee: Do pass as amended. (Ayes 12. Noes 5.) (May 27). Read second time and amended. Ordered to second reading.

May 4 In committee: Set, first hearing. Referred to APPR. suspense file.

Apr. 27 Re-referred to Com. on APPR.

Apr. 26 Read second time and amended.

Apr. 25 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (April 12).

Apr. 5 In committee: Set, second hearing. Hearing canceled at the request of author.

Mar. 15 In committee: Set, first hearing. Hearing canceled at the request of author.

Feb. 24 Referred to Com. on PUB. S.

Feb. 10 From printer. May be heard in committee March 12.

Feb. 9 Read first time. To print.

CURRENT BILL STATUS

MEASURE : A.B. No. 322  
AUTHOR(S) : Portantino (Coauthor: Fuentes).  
TOPIC : Forensic evidence: rape kits.  
HOUSE LOCATION : SEN  
+LAST AMENDED DATE : 06/28/2011

TYPE OF BILL :  
Active  
Non-Urgency  
Non-Appropriations  
Majority Vote Required  
State-Mandated Local Program  
Fiscal  
Non-Tax Levy

LAST HIST. ACT. DATE: 07/06/2011  
LAST HIST. ACTION : From committee: Do pass and re-refer to Com. on APPR.  
(Ayes 7. Noes 0.) (July 5). Re-referred to Com. on  
APPR.  
COMM. LOCATION : SEN APPROPRIATIONS  
HEARING DATE : 08/15/2011

TITLE : An act to add and repeal Sections 680.1 and 680.2 of the  
Penal Code, relating to forensic evidence.

Tuesday, July 05 2011

## Portantino's Rape Kit Testing Bill Approved By Senate Committee

SACRAMENTO – Assemblymember Anthony Portantino's (D-La Cañada Flintridge) bill to help put more rapists behind bars passed another legislative hurdle today when it was approved by the Senate Public Safety Committee 7 to 0. AB 322 seeks to shed light on the problem of untested rape kit evidence from sexual assaults and help bring rapists to justice.

"It's unconscionable that thousands of rape kits remain unopened and untested across California," stated Assemblymember Portantino. "Rape kits hold vital evidence that is crucial to a criminal conviction, while the clock is ticking on the statute of limitation for these crimes. It's frustrating to know that a rapist could be walking free and a victim who suffered is further disrespected because a vital piece of evidence went untested."

Under AB 322, law enforcement agencies will be required to report to the Department of Justice the number of rape kits they collect, the number that are the result of stranger-rape and the number of kits tested beginning when the law goes into effect. The bill will also establish a two-and-a-half-year pilot project to test all rape kits in California counties that make arrests in fewer than 12% of the forcible rapes reported in that county.

Rape kits hold potentially crucial information from the crime scene. DNA evidence from the kits is used to compare samples from known felons in State and Federal databases. If you don't process the evidence you can't check it against the database.

In 2009, law enforcement agencies reported 8,698 forcible rapes in California. But, arrests were made in less than 24% of the cases. By comparison, New York City, which has a policy of testing every rape kit, has an arrest rate around 70%.

This is the third time Assemblymember Portantino has introduced legislation aimed at getting law enforcement agencies to process rape kits in a timely manner. Despite strong bi-partisan support, former Governor Schwarzenegger twice vetoed earlier efforts. Assemblymember Portantino is hoping that this time with a new Governor and new language, the result will be different.

CONTACT: Wendy Gordon 626.577.9944

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Organization Founded by the Sheriffs in 1894

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June 14, 2011

The Honorable Loni Hancock  
California State Assembly  
State Capitol Building  
Sacramento, CA 95814

**Subject: Assembly Bill 322 (Portantino) – CSSA Oppose**

Dear Senator Hancock:

On behalf of the California State Sheriffs' Association (CSSA), we regret to inform you that we must oppose AB 322, which would require local law enforcement agencies responsible for taking or collecting rape kit evidence to annually report to the Department of Justice (DOJ) statistical information pertaining to the testing and submission for DNA analysis of rape kits, with the initial report due on July 1, 2013.

We recognize and share your intent to ensure that rape kits are analyzed and processed in order to identify and convict offenders of these heinous crimes. However, doing so by requiring law enforcement agencies to provide statistics to DOJ would place significant cost burdens on these agencies in terms of resources and personnel and consequently, and would inadvertently hamper our ability to process these kits. The focus should be on building the capacity and resources for processing these kits rather than using very limited resources to fulfill reporting requirements.

Local law enforcement agencies are grappling with significant budget cuts over the last several years while trying to maintain critical services. Adding an additional reporting requirement would divert limited resources away from providing current services. Additionally, ongoing budget discussions and the potential realignment of state services to counties will further exacerbate limited resources.

Due to the fiscal and workload implications of this bill, we must respectfully oppose AB 322.

Sincerely,

Curtis Hill  
Legislative Representative

Cc: The Honorable Joel Anderson, Vice-Chair, Senate Public Safety Committee  
The Honorable Anthony Portantino, Member, California State Assembly