


<p>California Department of Justice DIVISION OF LAW ENFORCEMENT Stephen Woolery, Chief (acting)</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i></p> <p>Senate Bill 464 (2023) Amendments to Victims' Rights and Requirements for Statewide Audit of Untested Sexual Assault Evidence Kits</p>	<p><i>No.</i></p> <p>2024-DLE-03</p>	<p><i>Contact for information:</i></p> <p>Nikki Duda Assistant Bureau Director Bureau of Forensic Services 916-210-7446</p>
	<p><i>Date:</i></p> <p>06/20/2024</p>	

TO: ALL CALIFORNIA LAW ENFORCEMENT AGENCIES AND PUBLIC CRIME LABORATORIES

This bulletin provides a summary of requirements of Senate Bill (SB) 464 (Cal. Stats. 2023, ch. 715), which amended Penal Code sections 680, 680.3, and 11116.10, and repealed and replaced section 680.4. Those changes took effect January 1, 2024.

AMENDMENTS TO VICTIMS' RIGHTS

As of January 2024, a victim may request that their sexual assault evidence kit not be tested. (Pen. Code, § 680, subd. (h)(2).) If such a request is made, a medical facility that collects that kit, and a law enforcement agency that receives it, should not submit the kit collected from that victim to a laboratory. Instead, the kit should be stored at the medical facility or law enforcement agency. If a public crime laboratory receives such a kit, the laboratory should release the kit for storage at the law enforcement agency. The kit should not be tested for DNA, should not be entered into the Department of Justice (DOJ) Sexual Assault Forensic Evidence Tracking (SAFE-T) database, and should not be reported in the statewide audit of untested sexual assault evidence kits (addressed below).

Medical facilities in jurisdictions that participate in rapid turnaround DNA programs (e.g., DOJ's Rapid DNA Service (RADS) program) submit kits directly from the medical facility to a crime laboratory. Please be advised that, when a victim has requested that their kit not be tested where a rapid turnaround program is in place, the medical facility should either retain both kits (i.e., the traditional or standardized kit and the rapid turnaround DNA kit) or release both kits for storage at a law enforcement agency with instructions not to test. When a victim has requested that their kit not be tested, their kit(s) should **not** be submitted to a laboratory.

If a victim or witness to a crime asks to be notified of the case outcome, the prosecuting attorney must notify the victim or witness by letter of the final disposition of the case (i.e., dismissal, acquittal, imposition of sentence by the court, or a decision by the prosecuting attorney not to file the case) within 30 days of such final disposition. (Pen. Code, § 11116.10, subd. (a).) Prior to the enactment of SB 464, the deadline was 60 days.

STATEWIDE AUDIT OF UNTESTED SEXUAL ASSAULT EVIDENCE KITS

Penal Code section 680.4, as added by SB 464, requires every "law enforcement agency, medical facility, public crime laboratory, and any other entity that receives, maintains, stores, or preserves sexual assault evidence

kits” to conduct an audit of untested sexual assault evidence kits in their possession and report specified information to DOJ. Section 680.4 defines the criteria for this audit. DOJ is required to submit a report to the Legislature summarizing the information it receives. (Pen. Code, § 680.4, subd. (d).)

This audit only applies to traditional or standardized sexual assault evidence kits collected from victims and suspects. Sexual assault evidence other than evidence collected into a kit (e.g., clothing and bedding, DNA reference samples collected from suspects and consensual partners, and other types of kits collected under circumstances where no sexual assault is alleged or suspected) is not subject to this audit and shall not be entered into DOJ’s SAFE-T database (as discussed below). (Pen. Code, § 680.4, subd. (b)(4).)

For the purpose of this audit, a traditional or standardized sexual assault evidence kit and its associated rapid turnaround DNA kit (e.g., RADS) are considered to be the same kit.

Under section 680.4, as amended by SB 464, a “tested kit” is one that has been taken, at minimum, through the DNA quantitation process:

- a) If the DNA quantitation results indicate that there is no DNA foreign to the victim, or the foreign DNA is of insufficient quality and quantity for DNA typing to provide genetic information about an alleged perpetrator, analysis can stop at DNA quantitation, and the kit shall be considered tested;
- b) If the DNA quantitation results indicate that DNA typing may provide genetic information about an alleged perpetrator, and the DNA is of sufficient quantity and quality to be successfully typed, the analysis shall continue through DNA typing for the kit to be considered tested.

A kit that has only undergone biological screening is not considered tested. And, if a medical facility submitted selected evidence samples directly to a crime laboratory under a rapid turnaround DNA program, and those samples have been taken through the DNA testing process, the entire sexual assault kit is considered tested. A “tested” kit may be subjected to additional testing, however, if warranted by the case history; that the kit is considered tested does not preclude a laboratory from testing additional samples from that kit.

Audit Guidelines for Law Enforcement Agencies and Public Crime Laboratories

No later than **July 1, 2026**, law enforcement agencies and public crime laboratories are required to:

- 1) **For untested victim kits**: Create a record in DOJ’s SAFE-T database for every victim sexual assault evidence kit in their possession that has not had DNA testing completed as of July 1, 2026.

Exception: If a kit was collected on or after January 1, 2024 **and** the victim has requested that their kit not be tested, the kit should not be entered into the SAFE-T database, and it should not be reported for this audit.

Note: A victim may choose to remain anonymous or to not participate in an investigation or prosecution **and** also want their kit to be tested.

- 2) For untested suspect kits: Report to DOJ specific data relating to every suspect sexual assault evidence kit in their possession that has not had DNA testing completed as of July 1, 2026. (Pen. Code, § 680.4, subd. (b).) An Excel template to report untested suspect kits is available to download from <https://oag.ca.gov/bfs/prop69>.

To ensure that your agency is recorded as having complied with the audit mandate under section 680.4, please complete the following **no later than July 1, 2026**:

- 1) For all qualifying untested victim sexual assault evidence kits in your agency's possession, create or update the SAFE-T record for each kit. No additional reporting is required for these kits.
- 2) Email DOJ at SAEKaudit@doj.ca.gov to:
 - a. Report that your agency has "No qualifying untested victim kits" in its possession (if applicable).
 - b. Submit your agency's untested suspect kit report (as discussed above), **OR** report that your agency has "No untested suspect kits" in its possession.
 - c. Report that your agency does not receive, maintain, store, or preserve sexual assault evidence kits, and is therefore not subject to this audit (if applicable).

Update to SAFE-T Recordkeeping Requirements

Previously, Penal Code section 680.3 required that law enforcement create a record in DOJ's SAFE-T database for every sexual assault evidence kit collected from a victim on or after January 1, 2018. As of 2024, that requirement applies to any kit that was collected from a victim on or after January 1, 2018 **and** to kits that have not had DNA testing completed by July 1, 2026, regardless of the date of collection of the kit. (Pen. Code, § 680.3, subs. (a), (h).) However, a kit collected on or after January 1, 2024 from a victim that has requested that their kit not be tested should not be entered into the SAFE-T database.

SAFE-T records for untested victim kits that were collected prior to January 1, 2016 are **excluded** from the requirement to provide an update in SAFE-T after every 120 days that DNA testing has not been completed. (Pen. Code, § 680.3, subd. (c)(2).) Additionally, kits collected before January 1, 2018 are still excluded from the 120-day update requirement.

Audit Guidelines for Medical Facilities and Other Non-Law Enforcement Entities

Medical facilities that collect sexual assault evidence kits and other non-law enforcement entities that collect, receive, maintain, store, or preserve sexual assault evidence kits are also required to report for this audit. No later than July 1, 2026, these entities are required to report to DOJ specified information about untested sexual assault evidence kits in their possession that were not submitted to a law enforcement agency or public crime laboratory by **July 1, 2026**. (Pen. Code, § 680.4, subd. (c).) However, a kit collected on or after January 1, 2024 from a victim that has requested that their kit not be tested should not be reported for this audit. An Excel template for non-law enforcement entities to report qualifying untested kits is available to download from <https://oag.ca.gov/bfs/prop69>.

To ensure that your facility is recorded as having complied with the audit mandate under section 680.4, please complete the following **no later than July 1, 2026**:

- 1) Email DOJ at SAEKaudit@doj.ca.gov to:
 - a. Submit your untested kit report, ***OR*** report that you have “No qualifying untested kits” in your possession.
 - b. Report that your facility does not collect, receive, maintain, store, or preserve sexual assault evidence kits, and is therefore not subject to this audit.

DOJ is required to submit a report to the Legislature by July 1, 2027 summarizing the audit results. The data for the report will be based in part on data entered into the SAFE-T database on or before July 1, 2026. Any subsequent updates to SAFE-T records will not be included in the audit report.

Penal Code section 680.4 sets forth the specific reporting criteria for this audit. To request a copy of a reporting template or assistance with determining whether a kit is subject to the reporting requirement, please contact the Bureau of Forensic Services at SAEKaudit@doj.ca.gov. For assistance with the SAFE-T database, please email SAFET@doj.ca.gov.