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SENATE BILL 154

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

David M. Gallegos

AN ACT

RELATING TO CRIME; AMENDING THE RIGHTS OF SEXUAL ASSAULT
SURVIVORS; PROVIDING TIME LINES FOR A LAW ENFORCEMENT AGENCY TO
SEND A SEXUAL ASSAULT EXAMINATION KIT TO A CRIME LABORATORY;
REQUIRING A LAW ENFORCEMENT AGENCY TO USE THE SEXUAL ASSAULT
EXAMINATION KIT TRACKING SYSTEM; ADDING TIME LINES TO SURVIVOR
NOTIFICATION WHEN A MATCH IS IDENTIFIED BETWEEN BIOLOGICAL
EVIDENCE IN A SEXUAL ASSAULT EXAMINATION KIT AND A DNA PROFILE
CONTAINED IN A DATABASE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-9-21 NMSA 1978 (being Laws 2019,
Chapter 102, Section 1) is amended to read:

"30-9-21. SEXUAL ASSAULT SURVIVOR'S BILL OF RIGHTS.--

A. A health care provider who examines and collects
a sexual assault examination kit from a survivor of sexual

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1 assault shall:

2 (1) obtain contact information for the
3 survivor;

4 (2) provide the survivor with:

5 (a) a consent form by which the survivor
6 may authorize the release of the kit to the relevant law
7 enforcement agency and information about how the survivor may
8 authorize the release of the kit to the agency at a later date;

9 (b) a copy of the provider's kit release
10 policy;

11 (c) ~~[provide the survivor with]~~ contact
12 and descriptive information regarding free and low-cost human
13 immunodeficiency virus and sexually transmitted disease
14 testing, prevention and treatment services, including options
15 and services provided by the department of health; and

16 (d) ~~[provide the survivor]~~ contact and
17 descriptive information regarding the department of public
18 safety ~~[statewide]~~ sexual assault examination kit tracking
19 system;

20 (3) if the survivor consents, notify the
21 relevant law enforcement agency of the sexual assault and
22 collection of the kit;

23 (4) upon the survivor's request, notify the
24 survivor when the kit is released to a law enforcement agency;
25 and

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1 (5) provide the survivor's contact information
2 to the law enforcement agency when the survivor's kit is
3 transferred to that agency.

4 B. No costs incurred by a health care provider for
5 the collection of a sexual assault examination kit shall be
6 charged directly or indirectly to the survivor of the sexual
7 assault.

8 C. With the survivor's consent, a law enforcement
9 agency [~~or crime laboratory~~] that receives a sexual assault
10 examination kit shall:

11 (1) send the kit to the agency's servicing
12 laboratory pursuant to Paragraph (3) of Subsection A of Section
13 30-9-19 NMSA 1978 within thirty days of the agency's receipt of
14 the sample;

15 (2) enter all necessary information into the
16 sexual assault examination kit tracking system;

17 [~~(1)~~] (3) confirm the sexual assault
18 survivor's contact information and request that the survivor
19 inform the agency of any changes to that information;

20 [~~(2)~~] (4) inform the survivor of the
21 survivor's right to have the kit tested by the agency's
22 servicing laboratory within one hundred eighty days and [~~have~~
23 ~~the right to the following information from the agency:~~

24 (a) ~~whether the survivor's kit has been~~
25 ~~tested and~~] the date on which test results are expected; [~~which~~

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1 ~~information shall be provided to the survivor; and~~

2 ~~(b) whether the agency was able to~~
3 ~~develop a DNA profile using the samples of biological material~~
4 ~~in the kit;~~

5 ~~(3)] (5) inform the survivor [of the~~
6 ~~survivor's right to the following information from the agency]:~~

7 (a) ~~[information regarding]~~ how to
8 access the [statewide] sexual assault examination kit tracking
9 system;

10 (b) ~~[upon completion of the law~~
11 ~~enforcement investigation]~~ whether [a] an alleged sexual
12 assault offender's DNA profile was developed using the samples
13 of the survivor's biological material in the sexual assault
14 examination kit; and

15 (c) ~~[upon completion of the law~~
16 ~~enforcement investigation]~~ whether a DNA profile match was
17 identified through comparison of the DNA profile;

18 (6) within five days after receiving
19 notification of a DNA profile match from the crime laboratory,
20 the law enforcement agency or prosecutor with jurisdiction over
21 the offense shall notify the survivor of the match;

22 (7) if disclosing the match within five days
23 would interfere with the investigation or prosecution of the
24 offense, the law enforcement agency or prosecutor shall
25 continue to make reasonable efforts to notify the survivor of

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1 the match and inform the survivor of an estimated date on which
2 the match will be disclosed;

3 [~~4~~] (8) in a case in which the alleged
4 sexual assault offender has not been identified, notify the
5 survivor in writing at least one hundred eighty days before
6 destruction of a kit, if the law enforcement agency intends to
7 destroy the survivor's kit, and provide information on how the
8 survivor may appeal the agency's decision to destroy the kit;
9 and

10 [~~5~~] (9) in a case where the alleged sexual
11 assault offender has been identified, with the consent of the
12 survivor, enter designated information from the sexual assault
13 examination kit into the department of public safety
14 [~~statewide~~] sexual assault examination kit tracking system
15 within fourteen days of obtaining consent.

16 D. A crime laboratory shall complete the processing
17 of a sexual assault examination kit within one hundred eighty
18 days of receipt of the kit and, if the crime laboratory is
19 unable to meet this deadline, it shall enter information into
20 the sexual assault examination kit tracking system to notify
21 the survivor of an estimated date on which the processing will
22 be completed.

23 E. Before commencing an interview of a sexual
24 assault survivor, a law enforcement officer or prosecutor shall
25 inform the survivor of the following:

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1 (1) the survivor's rights pursuant to this
2 section and other relevant law by providing the survivor with a
3 document to be developed by the department of public safety,
4 which document shall be signed by the survivor to confirm
5 receipt;

6 (2) the survivor's right to consult with a
7 counselor or advocate who specializes in sexual assault
8 services or a support person designated by the survivor during
9 any interview by a law enforcement officer, prosecutor or
10 defense attorney, and the counselor shall be summoned by the
11 interviewer before the commencement of the interview, unless no
12 counselor or advocate who specializes in sexual assault
13 services or [a] support person designated by the survivor can
14 be summoned in a reasonably timely manner;

15 (3) the survivor's right to have a support
16 person of the survivor's choosing present during an interview
17 by a law enforcement officer, prosecutor or defense attorney;
18 and

19 (4) for interviews by a law enforcement
20 officer, the survivor's right to request a different officer if
21 the survivor believes the officer to be unsupportive or
22 inadequately trained.

23 F. A law enforcement officer or prosecutor shall
24 not, for any reason, discourage a sexual assault survivor from
25 undergoing an examination or allowing the collection of a

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1 sexual assault examination kit.

2 G. In a civil or criminal case relating to a sexual
3 assault, a sexual assault survivor has the right to:

4 (1) be reasonably protected from the defendant
5 and persons acting on behalf of the defendant;

6 (2) not be required to submit to a polygraph
7 examination as a prerequisite to filing an accusatory pleading
8 or participating in any part of the criminal justice system;

9 (3) be heard through a survivor impact
10 statement at any proceeding relevant to the sexual assault; and

11 (4) provide a sentencing recommendation to the
12 official conducting a pre-sentence investigation.

13 H. A sexual assault survivor retains the right to
14 have an advocate present during all stages of any medical
15 examination, interview, investigation or other interaction with
16 representatives from the legal or criminal justice systems
17 within New Mexico. Treatment of the survivor shall not be
18 affected or altered in any way as a result of the survivor's
19 decision to exercise the survivor's right to have an advocate
20 present as provided in this section.

21 I. A law enforcement agency may require a sexual
22 assault survivor's requests for information pursuant to
23 Subsection C of this section to be made in writing, and the
24 agency shall communicate its responses to those requests in
25 writing.

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1 J. For the purpose of notifications and other
2 communications provided for in this section, a sexual assault
3 survivor may designate another person to receive notifications
4 and information on the survivor's behalf, and the survivor
5 shall provide the designee's contact information to a medical
6 provider or law enforcement agency required to communicate with
7 the survivor pursuant to this section.

8 K. In the case of a sexual assault survivor who is
9 deceased, the following persons shall have the right to receive
10 notifications and information required to be communicated to a
11 survivor pursuant to this section:

12 (1) a person who was the deceased sexual
13 assault survivor's spouse at the time of the survivor's death;
14 or

15 (2) the deceased sexual assault survivor's
16 parent or sibling or child who is eighteen years of age or
17 older.

18 L. A prosecutor shall not prosecute a sexual
19 assault survivor for a criminal offense that is not a felony,
20 including underage consumption of alcohol, drug use or
21 prostitution, if the evidence of the commission of the offense
22 is obtained through the examination of and collection of a
23 sexual assault examination kit from the survivor or is obtained
24 through the investigation of the sexual assault.

25 M. For the purposes of this section:

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1 (1) "health care provider" means a sexual
2 assault examination nurse or another health care provider
3 authorized to examine and collect samples of biological
4 material from a survivor of sexual assault following the
5 assault; and

6 (2) "sexual assault examination kit" means
7 samples of biological material derived from a human body,
8 including bodily fluid, hair and skin cells, collected during a
9 medical examination of a survivor following a sexual assault."