

HOUSE JOINT MEMORIAL 35

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Mimi Stewart

A JOINT MEMORIAL

REQUESTING THE SECRETARY OF PUBLIC SAFETY TO CONVENE A TASK FORCE TO STUDY WHETHER ALL OF THE STATE'S LAW ENFORCEMENT AGENCIES ARE COLLECTING BIOLOGICAL MATERIAL FROM SEXUAL ASSAULT VICTIMS, WHETHER THAT MATERIAL IS BEING SUBMITTED TO A FORENSIC LABORATORY IN A TIMELY AND UNIFORM MANNER AND WHETHER QUALIFYING RECORDS ARE BEING ENTERED INTO THE NATIONAL DNA INDEX SYSTEM AND THEN MAKE RECOMMENDATIONS ON HOW TO ENSURE THAT STATE LAW IS BEING FOLLOWED.

WHEREAS, Section 30-9-19 NMSA 1978 requires that samples from biological material collected pursuant to a medical examination of a sexual assault victim be submitted by the investigating law enforcement agency to the forensic laboratory that receives that agency's biological material for DNA testing; and

.182819.1

underscoring material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

underscored material = new
~~[bracketed material] = delete~~

1 WHEREAS, state law further requires that records derived
2 from DNA testing that qualify for insertion into the federal
3 bureau of investigation's national DNA index system be
4 submitted by the forensic laboratory to the administrative
5 center that operates and administers the state DNA
6 identification system; and

7 WHEREAS, in most cases, the laboratory that receives the
8 biological material from local law enforcement agencies is the
9 accredited forensic laboratory of the department of public
10 safety, known as the DNA and serology unit of the headquarters
11 crime lab; and

12 WHEREAS, this unit is charged with analyzing all types of
13 biological material submitted as evidence from violent crimes,
14 including the crime of sexual assault; and

15 WHEREAS, the unit is also responsible for providing
16 training in the recognition, collection and preservation of
17 biological evidence to law enforcement and criminal justice
18 agencies throughout the state; and

19 WHEREAS, in order to utilize the maximum potential of the
20 national DNA index system to link crimes to offenders, maximize
21 the protection of residents and ensure fair and timely justice
22 for victims who have reported the crime to law enforcement,
23 biological material must be submitted to the forensic
24 laboratories as soon as possible after collection of the
25 material; and

.182819.1

underscoring material = new
~~[bracketed material]~~ = delete

1 WHEREAS, there is no assurance that all local law
2 enforcement agencies are adhering to the law in a uniform
3 manner; and

4 WHEREAS, it appears that local law enforcement agencies
5 are not submitting biological material for DNA testing in a
6 timely and uniform manner to the department of public safety's
7 forensic laboratory or the forensic laboratory that receives
8 the agency's biological material; and

9 WHEREAS, it also appears that, contrary to their mandate,
10 local law enforcement agencies are not submitting biological
11 material unless the district attorney decides to prosecute the
12 case; and

13 WHEREAS, according to research reported in *Scientific*
14 *Testimony*, an online science journal, biological material that
15 is old, or that has been stored in warm or moist conditions,
16 may be unsuitable for DNA testing due to degradation of the
17 sample; and

18 WHEREAS, the state needs to ensure that local law
19 enforcement agencies are complying with the law in order to
20 ensure the safety of its residents and the attainment of
21 justice for victims of sexual assault who have reported the
22 crime to law enforcement;

23 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
24 STATE OF NEW MEXICO that the secretary of public safety be
25 requested to convene a task force to study whether all of the

.182819.1

underscored material = new
~~[bracketed material] = delete~~

1 state's law enforcement agencies are collecting biological
2 material from sexual assault victims, whether that material is
3 being submitted to a forensic laboratory in a timely and
4 uniform manner and whether qualifying records are being entered
5 into the national DNA index system and then make
6 recommendations on how to ensure that state law is being
7 followed; and

8 BE IT FURTHER RESOLVED that the task force include
9 representation from the New Mexico sheriffs' and police
10 association, the New Mexico district attorney's association,
11 the public defender department, the New Mexico criminal defense
12 lawyers association and the New Mexico coalition of sexual
13 assault programs, one sexual assault nurse examiner and one
14 representative of a New Mexico rape crisis center; and

15 BE IT FURTHER RESOLVED that the task force collect data on
16 the submission of biological material to the department of
17 public safety and to other forensic laboratories from sexual
18 assault victims who have reported the crime to law enforcement
19 and on the submission of records from the department's forensic
20 laboratory and other laboratories to the administrative center
21 that operates and administers the state DNA identification
22 system, on an annual basis; and

23 BE IT FURTHER RESOLVED that the task force consider
24 actions that can be taken to improve the process of submission
25 of biological material by law enforcement agencies to forensic

.182819.1

underscored material = new
~~[bracketed material]~~ = delete

1 laboratories and of records from forensic laboratories to the
2 DNA administrative center; and

3 BE IT FURTHER RESOLVED that a report on the findings and
4 recommendations of the task force be presented to the
5 appropriate interim legislative committee by October 2011; and

6 BE IT FURTHER RESOLVED that copies of this memorial be
7 transmitted to the secretary of public safety, the New Mexico
8 sheriffs' and police association, the New Mexico district
9 attorney's association, the chief public defender and the
10 director of the New Mexico criminal defense lawyers
11 association.