

1 HOUSE BILL 528

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Zachary J. Cook

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10 AN ACT

11 RELATING TO CRIMES; AMENDING THE SEXUAL CRIMES PROSECUTION AND
12 TREATMENT ACT TO PROVIDE FOR ADDITIONAL RIGHTS FOR VICTIMS OF
13 SEXUAL CRIMES; ENUMERATING ADDITIONAL CRIMES IN THE CRIME
14 VICTIMS REPARATIONS ACT FOR WHICH REPARATIONS MAY BE MADE.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 29-11-1 NMSA 1978 (being Laws 1978,
18 Chapter 27, Section 1) is amended to read:

19 "29-11-1. SHORT TITLE.--~~[This act]~~ Chapter 29, Article 11
20 NMSA 1978 may be cited as the "Sexual Crimes Prosecution and
21 Treatment Act"."

22 SECTION 2. Section 29-11-3 NMSA 1978 (being Laws 1978,
23 Chapter 27, Section 3, as amended) is amended to read:

24 "29-11-3. DEFINITIONS.--As used in the Sexual Crimes
25 Prosecution and Treatment Act:

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1 A. "active case" means a felony sexual assault
2 crime reported to law enforcement that:

3 (1) includes as evidence a sexual assault
4 examination kit;

5 (2) has remained unsolved for less than two
6 years; or

7 (3) is requested by the law enforcement
8 investigating agency or is requested by a prosecutor for a
9 pending prosecution;

10 ~~[A.]~~ B. "administrator" means the director of the
11 ~~[mental health division of the department of health]~~ behavioral
12 health services division of the human services department or
13 such person or office as the administrator may designate to act
14 in ~~[his]~~ the administrator's stead;

15 C. "cold case" means a sexual assault examination
16 kit from an alleged felony crime reported to law enforcement
17 that has remained unsolved for over two years after the crime
18 was initially reported to law enforcement and for which the
19 applicable statute of limitations has not expired;

20 ~~[B.]~~ D. "evidence" means that evidence relating to
21 the commission of a sexual crime;

22 ~~[C.]~~ E. "medical and psychological treatment"
23 includes that medical, mental or emotional treatment provided a
24 victim of a sexual crime. In addition to the improved physical
25 and emotional condition of a victim, the treatment should

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1 result in the improved ability of a victim to make informed and
2 rational choices about serving as a witness in the prosecution
3 of a suspect of a sexual crime; ~~and~~

4 ~~D.]~~ F. "sexual crime" includes any act [which] that
5 may be alleged to be a sexual offense or an attempted sexual
6 offense under the provisions of Sections 30-9-10 through
7 [30-9-16] 30-9-14.3 and 30-10-3 NMSA 1978;

8 G. "unreported sexual assault examination kits"
9 means sexual assault examination kits that are being held while
10 the victim decides if the victim will report the alleged crime;

11 H. "victim" means a person against whom a sexual
12 crime has been committed. For purposes of the victim's right
13 to notification, "victim":

14 (1) includes the parent or guardian of a minor
15 victim, or if the victim is killed or incapacitated, one of the
16 following, in the order of priority listed:

- 17 (a) the victim's spouse;
18 (b) the victim's parent;
19 (c) the victim's adult child;
20 (d) the victim's grandparent;
21 (e) the victim's sibling; or
22 (f) any other person related to the
23 victim by consanguinity or affinity to the second degree or any
24 other lawful representative of the victim; but

25 (2) does not include the accused, even if the

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1 accused is one of the persons listed in Paragraph (1) of this
2 subsection; and

3 I. "victim advocate" means a person who is employed
4 or authorized by a public or private entity to provide
5 counseling, treatment or other supportive assistance to crime
6 victims."

7 SECTION 3. Section 29-11-7 NMSA 1978 (being Laws 1995,
8 Chapter 91, Section 2) is amended to read:

9 "29-11-7. FREE FORENSIC MEDICAL EXAMS FOR VICTIMS OF
10 SEXUAL CRIMES.--

11 A. The administrator shall:

12 [~~A.~~] (1) provide free forensic medical exams
13 to victims of sexual crimes;

14 [~~B.~~] (2) arrange for victims of sexual crimes
15 to obtain free forensic medical exams; or

16 [~~C.~~] (3) reimburse victims of sexual crimes
17 for the cost of forensic medical exams; provided that:

18 [~~(1)~~] (a) the reimbursement covers the
19 full cost of the forensic medical exam, without any deductible
20 requirement or limit on the amount of the reimbursement;

21 [~~(2)~~] (b) the victim of a sexual crime
22 is entitled to apply for reimbursement for a period of one year
23 from the date of the forensic medical exam;

24 [~~(3)~~] (c) reimbursement is provided not
25 later than ninety days after the administrator receives written

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1 notification of the expense incurred by the victim for the
2 forensic medical exam; and

3 ~~[(4)]~~ (d) all victims of sexual crimes,
4 including victims with limited or no English proficiency, are
5 provided with information at the time of the forensic medical
6 exam regarding how to obtain reimbursement for the cost of the
7 exam.

8 B. For active cases:

9 (1) law enforcement shall assist the victim,
10 upon request, in obtaining medical treatment necessitated by
11 the sexual crime, including providing assistance in obtaining
12 transportation to a health care facility offering post-sexual-
13 crime medical care or medical forensic exams; and

14 (2) law enforcement and victim advocates shall
15 notify the victim of the victim's right to be accompanied by a
16 victim advocate at any proceeding related to a sexual crime,
17 including a sexual crime medical forensic exam.

18 C. The statewide sexual assault coalition shall
19 work with law enforcement to develop standards for:

20 (1) consent for the collection, testing and
21 release of test results of the forensic medical evidence;

22 (2) consent forms that notify victims of the
23 potential effects of each step of the process, including the
24 collection and testing of medical forensic evidence and release
25 of forensic laboratory test results, and that require

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- 1 acknowledgment of consent for each step of the process;
- 2 (3) who may give consent and when it is
- 3 required;
- 4 (4) who may withdraw consent and when it may
- 5 be withdrawn; and
- 6 (5) when, how, to whom and for what purposes
- 7 the results of any tests may be released.

8 D. Law enforcement shall adhere to the standards
9 established pursuant to Subsection C of this section.

10 E. Law enforcement and medical personnel shall not,
11 for any reason, discourage a victim from receiving a medical
12 forensic exam."

13 SECTION 4. A new section of the Sexual Crimes Prosecution
14 and Treatment Act is enacted to read:

15 "[NEW MATERIAL] RIGHT TO NOTICE REGARDING ACTIVE CASE
16 INVESTIGATION AND FORENSIC EVIDENCE.--

17 A. At the time of the initial contact between a
18 victim and a law enforcement agency, the agency shall provide
19 the victim notice of the victim's rights under the Sexual
20 Crimes Prosecution and Treatment Act.

21 B. After the initial contact between a victim and a
22 law enforcement agency, the law enforcement agency shall
23 provide the victim written notice of the victim's rights
24 pursuant to this section. The victim shall have the following
25 rights, upon request:

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1 (1) the right to receive a free copy of the
2 initial incident report; and

3 (2) the right to be informed regarding the
4 status of any analysis being performed on any DNA evidence that
5 was collected during the investigation of the offense,
6 including:

7 (a) when a request is submitted to a
8 crime laboratory to process and analyze any evidence that was
9 collected during the investigation of the offense;

10 (b) whether a DNA profile of the
11 assailant was obtained from that analysis; and

12 (c) when a request is submitted to
13 compare any biological evidence collected during the
14 investigation of the offense with DNA profiles maintained in a
15 state or federal DNA database.

16 C. To ensure objectivity of forensic personnel, all
17 requests made pursuant to Subsection B of this section shall be
18 made in writing through the law enforcement agency's
19 investigating officers."

20 SECTION 5. A new section of the Sexual Crimes Prosecution
21 and Treatment Act is enacted to read:

22 "[NEW MATERIAL] RIGHT TO NOTICE IN COLD CASES.--

23 A. The law enforcement agency responsible for
24 investigating a sexual crime shall provide the victim in a cold
25 case with information concerning any change in the status of

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1 the case, including the reopening of the case to resume
2 investigation, unless such disclosure would unreasonably
3 interfere with the investigation.

4 B. Upon the written request of the victim, the law
5 enforcement agency shall provide an update at least annually to
6 the victim concerning the status of a cold case."

7 SECTION 6. A new section of the Sexual Crimes Prosecution
8 and Treatment Act is enacted to read:

9 "[NEW MATERIAL] RIGHT TO NOTICE IN COLD CASES.--No law
10 enforcement agency or crime lab responsible for processing
11 sexual assault exam kits shall process cold case kits or
12 forensic evidence until the following steps have been taken:

13 A. no later than January 1, 2016, a "victims'
14 rights task force for sexual assault cold cases" shall be
15 formed and shall include:

16 (1) the director or designee from the
17 department of public safety;

18 (2) the director or designee from the New
19 Mexico association of district attorneys;

20 (3) a sex crimes law enforcement investigator
21 designated by the chief of the Albuquerque police department;

22 (4) a chief of police, or the chief's
23 designee, from a rural area of the state;

24 (5) the director of the Albuquerque police
25 department's crime laboratory, or the director's designee;

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1 (6) the director of the statewide sexual
2 assault coalition or the director's designee;

3 (7) the director of a rape crisis center from
4 southern New Mexico or the director's designee;

5 (8) the director of a rape crisis center from
6 northern New Mexico or the director's designee;

7 (9) the director of the crime victims
8 reparation commission or the director's designee;

9 (10) the chief public defender or the chief's
10 designee;

11 (11) a representative of the New Mexico
12 criminal defense lawyers association;

13 (12) a representative appointed by the
14 governor;

15 (13) a representative appointed by the
16 president pro tempore of the senate; and

17 (14) a representative appointed by the speaker
18 of the house of representatives;

19 B. no later than July 1, 2016, the victims' rights
20 task force for sexual assault cold cases shall:

21 (1) establish, implement, and complete a
22 process for conducting an inventory of all sexual assault cold
23 case exam kits and forensic evidence;

24 (2) report the results of the inventory to the
25 appropriate legislative interim committee that studies courts,

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1 corrections and justice-related issues;

2 (3) create standards for what evidence must be
3 submitted to any crime laboratory in New Mexico;

4 (4) create time frames for when the evidence
5 must be submitted, analyzed and compared to DNA databases;

6 (5) create victim notification and consent
7 procedures and forms that include:

8 (a) standards for consent for the
9 collection, testing and release of test results of the forensic
10 medical evidence; and

11 (b) consent forms that clearly and
12 plainly: 1) explain the potential effects of each step of the
13 process, including collection, testing and release of test
14 results, and require acknowledgment of consent for each step of
15 the process; 2) give the victim the right to withdraw consent
16 at any point in the process; 3) explain when and how results of
17 tests may be released and for what purposes; and 4) set forth
18 the date by which a law enforcement agency must analyze its
19 backlog of forensic medical evidence if it does not forward
20 such evidence to the appropriate crime laboratory;

21 (6) create recommendations on how long to
22 store unreported sexual assault examination kits;

23 (7) create recommendations on how to destroy
24 unreported sexual assault examination kits;

25 (8) create recommendations on how to destroy

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1 sexual assault examinations kits from other cases; and

2 (9) create recommendations concerning any
3 changes or clarifications to the procedures set forth in
4 Section 30-9-19 NMSA 1978;

5 C. on or before January 1, 2017, each law
6 enforcement agency in the state shall comply with the standards
7 established by the victims' rights task force for sexual
8 assault cold cases; provided, however, that the failure of a
9 law enforcement agency to comply with the standards shall not
10 affect:

11 (1) the authority of the agency to submit
12 evidence to crime laboratories; or

13 (2) the admissibility of the evidence in any
14 court;

15 D. all medical facility personnel performing
16 forensic medical examinations in sexual assault cases shall
17 comply with the standards established by the victims' rights
18 task force for sexual assault cold cases; and

19 E. all persons having custody of forensic medical
20 evidence collected in connection with an alleged sexual assault
21 or the results of tests conducted on the evidence shall comply
22 with the standards established by the victims' rights task
23 force for sexual assault cold cases."

24 **SECTION 7.** A new section of the Sexual Crimes Prosecution
25 and Treatment Act is enacted to read:

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1 "[NEW MATERIAL] REQUEST FOR INFORMATION BY A VICTIM.--

2 A. A victim who requests notification pursuant to
3 Section 4, 5 or 6 of this 2015 act shall provide a current
4 address, telephone number and email address, as applicable, to
5 the attorney representing the state and the law enforcement
6 agency that is investigating the offense. The victim must
7 inform the attorney representing the state and the law
8 enforcement agency of any change in the victim's contact
9 information.

10 B. A victim may designate a person, including an
11 entity that provides services to victims of sexual crimes or
12 the victim's attorney, to receive any notice requested pursuant
13 to Section 4, 5 or 6 of this 2015 act. The designation must
14 include a current address, telephone number and email address,
15 as applicable, for the designee."

16 **SECTION 8.** A new section of the Sexual Crimes Prosecution
17 and Treatment Act is enacted to read:

18 "[NEW MATERIAL] RIGHTS SUPPLEMENTAL TO VICTIMS OF CRIME
19 ACT.--The rights enumerated in the Sexual Crimes Prosecution
20 and Treatment Act shall be supplemental to the rights included
21 in the Victims of Crime Act."

22 **SECTION 9.** Section 31-22-8 NMSA 1978 (being Laws 1981,
23 Chapter 325, Section 8, as amended) is amended to read:

24 "31-22-8. CRIMES ENUMERATED.--

25 A. The crimes to which the Crime Victims Reparation

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1 Act applies and for which reparation to victims may be made are
2 the following enumerated offenses and all other offenses in
3 which any enumerated offense is necessarily included:

4 (1) arson resulting in bodily injury;

5 (2) aggravated arson;

6 (3) aggravated assault or aggravated battery;

7 (4) aggravated assault against a household
8 member;

9 (5) assault against a household member with
10 intent to commit a violent felony;

11 (6) aggravated battery against a household
12 member;

13 [~~(4)~~] (7) dangerous use of explosives;

14 [~~(5)~~] (8) negligent use of a deadly weapon;

15 [~~(6)~~] (9) murder;

16 [~~(7)~~] (10) voluntary manslaughter;

17 [~~(8)~~] (11) involuntary manslaughter;

18 [~~(9)~~] (12) kidnapping;

19 [~~(10)~~] (13) criminal sexual penetration;

20 [~~(11)~~] (14) criminal sexual contact of a
21 minor;

22 [~~(12)~~] (15) homicide by vehicle or great
23 bodily injury by vehicle, as provided in Section 66-8-101 NMSA
24 1978;

25 [~~(13)~~] (16) abandonment or abuse of a child;

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[~~(14)~~] (17) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;

[~~(15)~~] (18) aggravated stalking, as provided in Section 30-3A-3.1 NMSA 1978; and

[~~(16)~~] (19) human trafficking.

B. No award shall be made for any loss or damage to property."

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.