

HOUSE BILL 135

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO SEXUAL ASSAULT; PROVIDING A SEXUAL ASSAULT SURVIVOR WITH RIGHTS FOLLOWING A SEXUAL ASSAULT AND RELATED MEDICAL EXAMINATION; PROVIDING REQUIREMENTS FOR PROCESSING SEXUAL ASSAULT EXAMINATION KITS.

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

SECTION 1. A new section of Chapter 30, Article 9 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SEXUAL ASSAULT SURVIVOR'S BILL OF RIGHTS.--

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

(1) obtain contact information for the survivor;

(2) provide the survivor with:

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

(b) a copy of the provider's kit Sfl→retention release←Sfl policy Sfl→, which shall require storage of Sfl→HCPAC→an untested kit←HCPAC HCPAC→a kit that is not associated with a reported crime←HCPAC←Sfl Sfl→an untested kit←Sfl for at least twenty-four months before destruction←Sfl;

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

(d) provide the survivor contact and descriptive information regarding the department of public safety statewide sexual assault examination kit tracking system;

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

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

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

B. No costs incurred by a health care provider for the collection of a sexual assault examination kit shall be charged directly or indirectly to the survivor of the sexual assault HCPAC→, ~~unless reimbursement to the survivor is provided pursuant to the Sexual Crimes Prosecution and Treatment Act~~←HCPAC .

C. A law enforcement agency HCPAC→**or crime laboratory**←HCPAC that receives a sexual assault examination kit HCPAC→~~from a medical provider~~←HCPAC shall:

(1) confirm the sexual assault survivor's contact information and request that the survivor inform the agency of any changes to that information;

(2) inform the survivor of the survivor's right to Hf1→HCPAC→~~have the kit tested within ninety days and the right to~~←HCPAC←Hf1 Hf1→**have the kit tested within one hundred eighty days and have the right to**←Hf1 the following

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information from the agency:

(a) whether the survivor's kit has been tested and the date on which test results are expected, which information shall be provided to the survivor; and

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

HCPAC→(3)←~~if a DNA profile is developed through testing of a kit, inform the survivor at the time the law enforcement agency submits the profile to a DNA database for comparison with other profiles;~~←HCPAC

HCPAC→(4)←HCPAC HCPAC→(3)←HCPAC inform the survivor of the survivor's right to the following information from the agency:

(a) information regarding the statewide sexual assault examination kit tracking system;

(b) HCPAC→upon completion of the law enforcement investigation,←HCPAC whether a DNA profile was developed using the samples of biological material in the kit; and

(c) HCPAC→upon completion of the law enforcement investigation,←HCPAC whether a DNA profile match was identified through comparison of the DNA profile;

HCPAC→(5)←HCPAC HCPAC→(4)←HCPAC in a case in which the alleged sexual assault offender has not been

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identified, notify the survivor in writing at least Hf1→~~sixty~~
~~one hundred eighty~~←Hf1 days before destruction of a kit, if the
law enforcement agency intends to destroy the survivor's kit,
and provide information on how the survivor may appeal the
agency's decision to destroy the kit; and

HCPAC→~~(6)~~←HCPAC HCPAC→~~(5)~~←HCPAC with the
consent of the survivor, enter designated information from the
sexual assault examination kit into the department of public
safety statewide sexual assault examination kit tracking system
within fourteen days of obtaining consent.

HCPAC→~~D. A crime laboratory shall complete the
processing of a sexual assault examination kit within sixty
days of receipt of the kit.~~←HCPAC

Hf1→~~HCPAC→D. A crime laboratory shall:~~

~~(1) complete the processing of a sexual
assault examination kit within sixty days of receipt of the
kit; and~~

~~(2) preserve a kit for twenty-four months if
the survivor has not reported the crime or, if the survivor has
reported the crime, until the time within which the person who
committed the crime may be prosecuted, tried or punished has
expired.~~←HCPAC←Hf1

Hf1→~~D. A crime laboratory shall complete the
processing of a sexual assault examination kit within Hf1→~~sixty~~
~~one hundred eighty~~←Hf1 days of receipt of the kit.~~←Hf1

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E. Before commencing an interview of a sexual assault survivor, a law enforcement officer Sfl→Sfl→HJC→,←HJC HJC→or←HJC, ←Sfl←Sfl Sfl→or←Sfl prosecutor Sfl→Sfl→HJC→or defense attorney←HJC or defense attorney←Sfl←Sfl shall inform the survivor of the following:

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

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

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

(4) for interviews by a law enforcement officer, the survivor's right to HCPAC→be interviewed by a law

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~~enforcement officer of the gender of the survivor's choosing.~~
~~If no law enforcement officer of that gender is reasonably~~
~~available, the survivor may be interviewed by an available law~~
~~enforcement officer only upon the survivor's consent.~~←HCPAC
HCPAC→request a different officer if the survivor believes the
officer to be unsupportive or inadequately trained.←HCPAC

F. A law enforcement officer HJC→, or←HJC
prosecutor HJC→~~or defense attorney~~←HJC shall not, for any
reason, discourage a sexual assault survivor from undergoing an
examination or allowing the collection of a sexual assault
examination kit.

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

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

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

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

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

H. A sexual assault survivor retains the right to
have HCPAC→~~legal counsel~~←HCPAC HCPAC→an advocate←HCPAC
present during all stages of any medical examination,

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interview, investigation or other interaction with representatives from the legal or criminal justice systems within New Mexico. Treatment of the survivor shall not be affected or altered in any way as a result of the survivor's decision to exercise the survivor's right to have HJC→**counsel** **an advocate**←HJC present as provided in this section.

I. A law enforcement agency may require a sexual assault survivor's requests for information pursuant to Subsection C of this section to be made in writing, and the agency Hfl→~~may~~ **shall**←Hfl communicate its responses to those requests Hfl→~~verbally or~~←Hfl in writing.

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

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

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

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

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

HJC→~~M. Each person who has a responsibility to sexual assault survivors pursuant to this section or other applicable law shall make reasonable efforts to become informed about these responsibilities and to ensure that survivors and witnesses receive such information and services to which they may be entitled under applicable law. Any failure to make such efforts, or any violation of the enumerated rights or provisions provided in this section, shall be considered a tortious act causing injury to person or property within New Mexico. The court may award reasonable attorney fees to a plaintiff who prevails on a claim pursuant to this subsection.~~←HJC

HJC→~~N.~~ **M.**←HJC For the purposes of this section:

(1) "health care provider" means a sexual assault examination nurse or another health care provider

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authorized to examine and collect samples of biological material from a survivor of sexual assault following the assault; and

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

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.