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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:

"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 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 release policy;

(c) provide the survivor with contact and descriptive information regarding free and low-cost human

1 immunodeficiency virus and sexually transmitted disease
2 testing, prevention and treatment services including options
3 and services provided by the department of health; and

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

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

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

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

17 B. No costs incurred by a health care provider for
18 the collection of a sexual assault examination kit shall be
19 charged directly or indirectly to the survivor of the sexual
20 assault.

21 C. A law enforcement agency or crime laboratory
22 that receives a sexual assault examination kit shall:

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

1 (2) inform the survivor of the survivor's
2 right to have the kit tested within one hundred eighty days
3 and have the right to the following information from the
4 agency:

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

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

11 (3) inform the survivor of the survivor's
12 right to the following information from the agency:

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

15 (b) upon completion of the law
16 enforcement investigation, whether a DNA profile was
17 developed using the samples of biological material in the
18 kit; and

19 (c) upon completion of the law
20 enforcement investigation, whether a DNA profile match was
21 identified through comparison of the DNA profile;

22 (4) in a case in which the alleged sexual
23 assault offender has not been identified, notify the survivor
24 in writing at least one hundred eighty days before
25 destruction of a kit, if the law enforcement agency intends

1 to destroy the survivor's kit, and provide information on how
2 the survivor may appeal the agency's decision to destroy the
3 kit; and

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

9 D. A crime laboratory shall complete the
10 processing of a sexual assault examination kit within one
11 hundred eighty days of receipt of the kit.

12 E. Before commencing an interview of a sexual
13 assault survivor, a law enforcement officer or prosecutor
14 shall inform the survivor of the following:

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

20 (2) the survivor's right to consult with a
21 counselor or advocate who specializes in sexual assault
22 services or a support person designated by the survivor
23 during any interview by a law enforcement officer, prosecutor
24 or defense attorney, and the counselor shall be summoned by
25 the interviewer before the commencement of the interview,

1 unless no counselor or advocate who specializes in sexual
2 assault services or a support person designated by the
3 survivor can be summoned in a reasonably timely manner;

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

8 (4) for interviews by a law enforcement
9 officer, the survivor's right to request a different officer
10 if the survivor believes the officer to be unsupportive or
11 inadequately trained.

12 F. A law enforcement officer or prosecutor shall
13 not, for any reason, discourage a sexual assault survivor
14 from undergoing an examination or allowing the collection of
15 a sexual assault examination kit.

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

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

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

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

1 and

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

4 H. A sexual assault survivor retains the right to
5 have an advocate present during all stages of any medical
6 examination, interview, investigation or other interaction
7 with representatives from the legal or criminal justice
8 systems within New Mexico. Treatment of the survivor shall
9 not be affected or altered in any way as a result of the
10 survivor's decision to exercise the survivor's right to have
11 an advocate present as provided in this section.

12 I. A law enforcement agency may require a sexual
13 assault survivor's requests for information pursuant to
14 Subsection C of this section to be made in writing, and the
15 agency shall communicate its responses to those requests in
16 writing.

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

24 K. In the case of a sexual assault survivor who is
25 deceased, the following persons shall have the right to

1 receive notifications and information required to be
2 communicated to a survivor pursuant to this section:

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

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

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

16 M. For the purposes of this section:

17 (1) "health care provider" means a sexual
18 assault examination nurse or another health care provider
19 authorized to examine and collect samples of biological
20 material from a survivor of sexual assault following the
21 assault; and

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

1 assault."

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

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