

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS  
2024 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

**SECTION I: GENERAL INFORMATION**

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original  Amendment

Correction  Substitute

Date 23JAN2024

Bill No: SB 154

Sponsor: David M. Gallegos

Short Title: THIRTY-DAY SEX ASSAULT KIT

Agency Name and Code

790- Department of Public Safety

Number:

Person Writing Bill Sheila McDonald/Randy

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0.0	0.0		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0.0	0.0	0.0		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0.0	250.0	250.0	500.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

**SECTION III: NARRATIVE**

**BILL SUMMARY**

SB 154 requires survivors’ consent for law enforcement agencies to send a sexual assault kit to the agency's servicing laboratory and requires that to happen within thirty days of the agency's receipt of the sample. It also requires agencies enter all necessary information into the sexual assault examination kit tracking system.

The bill adds timelines to survivor notification when a match is identified between biological evidence in a sexual assault examination kit and a DNA profile contained in the database. This bill also specifies that survivors should be notified of a match within 5 days unless doing so “would interfere with the investigation or prosecution of the offense.” If doing so would interfere, the bill states that law enforcement agencies or the prosecutor should “continue to make reasonable efforts to notify the survivor” of a match.

**FISCAL IMPLICATIONS**

The Department of Public Safety Forensic Laboratory respectfully requests \$250,000.00 to outsource non-homicide, violent cases that require forensic DNA analysis. The laboratory will be able to focus on homicide and sexual assault cases. The approximate cost for one sample to be processed by an accredited forensic DNA testing laboratory is approximately \$1,000.00 / sample. With \$250,000.00, about 250 case samples may be submitted for analysis providing timely results for law-enforcement, judicial and the criminal justice system. This will afford DNA forensic scientists the ability to focus on completing homicide and sexual assault kits (within 180 days as mandated in House Bill 135, the Sexual Assault Survivor’s Bill of Rights). Historically, the laboratory has been short staffed in the DNA Unit, but a recent pay plan implementation seeks to recruit and retain qualified DNA analysts.

**SIGNIFICANT ISSUES**

The NMDPS is responsible for management of the sexual assault evidence kit (SAEK) tracking system that was implemented in 2020 as part of the state’s effort to reform criminal justice response to sexual assault. The SAEK tracking system promotes transparency and accountability by

providing sexual assault survivors with the ability to anonymously track the location and status of their SAEK from the point of collection through forensic analysis to final storage location.

Currently, the law does not mandate law enforcement agencies who receive the SAEK to “enter all necessary” information into the sexual assault tracking system. When law enforcement agencies fail to enter or update the tracking system with the “necessary information”, survivors are unable to accurately view the location of their kit and see whether it is being processed in the timeframe dictated by New Mexico law.

According to national best practice, full participation by law enforcement at every step of the process should be state mandated. Most law enforcement agencies across the state understand the value of the system for survivors and make efforts to participate by entering the necessary information. However, some law enforcement agencies have simply opted not to participate or have not consistently entered the necessary information to track the kit all the way through the entire testing process. This lack of participation or lackadaisical efforts may lead to timelines that are not updated at each step of the testing process and therefore does not reliably provide transparent and accurate information to survivors. Without full participation by all users, survivors cannot reap the emotional and psychological benefits of possessing accurate and timely information regarding the testing status of the biological evidence collected from their bodies after a sexual assault. The bill proposed is a step in the right direction for New Mexico’s reform of criminal justice response to sexual assault and will affect positive change for survivors.

In addition, the following should be considered as it relates to this bill:

- Page 4 section 6 – Who will track mandatory notification within 5 days to assure compliance? How will it be tracked?
- Page 4 Section 7 – What is the definition of reasonable efforts?
- Page 5 Section 9 – Indicates that if an alleged sexual assault offender has been identified, the information would be entered into the tracking system. However, the tracking system does NOT contain any personal identifiable information for either the survivors or offenders. The ability to remain anonymous enables a victim to have forensic evidence collected without revealing identifying information. Victims are given a code number they can use to identify themselves if they choose to report later, and they are not required to cooperate with law enforcement or criminal justice authorities.
- What are the consequences if law enforcement agencies remain non-compliant?

## **PERFORMANCE IMPLICATIONS**

No significant performance implications for DPS.

## **ADMINISTRATIVE IMPLICATIONS**

None

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None

## **TECHNICAL ISSUES**

No technical issues to DPS.

**OTHER SUBSTANTIVE ISSUES**

None identified.

**ALTERNATIVES**

None.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo will remain.

**AMENDMENTS**

None, currently.