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HOUSE BILL 491

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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AN ACT

RELATING TO SEXUAL ASSAULT; PROVIDING A SEXUAL ASSAULT
SURVIVOR'S RIGHTS FOLLOWING A SEXUAL ASSAULT AND RELATED
MEDICAL EXAMINATION.

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.--

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) inform the survivor of the right to

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1 request:

2 (a) voluntary testing of the survivor
3 for human immunodeficiency virus; and

4 (b) mandatory testing of the alleged
5 sexual assault offender for human immunodeficiency virus;

6 (3) provide the survivor with:

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

12 (b) a copy of the provider's kit
13 retention policy, which shall require storage of an untested
14 kit for at least twenty-four months before destruction;

15 (4) if the survivor consents, notify the
16 relevant law enforcement agency of the sexual assault and
17 collection of the kit;

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

21 (6) provide the survivor's contact information
22 to the law enforcement agency when the survivor's kit is
23 transferred to that agency.

24 B. A law enforcement agency that receives a sexual
25 assault examination kit from a medical provider shall:

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

4 (2) inform the survivor of the survivor's
5 right to request the following information from the agency:

6 (a) the status of testing of the
7 survivor's kit and the date on which test results are expected,
8 which information shall be provided to the survivor unless
9 providing the information would interfere with the agency's
10 investigation; and

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

14 (3) if a DNA profile is developed through
15 testing of a kit, inform the survivor at the time the law
16 enforcement agency submits the profile to a DNA database for
17 comparison with other profiles;

18 (4) inform a survivor of any DNA profile
19 matches identified through comparison of the DNA profile
20 developed in the survivor's case with those in a DNA database,
21 unless providing that information would interfere with the
22 agency's investigation; and

23 (5) in a case in which the alleged sexual
24 assault offender has not been identified, notify the survivor:

25 (a) if the law enforcement agency

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1 determines that the survivor's kit will not be tested; or

2 (b) in writing at least sixty days
3 before destruction of a kit, if the law enforcement agency
4 intends to destroy the survivor's kit, and provide information
5 on how the survivor may appeal the agency's decision to destroy
6 the kit.

7 C. A law enforcement agency may require a
8 survivor's requests for information pursuant to Subsection B of
9 this section to be made in writing, and the agency may
10 communicate its responses to those requests verbally or in
11 writing.

12 D. For the purpose of notifications and other
13 communications provided for in this section, a survivor may
14 designate another person to receive notifications and
15 information on the survivor's behalf and the survivor shall
16 provide the designee's contact information to a medical
17 provider or law enforcement agency required to communicate with
18 the survivor pursuant to this section.

19 E. In the case of a survivor who is deceased, the
20 following persons shall have the right to receive notifications
21 and information required to be communicated to a survivor
22 pursuant to this section:

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

25 (2) the deceased survivor's parent or sibling

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1 or child who is eighteen years of age or older.

2 F. For the purposes of this section:

3 (1) "health care provider" means a sexual
4 assault examination nurse or another health care provider
5 authorized to examine and collect samples of biological
6 material from a survivor of sexual assault following the
7 assault; and

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