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HOUSE BILL 135

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

INTRODUCED BY

Elizabeth "Liz" Thomson

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.--

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;

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(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 retention policy, which shall require storage of an untested kit for at least twenty-four months before destruction;

(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;

(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

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1 transferred to that agency.

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

7 C. A law enforcement agency that receives a sexual
8 assault examination kit from a medical provider shall:

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

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

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

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

20 (3) if a DNA profile is developed through
21 testing of a kit, inform the survivor at the time the law
22 enforcement agency submits the profile to a DNA database for
23 comparison with other profiles;

24 (4) inform the survivor of the survivor's
25 right to the following information from the agency:

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

3 (b) whether a DNA profile was developed
4 using the samples of biological material in the kit; and

5 (c) whether a DNA profile match was
6 identified through comparison of the DNA profile;

7 (5) in a case in which the alleged sexual
8 assault offender has not been identified, notify the survivor
9 in writing at least sixty days before destruction of a kit, if
10 the law enforcement agency intends to destroy the survivor's
11 kit, and provide information on how the survivor may appeal the
12 agency's decision to destroy the kit; and

13 (6) with the consent of the survivor, enter
14 designated information from the sexual assault examination kit
15 into the department of public safety statewide sexual assault
16 examination kit tracking system within fourteen days of
17 obtaining consent.

18 D. A crime laboratory shall complete the processing
19 of a sexual assault examination kit within sixty days of
20 receipt of the kit.

21 E. Before commencing an interview of a sexual
22 assault survivor, a law enforcement officer, prosecutor or
23 defense attorney shall inform the survivor of the following:

24 (1) the survivor's rights pursuant to this
25 section and other relevant law by providing the survivor with a

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1 document to be developed by the department of public safety,
2 which document shall be signed by the survivor to confirm
3 receipt;

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

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

17 (4) for interviews by a law enforcement
18 officer, the survivor's right to be interviewed by a law
19 enforcement officer of the gender of the survivor's choosing.
20 If no law enforcement officer of that gender is reasonably
21 available, the survivor may be interviewed by an available law
22 enforcement officer only upon the survivor's consent.

23 F. A law enforcement officer, prosecutor or defense
24 attorney shall not, for any reason, discourage a sexual assault
25 survivor from undergoing an examination or allowing the

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1 collection of a sexual assault examination kit.

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

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

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

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

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

13 H. A sexual assault survivor retains the right to
14 have legal counsel present during all stages of any medical
15 examination, interview, investigation or other interaction with
16 representatives from the legal or criminal justice systems
17 within New Mexico. Treatment of the survivor shall not be
18 affected or altered in any way as a result of the survivor's
19 decision to exercise the survivor's right to have counsel
20 present as provided in this section.

21 I. A law enforcement agency may require a sexual
22 assault survivor's requests for information pursuant to
23 Subsection C of this section to be made in writing, and the
24 agency may communicate its responses to those requests verbally
25 or in writing.

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

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

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

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

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

25 M. Each person who has a responsibility to sexual

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1 assault survivors pursuant to this section or other applicable
2 law shall make reasonable efforts to become informed about
3 these responsibilities and to ensure that survivors and
4 witnesses receive such information and services to which they
5 may be entitled under applicable law. Any failure to make such
6 efforts, or any violation of the enumerated rights or
7 provisions provided in this section, shall be considered a
8 tortious act causing injury to person or property within New
9 Mexico. The court may award reasonable attorney fees to a
10 plaintiff who prevails on a claim pursuant to this subsection.

11 N. For the purposes of this section:

12 (1) "health care provider" means a sexual
13 assault examination nurse or another health care provider
14 authorized to examine and collect samples of biological
15 material from a survivor of sexual assault following the
16 assault; and

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

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