

HOUSE BILL 231

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Elizabeth "Liz" Thomson and Joanne J. Ferrary
and Angelica Rubio and Patricia Roybal Caballero

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) provide the survivor with:

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

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

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

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

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

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

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

25 (1) confirm the survivor's contact information

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1 and request that the survivor inform the agency of any changes
2 to that information;

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

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

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

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

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

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

24 (a) if the law enforcement agency
25 determines that the survivor's kit will not be tested; or

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

6 D. Before commencing an interview of a survivor, a
7 law enforcement officer, prosecutor or defense attorney shall
8 inform the survivor of the following:

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

14 (2) the survivor's right to consult with a
15 sexual assault counselor during any interview by a law
16 enforcement officer, prosecutor or defense attorney, and the
17 counselor shall be summoned by the interviewer before the
18 commencement of the interview, unless no sexual assault
19 counselor can be summoned in a reasonably timely manner;

20 (3) the survivor's right to have a support
21 person of the survivor's choosing present during an interview
22 by a law enforcement officer, prosecutor or defense attorney,
23 unless the law enforcement officer, prosecutor or defense
24 attorney determines in good faith professional judgment that
25 the presence of that individual would be detrimental to the

1 purpose of the interview; and

2 (4) for interviews by a law enforcement
3 officer, the survivor's right to be interviewed by a law
4 enforcement officer of the gender of the survivor's choosing.
5 If no law enforcement officer of that gender is reasonably
6 available, the survivor may be interviewed by an available law
7 enforcement officer only upon the survivor's consent.

8 E. A law enforcement officer, prosecutor or defense
9 attorney shall not, for any reason, discourage a survivor from
10 receiving an examination or allowing collection of a sexual
11 assault examination kit.

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

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

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

20 (3) to be heard through a survivor impact
21 statement at any proceeding involving a post-arrest release
22 decision, plea, sentencing, post-conviction release decision or
23 any other proceeding where a right of the survivor is at issue;
24 and

25 (4) to provide a sentencing recommendation to

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1 the probation department official conducting a pre-sentence
2 investigation.

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

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

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

23 J. In the case of a survivor who is deceased, the
24 following persons shall have the right to receive notifications
25 and information required to be communicated to a survivor

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1 pursuant to this section:

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

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

6 K. A prosecutor shall not prosecute a survivor for
7 minor criminal offenses, including underage consumption of
8 alcohol, drug use or prostitution, if the evidence of the
9 commission of the offense is obtained through the examination
10 of and collection of a sexual assault examination kit from the
11 survivor.

12 L. Each person who has a responsibility to
13 survivors pursuant to this section or other applicable law
14 shall make reasonable efforts to become informed about these
15 responsibilities and to ensure that survivors and witnesses
16 receive such information and services to which they may be
17 entitled under applicable law. Any failure to make such
18 efforts, or any violation of the enumerated rights or
19 provisions provided in this section, shall be considered a
20 tortious act causing injury to person or property within New
21 Mexico. The court may award reasonable attorney fees to a
22 plaintiff who prevails on a claim pursuant to this subsection.

23 M. For the purposes of this section:

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

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

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

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