

SENATE BILL NO. 52

INTRODUCED BY D. SANDS

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO SEXUAL ASSAULT EVIDENCE KITS; CREATING A PROCESS FOR SEXUAL ASSAULT EVIDENCE KITS TO BE CREATED, COLLECTED, AND DELIVERED TO A LAW ENFORCEMENT AGENCY; REQUIRING A HEALTH CARE FACILITY TO OBTAIN THE CONSENT OF THE PATIENT BEFORE PROVIDING THE KIT TO LAW ENFORCEMENT; PROVIDING TIMELINES FOR KITS TO BE PROVIDED TO LAW ENFORCEMENT AGENCIES AND TO THE OFFICE OF VICTIM SERVICES OF THE DEPARTMENT OF JUSTICE AND FOR TESTING OF THE KITS; CREATING A MINIMUM AMOUNT OF TIME A KIT IS REQUIRED TO BE STORED BY THE OFFICE OF VICTIM SERVICES; REQUIRING THE DEPARTMENT OF JUSTICE TO CREATE A STATEWIDE TRACKING SYSTEM FOR SEXUAL ASSAULT EVIDENCE KITS; PROVIDING THAT INFORMATION STORED IN THE TRACKING SYSTEM IS CONFIDENTIAL; REQUIRING THE DEPARTMENT OF JUSTICE TO CREATE A MODEL FORM CONTAINING INFORMATION ABOUT THE RIGHTS OF A SEXUAL ASSAULT VICTIM; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 46-15-411, MCA; AND PROVIDING A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Sexual assault evidence kit collection and storage -- consent of patient -- notice to law enforcement. (1) Following the completion of hospital emergency services and forensic services for a sexual assault medical forensic examination, the health care professional providing the forensic services shall provide the patient the opportunity to sign a written consent to allow law enforcement to submit the sexual assault evidence kit for testing. The written consent must be on a form included in the kit and must indicate whether the patient consents to the release of information about the sexual assault to law enforcement.

(2) A health care facility that obtains written consent to release a sexual assault evidence kit to law enforcement shall notify the investigating law enforcement agency, if known, or the law enforcement agency that has jurisdiction in the area in which the health care facility is located within 24 hours after the kit is collected.

(3) (a) A health care facility that did not obtain written consent to release the sexual assault evidence kit

1 to law enforcement shall inform the individual from whom the kit was obtained that the evidence will be forwarded
2 to the office of victim services of the department of justice as an anonymous kit.

3 (b) The office of victim services shall store a sexual assault evidence kit for a minimum of 1 year before
4 the kit may be destroyed.

5 (c) The individual from whom an anonymous sexual assault evidence kit was obtained or the individual's
6 agent may provide consent for the kit to be tested at any time during that 1-year period.

7 (4) (a) A law enforcement agency that receives notice from a health care facility as provided in subsection
8 (2) shall take possession of the sexual assault evidence kit from the health care facility within 5 business days
9 after the evidence is collected.

10 (b) If the law enforcement agency determines that the alleged sexual assault occurred within the
11 jurisdiction of another law enforcement agency and that it does not otherwise have jurisdiction over that alleged
12 assault, the law enforcement agency in possession of the sexual assault evidence kit shall notify the law
13 enforcement agency that has jurisdiction within 5 days after receiving the kit from the health care facility and shall
14 forward the evidence to that jurisdiction.

15 (5) An investigating law enforcement agency that takes possession of a sexual assault evidence kit shall
16 submit the evidence and an accompanying police report to a publicly accredited crime laboratory for forensic
17 analysis within 30 days after receiving the kit from either a health care facility or another law enforcement agency.

18 (6) The failure of a law enforcement agency to submit a request for analysis within the time limits provided
19 in this section does not constitute grounds in a criminal or civil proceeding to challenge the validity of a DNA
20 evidence association, and a court may not exclude any evidence obtained from the sexual assault evidence kit
21 on those grounds.

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23 **NEW SECTION. Section 2. Statewide sexual assault evidence kit tracking system -- rulemaking.**

24 (1) The department of justice shall create, operate, and maintain a statewide sexual assault evidence kit tracking
25 system. The tracking system must:

26 (a) track the status of a sexual assault evidence kit from the collection site through the criminal justice
27 process, including the initial collection at a health care facility, inventory and storage by law enforcement
28 agencies, analysis at a crime laboratory, and storage or destruction after completion of analysis;

29 (b) allow law enforcement agencies, health care facilities, a crime laboratory, and other entities that
30 receive, maintain, store, or preserve sexual assault evidence kits to update the status and location of the kits; and

1 (c) allow an individual to anonymously access the tracking system to track the location and status of the
2 individual's sexual assault evidence kit.

3 (2) The department of justice shall adopt rules for developing and using the sexual assault evidence kit
4 tracking system. Law enforcement agencies, health care facilities, and crime laboratories shall use the tracking
5 system as provided in the rules.

6 (3) Information contained in the sexual assault evidence kit tracking system is confidential and not subject
7 to public disclosure.

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9 **NEW SECTION. Section 3. Notice of rights for victims of sexual assault.** The department of justice
10 shall prepare a model form for use by health care facilities and law enforcement agencies that details the statutory
11 rights of victims of sexual assault. These rights include the following:

12 (1) a victim may receive a sexual assault medical forensic examination and have evidence collected using
13 a sexual assault evidence kit even if the victim does not want to participate in a criminal investigation;

14 (2) a victim may not be billed for the cost of administering the sexual assault medical forensic examination
15 or collecting evidence for the sexual assault evidence kit;

16 (3) on request by a sexual assault victim to the investigating law enforcement agency, the victim may
17 receive the following information:

18 (a) contact information for the officer investigating the case;

19 (b) the current status of the case;

20 (c) whether the case has been submitted to the office of the prosecuting attorney for review;

21 (d) whether the case has been closed and the documented reason for closure;

22 (e) if available, contact information for a local community-based victim services program;

23 (f) notifications of the victim's legal rights, including the right to file a petition requesting an order of
24 protection; and

25 (g) the notices required by 46-24-203, 46-24-204, and 46-24-206.

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27 **NEW SECTION. Section 4. Testing of sexual assault evidence kits.** Except for a sexual assault
28 evidence kit that is submitted to the department of justice as provided in 46-15-411(2)(a), a local law enforcement
29 agency shall submit all other kits to the division of forensic science within 30 days after the local law enforcement
30 agency receives the kit.

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Section 5. Section 46-15-411, MCA, is amended to read:

"46-15-411. Payment for medical evidence -- alleged sexual offenses. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall pay for the sexual assault medical forensic examination of a victim of the alleged offense when the examination is directed by the agency or when evidence obtained by the examination is used for the investigation, prosecution, or resolution of an offense.

(2) (a) The department of justice shall, as long as funds are available from an appropriation made for this purpose, pay for the ~~medical~~ sexual assault medical forensic examination of a victim of an alleged incident of sexual intercourse without consent, sexual assault, or incest if the cost is not the responsibility of a local law enforcement agency under subsection (1).

- (b) In administering the provisions of subsection (2)(a), the department shall:
 - (i) identify priorities for funding services, activities, and criteria for the receipt of program funds;
 - (ii) monitor the expenditure of funds by organizations receiving funds under this section;
 - (iii) evaluate the effectiveness of services and activities under this section; and
 - (iv) adopt rules necessary to implement this subsection (2).

(3) This section does not require a law enforcement agency or the state to pay any costs of treatment for injuries resulting from the alleged offense."

NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 46, chapter 15, part 4, and the provisions of Title 46, chapter 15, part 4, apply to [sections 1 through 4].

NEW SECTION. **Section 7. Termination.** [Section 4] terminates June 30, 2023.

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