

Assembly Bill No. 176—Assemblymen Yeager; Benitez-
Thompson, Krasner and Monroe-Moreno
Joint Sponsor: Senator Cannizzaro

AN ACT relating to crimes; enacting the Sexual Assault Survivors' Bill of Rights; defining certain terms relating to victims of sexual assault; creating the Advisory Committee on the Rights of Survivors of Sexual Assault; prescribing the membership and duties of the Advisory Committee; requiring certain information to be provided to a victim of sexual assault; revising certain provisions relating to sexual assault forensic analysis kits; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 2-29 of this bill enact the Sexual Assault Survivors' Bill of Rights.

Section 16 of this bill provides that the Sexual Assault Survivors' Bill of Rights attaches when a survivor is subject to: (1) a forensic medical examination; or (2) an interview by a law enforcement official or prosecutor.

Section 17 of this bill generally grants a survivor the right to consult with a sexual assault victims' advocate or to designate an attendant for support during a sexual assault forensic medical examination and an interview with a law enforcement official or prosecutor.

Section 18 of this bill provides: (1) that a survivor retains the rights set forth in **section 17** even if the survivor has waived such rights during a previous examination or interview; and (2) that, except with the consent of the survivor, the fact that the survivor waived the right to consult with a sexual assault victims' advocate is not admissible into evidence for any purpose.

Section 19 of this bill outlines a survivor's rights before and during a forensic medical examination and prescribe certain duties required of the medical provider.

Section 20 of this bill makes conforming changes to reflect a survivor's rights during an interview with a law enforcement official or prosecutor, and such an interviewer's duties.

Section 21 of this bill affords a survivor the right to counsel under certain circumstances.

Section 26 of this bill provides that forensic evidence from the sexual assault may not be used to prosecute a survivor under certain circumstances.

Section 27 of this bill requires the Office of the Attorney General to develop and make available certain information for a survivor regarding his or her sexual assault.

Section 35 of this bill additionally requires the prosecutor to provide, upon the written request of the alleged victim, the pretrial disposition of the case and information supplied by the sex offender registry regarding the defendant, if applicable.

Section 37 of this bill requires that the survivor be allowed to track or receive certain updates via Internet or telephone.

Sec. 16.

1. The rights provided to a survivor pursuant to the Sexual Assault Survivors' Bill of Rights attach whenever the survivor is subject to:
 - (a) A forensic medical examination; or
 - (b) An interview by a law enforcement official or prosecutor.
2. A survivor retains the rights provided by the Sexual Assault Survivors' Bill of Rights at all times, regardless of whether the survivor:
 - (a) Agrees to participate in the legal or criminal justice system;
 - (b) Agrees to speak to a law enforcement official or prosecutor; or
 - (c) Consents to a forensic medical examination.

Sec. 17.

1. A survivor has the right to consult with a sexual assault victims' advocate during:
 - (a) Any forensic medical examination; and
 - (b) Any interview by a law enforcement official or prosecutor.
2. Except as otherwise provided in subsection 3, a survivor has the right to designate an attendant to provide support during:
 - (a) Any forensic medical examination; and
 - (b) Any interview by a law enforcement official or prosecutor.
3. If a law enforcement official or prosecutor conducts an interview of a survivor who is a minor, the law enforcement official or prosecutor may exclude the attendant from the interview if the law enforcement official or prosecutor:
 - (a) Has successfully completed specialized training in interviewing survivors who are minors that meets the standards of the National Children's Alliance or its successor organization or another national organization that provides specialized training in interviewing survivors who are minors; and
 - (b) Determines, in his or her good faith, that the presence of the attendant would be detrimental to the purpose of the interview.

Sec. 18.

1. A survivor retains the rights pursuant to section 17 of this act even if the survivor has waived such rights during a previous examination or interview.
2. Except with the consent of the survivor, the fact that the survivor waived the right to consult with a sexual assault victims' advocate pursuant to section 17 of this act is not admissible into evidence for any purpose.

Sec. 19.

1. If a survivor requests a consultation with a sexual assault victims' advocate or an attendant to provide support to the survivor pursuant to section 17 of this act, the medical provider shall summon the sexual assault victims' advocate or attendant before the commencement of the forensic medical examination.
2. If a sexual assault victims' advocate or an attendant to provide support to the survivor pursuant to section 17 of this act cannot be summoned in a timely manner, the medical provider shall inform the survivor of the ramifications of delaying the forensic medical examination.
3. A survivor must not be required to pay any expense related to a forensic medical examination pursuant to NRS 217.300.
4. After the forensic medical examination, the survivor has the right to use a shower apparatus at no cost, unless a facility which includes a shower apparatus is not available.

5. Before a medical provider commences a forensic medical examination, the medical provider shall inform the survivor of his or her rights pursuant to the Sexual Assault Survivors' Bill of Rights and other relevant law by presenting a document developed by the Office of the Attorney General pursuant to section 27 of this act.

6. The person who presents to the survivor the document developed by the Office of the Attorney General pursuant to section 27 of this act shall sign a written acknowledgment indicating that the person presented the document to the survivor. The written acknowledgment must be retained in the case file of the survivor.

Sec. 20.

1. If a survivor exercises his or her right to consult with a sexual assault victims' advocate during an interview pursuant to section 17 of this act, the law enforcement official or prosecutor conducting the interview, as applicable, shall summon the sexual assault victims' advocate before the commencement of the interview, unless no sexual assault victims' advocate can be summoned in a timely manner.

2. A survivor has the right to designate an attendant to provide support of his or her choosing during any interview by a law enforcement official or prosecutor pursuant to section 17 of this act, unless the law enforcement official or prosecutor determines, in his or her good faith, that the presence of the attendant would be detrimental to the purpose of the interview.

3. A survivor has the right to be interviewed by a law enforcement official of the gender of the choosing of the survivor. If no law enforcement official of that gender is available in a reasonably timely manner, the survivor may be interviewed by an available law enforcement official of a different gender only upon the consent of the survivor.

4. A law enforcement official or prosecutor shall not discourage a survivor from receiving a forensic medical examination.

5. Before commencing an interview with a survivor, the law enforcement official or prosecutor conducting the interview shall inform the survivor of his or her rights pursuant to the Sexual Assault Survivors' Bill of Rights and other relevant law.

6. Any information conveyed by the law enforcement official or prosecutor pursuant to subsection 5 must be conveyed to the survivor by presenting a document developed by the Office of the Attorney General pursuant to section 27 of this act.

7. The person who presents to the survivor the document developed by the Office of the Attorney General pursuant to section 27 of this act shall sign a written acknowledgment indicating that the person presented the document to the survivor. The written acknowledgment must be retained in the case file of the survivor.

Sec. 21.

1. A survivor retains the right to have counsel present during any forensic medical examination, interview, investigation or other interaction with any representative of the legal or criminal justice system within this State pursuant to sections 16 to 20, inclusive, of this act.

2. The treatment of the survivor must not be affected or altered in any way as a result of the decision of the survivor to exercise his or her right to have counsel present during any forensic medical examination, interview, investigation or other interaction with the legal or criminal justice systems within this State.

Sec. 22.

1. A survivor has the right to prompt genetic marker analysis of a sexual assault forensic evidence kit pursuant to NRS 200.3786.
 - a. **NRS 200.3786 Sexual assault forensic evidence kits: Submission to forensic laboratory; testing; report to Legislature or Legislative Commission; contents of report.**
 - i. Except as otherwise provided in this subsection, a law enforcement agency shall, not later than 30 days after receiving a sexual assault forensic evidence kit, submit the sexual assault forensic evidence kit to the applicable forensic laboratory responsible for conducting a genetic marker analysis. The provisions of this subsection do not apply to any non-investigatory sexual assault forensic evidence kit associated with a victim who has chosen to remain anonymous.
 - ii. A forensic laboratory shall, not later than 120 days after receiving a sexual assault forensic evidence kit from a law enforcement agency, test the sexual assault forensic evidence kit. Upon completion of a genetic marker analysis, the forensic laboratory shall include the DNA profile obtained from the genetic marker analysis in the State DNA Database and CODIS.
2. A sexual assault forensic evidence kit must be transported to a forensic laboratory and analyzed pursuant to **NRS 200.3786**, unless the survivor requests, in writing at any time prior to such analysis, for the forensic laboratory to defer analysis of the sexual assault forensic evidence kit.
3. Biological evidence, including, without limitation, a sexual assault forensic evidence kit, secured in connection with the investigation or prosecution of a criminal case must be preserved and stored in accordance with the provisions of this subsection and **NRS 176.0912**.
 - a. **NRS 176.0912 Biological evidence secured in connection with investigation or prosecution; required preservation.**
 - i. Except as otherwise provided in this section, upon the conviction of a defendant for a category A or B felony, an agency of criminal justice that has in its possession or custody any biological evidence secured in connection with the investigation or prosecution of the defendant shall preserve such evidence until the expiration of any sentence imposed on the defendant.
 - ii. Biological evidence subject to the requirements of this section may be consumed for testing upon notice to the defendant.
 - iii. An agency of criminal justice may establish procedures for:
 - a. Retaining probative samples of biological evidence subject to the requirements of this section; and
 - b. Disposing of bulk evidence that does not affect the suitability of such probative samples for testing.

A sexual assault forensic evidence kit that is in the custody of an agency of criminal justice must be retained for:

- (a) If the sexual assault forensic evidence kit is associated with an uncharged or unsolved sexual assault, at least 50 years.
 - (b) If the sexual assault forensic evidence kit is associated with an unreported or anonymous sexual assault, at least 20 years.
4. If a survivor has requested to defer analysis pursuant to subsection 2, the survivor may request that the forensic laboratory analyze the sexual assault forensic evidence kit at any later date before the expiration of the retention period pursuant to subsection 3.
 5. A survivor has the right to the information regarding the timeline of the genetic marker analysis of sexual assault forensic evidence kits pursuant to **NRS 200.3786** (*See above*).
- Sec. 23.** Upon the request of a survivor, he or she has the right to be informed of:
1. The results of the genetic marker analysis of the sexual assault forensic evidence kit of the survivor;
 2. Whether the analysis yielded a DNA profile; and
 3. Whether the analysis yielded the DNA profile of the defendant or person accused or convicted of a crime against the survivor or a person already in CODIS.
- Sec. 26.** Forensic evidence from a sexual assault may not be used:
1. To prosecute a survivor for any:
 - (a) Misdemeanor; or
 - (b) Offense related to a controlled substance.

2. As a basis to search for further evidence of any unrelated misdemeanor or any offense related to a controlled substance that may have been committed by the survivor.

Sec. 27.

1. The Office of the Attorney General shall:
 - (a) Develop a document that explains the rights of a survivor pursuant to the Sexual Assault Survivors' Bill of Rights and other relevant law; and
 - (b) Make the document available to medical providers, law enforcement officials and prosecutors.
2. The document must be in clear language that is comprehensible to a person proficient in English at the reading level of a fifth grader, accessible to persons with visual disabilities and available in all major languages of this State.
3. The document must include, without limitation:
 - (a) A clear statement that the survivor is not required to participate in the criminal justice system or to receive a forensic medical examination in order to retain the rights provided by the Sexual Assault Survivors' Bill of Rights and other relevant law;
 - (b) Means of contacting, by telephone or Internet, nearby sexual assault victims' advocates and centers for support for victims of sexual assault;
 - (c) Information about the availability of temporary and extended orders of protection pursuant to NRS 200.378;
 - i. NRS 200.378 Court may impose temporary or extended order to restrict conduct of alleged perpetrator, defendant or convicted person; penalty for violation of order; dissemination of order; notice provided in order.
 - a. In addition to any other remedy provided by law, a person who reasonably believes that the crime of sexual assault has been committed against him or her by another person may petition any court of competent jurisdiction for a temporary or extended order directing the person who allegedly committed the sexual assault to:
 - i. Stay away from the home, school, business or place of employment of the victim of the alleged sexual assault and any other location specifically named by the court.
 - ii. Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged sexual assault and any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged sexual assault.
 - iii. Comply with any other restriction which the court deems necessary to protect the victim of the alleged sexual assault or to protect any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged sexual assault.
 - b. If a defendant charged with a crime involving sexual assault is released from custody before trial or is found guilty at the trial, the court may issue a temporary or extended order or provide as a condition of the release or sentence that the defendant:
 - i. Stay away from the home, school, business or place of employment of the victim of the alleged sexual assault and any other location specifically named by the court.
 - ii. Refrain from contacting, intimidating, threatening or otherwise interfering with the victim of the alleged sexual assault and any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged sexual assault.
 - iii. Comply with any other restriction which the court deems necessary to protect the victim of the alleged sexual assault or to protect any other person named in the order, including, without limitation, a member of the family or the household of the victim of the alleged sexual assault.
 - c. A temporary order may be granted with or without notice to the adverse party. An extended order may be granted only after.
 - i. Notice [. . .]; and
 - ii. A hearing is held on the petition.
 - (d) Instructions for requesting the results of the genetic marker analysis of the sexual assault forensic evidence kit of the survivor;

- (e) Information concerning state and federal funds for compensation for medical and other costs associated with the sexual assault; and
- (f) Information concerning any municipal, state or federal right to restitution for survivors in the event of a criminal trial.

Sec. 28.

1. Except as otherwise provided in this subsection, a law enforcement agency shall, upon written request by the survivor, furnish within 1 month, free, complete and unaltered copies of all reports of the law enforcement agency concerning the sexual assault, regardless of whether the report has been closed by the law enforcement agency. A law enforcement agency may, as appropriate, redact personal identifying information from any reports provided pursuant to this subsection.
2. A prosecutor shall, upon written request of a survivor, provide certain information to the survivor pursuant to NRS 200.3784 [. . .]
 - i. NRS 200.3784 Victim to be given certain information and documents concerning case; clerk to keep record of order or condition restricting conduct of defendant.
 - a. The prosecuting attorney in any trial brought against a person on a charge of sexual assault shall inform the alleged victim of the final disposition of the case.
 - b. If the defendant is found guilty and the court issues an order or provides a condition of the sentence restricting the ability of the defendant to have contact with the victim or witnesses, the clerk of the court shall:
 - i. Keep a record of the order or condition of the sentence; and
 - ii. Provide a certified copy of the order or condition of the sentence to the victim and other persons named in the order.
4. The State shall establish a statewide program to track sexual assault forensic evidence kits pursuant to NRS 200.3788.

Sec. 29.

1. In addition to any other right provided by law, a survivor has the right:
 - (a) In any civil or criminal case related to a sexual assault, to be reasonably protected from the defendant and persons acting on behalf of the defendant.
 - (b) To be free from intimidation, harassment and abuse.
 - (c) To be treated with fairness and respect for his or her privacy and dignity.
 - (d) To be heard through a victim impact statement at any proceeding involving any plea, sentencing, post-conviction decision or any other proceeding where the rights of the survivor are at issue.
2. A survivor must not be required to submit to an examination by polygraph as a prerequisite to filing an accusatory pleading or participating in any part of the criminal justice system.
3. A court shall make reasonable efforts to provide the survivor and the family, friends and witnesses of the survivor with a secure waiting area or room that is separate from:
 - (a) The waiting area of the defendant and the family, friends, witnesses and attorneys of the defendant; and
 - (b) The office of the prosecutor, if applicable.

Sec. 35. NRS 200.3784 is hereby amended to read as follows:

- i. 200.3784 1. [The] Upon written request of the alleged victim, the prosecuting attorney in any trial brought against a person on a charge of sexual assault shall timely inform the alleged victim of [the] :
 - a. Any pretrial disposition of the case;
 - b. The final disposition of the case [.] ; and
 - c. Information from the record of registration pursuant to NRS 179D.151 (listing the contents of the record of registration, such as

the name, aliases, and physical description) regarding the defendant, if applicable.

2. If the defendant is found guilty and the court issues an order or provides a condition of the sentence restricting the ability of the defendant to have contact with the victim or witnesses, the clerk of the court shall:

Keep a record of the order or condition of the sentence; and

Provide a certified copy of the order or condition of the sentence to the victim and other persons named in the order.

Sec. 36. NRS 200.3786 is hereby amended to read as follows:

- i. 1. Within 72 hours after conducting a forensic medical examination, a medical provider shall notify the law enforcement agency having jurisdiction over the alleged sexual assault of the victim and the law enforcement agency shall take possession of the sexual assault forensic evidence kit.
- ii. 2. If a law enforcement agency determines it does not have jurisdiction over an alleged sexual assault, the law enforcement agency shall notify the law enforcement agency having proper jurisdiction [. . .] within 5 days [. . .]
- iii. 3. Except as otherwise provided in this subsection, a law enforcement agency shall, not later than 30 days after receiving notice pursuant to subsection 1 or 2 of a sexual assault forensic evidence kit, submit the sexual assault forensic evidence kit to the applicable forensic laboratory responsible for conducting a genetic marker analysis. The provisions of this subsection do not apply to any non-investigatory sexual assault forensic evidence kit associated with a victim who has chosen to remain anonymous.
- iv. 4. A law enforcement agency shall, not later than 5 days after receiving notice of a sexual assault forensic evidence kit, assign a criminal complaint number to the evidence.
- v. 5. Any law enforcement agency that submits a sexual assault forensic evidence kit to a forensic laboratory shall, immediately following such a submission, notify the victim of the information contained in subsections 1, 2 and 3.
- vi. 6. A forensic laboratory shall, not later than 120 days after receiving a sexual assault forensic evidence kit from a law enforcement agency, test the sexual assault forensic evidence kit, unless the victim requests, in writing, to defer the genetic marker analysis of the sexual assault forensic evidence kit pursuant to section 22 of this act.

Sec. 37. NRS 200.3788 is hereby amended to read as follows:

1. A statewide program to track sexual assault forensic evidence kits must be established in this State. [. . .]
2. The program to track sexual assault forensic evidence kits must: [. . .]
 - (c) Allow a victim of sexual assault to anonymously track or receive, by telephone or on an Internet website, updates regarding the status and location of his or her sexual assault forensic evidence kit.