

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1126

Introduced by Bolz, 29.

Read first time January 18, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to victims' rights; to adopt the Sexual
- 2 Assault Survivors' Bill of Rights Act; and to provide for a civil
- 3 action.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known and may be
2 cited as the Sexual Assault Survivors' Bill of Rights Act.

3 Sec. 2. For the purposes of the Sexual Assault Survivors' Bill of
4 Rights Act:

5 (1) Sexual assault forensic evidence, SAEC Kit, or kit means any
6 human biological specimen collected by a medical provider during a
7 forensic medical examination from an alleged survivor, including, but not
8 limited to, a toxicology kit;

9 (2) Sexual assault survivor or survivor means any person who is a
10 victim of a crime defined under section 28-319, 28-319.01, 28-320,
11 28-320.01, 28-322.01, 28-322.02, 28-322.03, 28-322.04, subdivision (1)(c)
12 or (g) of section 28-386, 28-703, or 28-831, and, if the survivor is
13 incompetent, deceased, or a minor who is unable to consent to counseling
14 services, the parent, guardian, spouse, or any other person related to
15 the survivor by consanguinity or affinity to the second degree, or any
16 other lawful representative of the survivor, unless such person is the
17 alleged assailant; and

18 (3) Medical provider means any qualified health care professional,
19 hospital, other emergency medical facility, or other facility conducting
20 a medical evidentiary or physical examination of the survivor.

21 Sec. 3. (1) The rights provided to survivors in the Sexual Assault
22 Survivors' Bill of Rights Act apply whenever a survivor is subject to a
23 medical evidentiary or physical examination and whenever a survivor is
24 subject to an interview by a peace officer, prosecutor, or defense
25 attorney.

26 (2) A survivor retains all the rights under this act at all times
27 regardless of whether the survivor consents to a medical evidentiary or
28 physical examination to collect sexual assault forensic evidence.

29 Sec. 4. (1) A survivor has the right to consult with a sexual
30 assault counselor during any medical evidentiary or physical examination,
31 as well as the right to have a support person of the survivor's choosing

1 present during any interview by a peace officer, prosecutor, or defense
2 attorney. A survivor retains this right even if the survivor has waived
3 the right in a previous examination or interview.

4 (2) Communications between a survivor and a sexual assault counselor
5 are confidential and privileged as the privilege exists under section
6 27-504.

7 Sec. 5. (1) No costs incurred by a medical provider for the medical
8 evidentiary examination portion of the examination of a survivor shall be
9 charged to the survivor, as provided in section 81-1429.03.

10 (2) Before a medical provider commences a medical evidentiary or
11 physical examination of a survivor, the medical provider shall inform the
12 survivor of the following:

13 (a) The survivor's rights pursuant to the Sexual Assault Survivors'
14 Bill of Rights Act and other relevant law in a document to be developed
15 by the Nebraska Commission on Law Enforcement and Criminal Justice, which
16 shall be signed by the survivor of sexual assault to confirm receipt;

17 (b) The survivor's right to consult with a sexual assault counselor,
18 to be contacted by the medical provider before the commencement of the
19 medical evidentiary or physical examination, unless no sexual assault
20 counselor can appear in a reasonably timely manner, and to have present
21 at least one support person of the survivor's choosing;

22 (c) If a sexual assault counselor or support person cannot appear in
23 a timely manner, the ramifications of delaying the medical evidentiary or
24 physical examination; and

25 (d) After the medical evidentiary or physical examination, the
26 survivor's right to shower at no cost, unless showering facilities are
27 not available.

28 Sec. 6. (1) Before commencing an interview of a survivor, a peace
29 officer, prosecutor, or defense attorney shall inform the survivor of the
30 following:

31 (a) The survivor's rights pursuant to the Sexual Assault Survivors'

1 Bill of Rights Act and other relevant law by providing the survivor with
2 a document to be developed by the Nebraska Commission on Law Enforcement
3 and Criminal Justice, which document shall be signed by the survivor of
4 sexual assault to confirm receipt;

5 (b) The survivor's right to consult with a sexual assault counselor
6 during any interview by a peace officer, prosecutor, or defense attorney,
7 to be contacted by the interviewer before the commencement of the
8 interview, unless no sexual assault counselor can appear in a reasonably
9 timely manner;

10 (c) The survivor's right to have a support person of the survivor's
11 choosing present during any interview by a peace officer, prosecutor, or
12 defense attorney, unless the peace officer, prosecutor, or defense
13 attorney determines in his or her good faith professional judgment that
14 the presence of that individual would be detrimental to the purpose of
15 the interview; and

16 (d) For interviews by a peace officer, the survivor's right to be
17 interviewed by a peace officer of the gender of the survivor's choosing.
18 If no peace officer of that gender is reasonably available, the survivor
19 may be interviewed by an available peace officer only upon the survivor's
20 consent.

21 (2) A peace officer, prosecutor, or defense attorney shall not, for
22 any reason, discourage a survivor from receiving a medical evidentiary or
23 physical examination.

24 Sec. 7. A survivor retains the right to have counsel present during
25 all stages of any medical examination, interview, investigation, or other
26 interaction with representatives from the legal or criminal justice
27 systems within this state as set forth in sections 5 and 6 of this act.
28 Treatment of the survivor should not be affected or altered in any way as
29 a result of the survivor's decision to exercise this right to have
30 counsel present during any interaction with the legal or criminal justice
31 systems within this state.

1 Sec. 8. (1) A survivor has the right to prompt analysis of sexual
2 assault forensic evidence.

3 (2) A medical provider shall, upon conducting a medical evidentiary
4 examination to collect sexual assault forensic evidence, inform the
5 survivor that:

6 (a) The sexual assault forensic evidence shall be transported to a
7 crime laboratory and analyzed within ninety days after receipt of such
8 evidence, unless the survivor requests in writing at any time prior to
9 analysis for the crime laboratory to defer analysis of the sexual assault
10 forensic evidence;

11 (b) The crime laboratory shall retain the sexual assault forensic
12 evidence indefinitely; and

13 (c) If the survivor has requested deferred analysis, as described in
14 subdivision (2)(a) of this section, the survivor can request the crime
15 laboratory to analyze the sexual assault forensic evidence at any later
16 date before the expiration of the retention period defined in subdivision
17 (2)(b) of this section.

18 (3) A medical provider shall, within twenty-four hours after
19 collecting any sexual assault forensic evidence, notify the law
20 enforcement agency having jurisdiction over the alleged assault.

21 (4) A law enforcement agency that receives notice under subsection
22 (3) of this section shall take possession of the sexual assault forensic
23 evidence from the medical provider. Upon taking such possession, the law
24 enforcement agency shall:

25 (a) Submit it to the crime laboratory within five days after
26 receiving that notice and assign a criminal complaint number to that
27 evidence within five days after receiving that notice; or

28 (b) If the law enforcement agency determines that it does not have
29 jurisdiction over the alleged assault, it shall notify the law
30 enforcement agency having proper jurisdiction of that fact within five
31 days after taking possession of the sexual assault forensic evidence.

1 After receiving such notice, the law enforcement agency having proper
2 jurisdiction shall take possession of the sexual assault forensic
3 evidence and submit it to the crime laboratory within five days.

4 (5) Any law enforcement agency that submits sexual assault forensic
5 evidence to a crime laboratory shall, immediately following such
6 submission, notify the survivor of the name, address, and telephone
7 number of the crime laboratory. The law enforcement agency shall also
8 notify the survivor of the information listed in subdivisions (2)(a)
9 through (c) of this section.

10 (6) A crime laboratory that receives sexual assault forensic
11 evidence on or after the effective date of this act shall analyze that
12 evidence and upload any available DNA profiles into the Federal Bureau of
13 Investigation's Combined DNA Index System within ninety days after
14 receipt of such evidence, unless the survivor has requested in writing
15 for the crime laboratory to defer analysis of that evidence.

16 (7) A crime laboratory shall retain all sexual assault forensic
17 evidence indefinitely. A survivor has the right to be informed, upon the
18 survivor's request, of the results of the analysis of the survivor's
19 sexual assault forensic evidence, whether the analysis yielded a DNA
20 profile, and whether the analysis yielded a DNA match, either to the
21 named perpetrator or to a suspect already in the Combined DNA Index
22 System. The survivor has the right to receive this information through a
23 secure and confidential message in writing from the crime laboratory.
24 This message must include the telephone number of the crime laboratory so
25 that the survivor can call regarding the results.

26 (8)(a) A defendant or person accused or convicted of a crime against
27 a survivor shall have no standing to object to any failure to comply with
28 this section, and the failure to provide a right or notice to a survivor
29 under this section may not be used by a defendant to seek to have the
30 conviction or sentence set aside.

31 (b) The failure of a law enforcement agency to take possession of

1 any sexual assault forensic evidence under the Sexual Assault Survivors'
2 Bill of Rights Act or to submit that evidence for analysis within the
3 time prescribed under the act does not alter the authority of a law
4 enforcement agency to take possession of that evidence or to submit that
5 evidence to the crime laboratory and does not alter the authority of the
6 crime laboratory to accept and analyze the evidence or to upload the DNA
7 profile obtained from that evidence into the Combined DNA Index System. A
8 failure to comply with the requirements of the act does not constitute
9 grounds in any criminal or civil proceeding for challenging the validity
10 of a data base match or of any data base information, and any evidence of
11 a DNA record shall not be excluded by a court on those grounds.

12 (9) No sexual assault forensic evidence shall be used:

13 (a) To prosecute a survivor for any misdemeanor crimes or any crime
14 under the Uniform Controlled Substances Act; or

15 (b) As a basis to search for further evidence of any unrelated
16 misdemeanor crimes or any crime under the Uniform Controlled Substance
17 Act that may have been committed by the survivor.

18 Sec. 9. (1) Upon initial interaction with a survivor, a peace
19 officer or medical provider shall provide the survivor with a document to
20 be developed by the Nebraska Commission on Law Enforcement and Criminal
21 Justice that explains the rights of survivors, pursuant to the Sexual
22 Assault Survivors' Bill of Rights Act and other relevant law, in clear
23 language that is comprehensible to a person proficient in English at the
24 fifth grade level, accessible to persons with visual disabilities, and
25 available in all major languages spoken in this state. This document
26 shall include, but is not limited to:

27 (a) A clear statement that a survivor is not required to participate
28 in the criminal justice system or to receive a medical evidentiary or
29 physical examination in order to retain the rights provided by the act
30 and other relevant law;

31 (b) Telephone and Internet means of contacting nearby rape crisis

1 centers and sexual assault counselors;

2 (c) Forms of law enforcement protection available to the survivor,
3 including temporary protection orders, and the process to obtain such
4 protection;

5 (d) Instructions for requesting the results of the analysis of the
6 survivor's sexual assault forensic evidence; and

7 (e) State and federal compensation funds for medical and other costs
8 associated with the sexual assault and information on any municipal,
9 state, or federal right to restitution for survivors in the event of a
10 criminal trial.

11 (2) A peace officer shall, upon written request by a survivor,
12 furnish within ten business days of receiving such request a free,
13 complete, and unaltered copy of all law enforcement reports concerning
14 the sexual assault, regardless of whether the report has been closed by
15 the law enforcement agency.

16 (3) A prosecutor shall, upon written request by a survivor, provide:

17 (a) Timely notice of any pretrial disposition of the case;

18 (b) Timely notice of the final disposition of the case, including
19 the conviction, sentence, and place and time of incarceration;

20 (c) Timely notice of a convicted defendant's location, including
21 whenever the defendant receives a temporary, provisional, or final
22 release from custody, escapes from custody, is moved from a secure
23 facility to a less secure facility, or reenters custody; and

24 (d) A convicted defendant's information under the Sex Offender
25 Registration Act, if any.

26 Sec. 10. (1) In either a civil or criminal case relating to the
27 sexual assault, a survivor has the right to be reasonably protected from
28 the defendant and persons acting on behalf of the defendant.

29 (2) A survivor has the right to be free from intimidation,
30 harassment, and abuse. A court shall make reasonable efforts to provide
31 the survivor and the survivor's family members, friends, and witnesses

1 with a secure waiting area or room that is separate from the waiting area
2 of the defendant and the defendant's family members, friends, witnesses,
3 and attorneys and separate from the prosecutor's office.

4 (3) A survivor has the right to be treated with fairness and respect
5 for his or her privacy and dignity. A court shall, upon the request of
6 the survivor, clear the courtroom of all persons when the survivor is
7 testifying regarding the sexual assault in any civil or criminal trial,
8 except that parties to the cause and their immediate families or
9 guardians, attorneys and personnel working at the attorneys' direction,
10 officers of the court, jurors, newspaper reporters or broadcasters, court
11 reporters, and, with the consent of the survivor, witnesses designated by
12 the prosecutor, may remain in the courtroom.

13 (4) A survivor has the right to be heard through a victim impact
14 statement at sentencing or any other proceeding where a right of the
15 survivor is at issue, as provided in section 81-1848.

16 Sec. 11. It is the intent of the Legislature that \$XXX be
17 appropriated for fiscal years 2018 to 2020 to implement the Sexual
18 Assault Survivors' Bill of Rights Act.