

SENATE BILL REPORT

SB 5686

As of February 15, 2017

Title: An act relating to creating a sexual assault survivor bill of rights.

Brief Description: Creating a sexual assault survivor bill of rights.

Sponsors: Senators Rivers, Ranker, Fain and Keiser.

Brief History:

Committee Activity: Law & Justice: 2/15/17.

Brief Summary of Bill

- Enumerates seven rights of sexual assault survivors.
- Provides that the rights attach whenever a survivor consents to a forensic, medical evidentiary, or physical examination and whenever a survivor consents to an interview by law enforcement officers, district attorneys, or defense attorneys.
- Specifies that all the enumerated rights are retained regardless of whether the survivor agrees to participate in the criminal justice system at any time and regardless of whether the survivor agrees to receive a forensic or medical evidentiary examination to collect sexual assault forensic evidence.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: In October 2016, the federal Sexual Assault Survivors' Rights Act was signed into law. The measure focuses on collecting and preserving the forensic evidence collected in a medical examination after a suspected sexual assault. Police enter the DNA collected from rape kits into state and national databases. The new law was the first at the federal level protecting survivors' access to the initial forensic medical examination and instituting measures to ensure evidence of rape is appropriately preserved and tested.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under federal law, survivors can no longer be charged fees or prevented from getting a rape kit examination, even if they have not yet decided to file a police report. Once the medical examination is completed, the kits must be preserved, at no cost to the survivor, until the applicable statute of limitations runs out. Survivors are now able to request that authorities notify them before destroying their rape kits, and they have the right to request that the evidence be preserved. Once the kit is tested, they also have the right to be notified of important results—including a DNA profile match and toxicology report. Survivors must be informed of these rights, regardless of whether they decide to pursue legal action against an assailant. The law also creates a task force to examine how well the new regulations work.

The Department of Justice's (DOJ) Office of Justice Programs is authorized to make grants to states to develop sexual assault survivors' rights and policies and to disseminate written notice of such rights and policies to medical centers, hospitals, forensic examiners, sexual assault service providers, law enforcement agencies, and other state entities. The DOJ is directed to establish a working group to develop, coordinate, and disseminate best practices regarding the care and treatment of sexual assault survivors and the preservation of forensic evidence.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A sexual assault survivor or survivor means any person who has sustained emotional, psychological, physical, or financial injury. The term includes the parent, guardian, spouse, or any other person related to the survivor by consanguinity or affinity to the second degree, or any other lawful representative of the survivor, if the survivor is incompetent, deceased, or a minor who is unable to consent to counseling services, unless the person is the alleged assailant. A sexual assault survivor's advocate is any person who is a sexual assault advocate, or a crime victim advocate.

The rights provided to sexual assault survivors attach whenever a survivor consents to a forensic, medical evidentiary, or physical examination and whenever a survivor consents to an interview by law enforcement officers, district attorneys, or defense attorneys. A sexual assault survivor retains all the enumerated rights regardless of whether the survivor agrees to participate in the criminal justice system at any time and regardless of whether the survivor agrees to receive a forensic or medical evidentiary examination to collect sexual assault forensic evidence.

A sexual assault survivor has the right to:

- consult with a sexual assault survivor's advocate during any medical evidentiary or physical examination and during any interview by law enforcement officers, district attorneys, or defense attorneys;
- consult with a sexual assault survivor's advocate, to be contacted by the interviewer, during any interview by a law enforcement officer, prosecuting attorney, or defense attorney, unless a sexual assault survivor's advocate cannot be summoned in a reasonable timely manner;
- be informed, upon the survivor's request, of when the analysis of the forensic evidence will be or was completed, of the results of the analysis of the forensic evidence, whether the analysis yielded a DNA profile, and whether the analysis

- yielded a DNA match—the survivor has the right to receive this information, in writing, through a secure confidential message;
- be reasonably protected from the defendant and persons acting on behalf of the defendant;
 - be free from intimidation, harassment, and abuse;
 - be treated with fairness and respect for their privacy and dignity; and
 - be heard through a survivor's impact statement at any proceeding involving post-arrest decisions, pleas, sentencing, post-conviction release, or any other proceeding.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: PRO: This represents part of the suite of legislative ideas from the SAFE workgroup. We need to focus on the rights of victims and take proactive steps to help them heal. This sends a message to survivors that we care about them.

OTHER: Having the advocate in the room during an interview may result in a waiver of confidentiality. We already have provisions in the state Constitution and statutes protecting crime victims' rights. This risks turning advocates into potential witnesses. Rape victims can already request that the rape kit not be sent for testing. The provisions of the bill should be integrated into the current crime victim statutes. There is no enforcement mechanism for violation of the enumerated rights.

Persons Testifying: PRO: Senator Ann Rivers, Prime Sponsor.

OTHER: Randy Ryan, Executive Director, Children's Advocacy Services; Tom McBride, WAPA; David Ward, Legal Voice; Andrea Piper-Wentland, Executive Director, WCSAP.

Persons Signed In To Testify But Not Testifying: No one.