

1 **SENATE FLOOR VERSION**

2 April 2, 2019

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 2639

6 By: Munson and Nollan of the
7 House

8 and

9 Floyd of the Senate

10 [sexual assault victims - creating the Sexual
11 Assault Victims' Right to Information Act - declaring
12 rights of sexual assault victims - effective date]

13 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

14 SECTION 1. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 142C of Title 21, unless there
16 is created a duplication in numbering, reads as follows:

17 Sections 1 through 10 of this act shall be known and may be
18 cited as the "Sexual Assault Victims' Right to Information Act".

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 142C-1 of Title 21, unless there
21 is created a duplication in numbering, reads as follows:

22 For the purposes of this act:

23 1. "Forensic laboratory" means a laboratory operated by or
24 contracted with the state or any unit of municipal, county, city or

1 other local government that examines physical evidence in criminal
2 matters and provides opinion testimony in a court of law;

3 2. "Law enforcement officer" means any sheriff, police officer,
4 peace officer, tribal law enforcement officer, federal law
5 enforcement officer, campus police officer or any other law
6 enforcement officer who has been certified by the Council on Law
7 Enforcement Education and Training and whose duty it is to enforce
8 and preserve the public peace or any other first responder;

9 3. "Sexual assault victims' advocate" means any person who is
10 certified as a behavioral health professional, or as a victims'
11 advocate working in a center that offers sexual assault services,
12 who has received formalized training through a government agency,
13 tribal organization, tribal agency or victim services agency, in
14 providing trauma-informed direct services to victims of sexual
15 assault;

16 4. "Sexual assault forensic evidence" means any human
17 biological specimen collected by a medical provider during a
18 forensic medical examination from an alleged sexual assault victim
19 including, when circumstances indicate the need, a toxicology kit;
20 and

21 5. "Sexual assault victim" or "victim" means any person who is
22 a victim of a sexual assault defined under Section 142.20 of Title
23 21 of the Oklahoma Statutes. If the victim is incompetent, the term
24 shall include the parent, guardian, spouse or any other person

1 related to the incompetent victim by consanguinity or affinity to
2 the second degree, or any other lawful representative of the
3 incompetent victim.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 142C-2 of Title 21, unless there
6 is created a duplication in numbering, reads as follows:

7 A sexual assault victim retains all the rights of this act
8 regardless of whether the victim agrees to participate in the
9 criminal justice system at any time and regardless of whether the
10 victim agrees to receive a medical evidentiary examination to
11 collect sexual assault forensic evidence.

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 142C-3 of Title 21, unless there
14 is created a duplication in numbering, reads as follows:

15 A. A sexual victims' assault victim has the right to consult,
16 either in person or via telemedicine, with a sexual assault victims'
17 advocate during any medical evidentiary or physical examination and
18 during any interview by law enforcement authorities or district
19 attorneys. A sexual assault victim retains this right even if the
20 victim has waived the right in a previous examination or interview.
21 Where a sexual assault victims' advocate is not available for an in-
22 person consultation, consultations via telemedicine must be
23 provided.

24

1 B. Communications between a sexual assault victim and a sexual
2 assault victims' advocate are confidential and privileged, including
3 information disclosed in the presence of any third persons
4 conducting a medical evidentiary or physical examination.

5 C. The presence of a sexual assault victims' advocate does not
6 operate to defeat any existing privilege otherwise guaranteed by
7 law.

8 D. The waiving of the right to a sexual assault victims'
9 advocate by a sexual assault victim is privileged information.

10 SECTION 5. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 142C-4 of Title 21, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Costs incurred by a qualified health care professional,
14 hospital or other emergency medical facility for the medical
15 evidentiary examination portion of the examination and any
16 medications which are related to the sexual assault and deemed
17 necessary by the health care professional in the treatment of a
18 sexual assault victim shall not be charged directly or indirectly to
19 the victim, as set forth in Section 142.20 of Title 21 of the
20 Oklahoma Statutes.

21 B. Before a medical facility commences a medical evidentiary or
22 physical examination of a sexual assault victim, the medical
23 facility shall inform the victim of the following:

24

1 1. The rights of the victim pursuant to this act and other
2 relevant law in a document to be developed by the Office of the
3 Attorney General; and

4 2. The right of the victim to consult with a sexual assault
5 victims' advocate who is to be requested by the medical facility
6 before the commencement of the medical evidentiary or physical
7 examination, unless no sexual assault victims' advocate is
8 available.

9 SECTION 6. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 142C-5 of Title 21, unless there
11 is created a duplication in numbering, reads as follows:

12 A. Before commencing an interview of a sexual assault victim, a
13 law enforcement officer or district attorney shall inform the victim
14 of the right to consult with a sexual assault victims' advocate
15 during any interview by a law enforcement officer or district
16 attorney and the right to have a sexual assault victims' advocate
17 requested by the interviewer and present before the commencement of
18 the interview, unless no sexual assault victims' advocate is
19 available.

20 B. No person, for any reason, shall discourage a sexual assault
21 victim from receiving a medical evidentiary or physical examination
22 or discourage the victim from reporting to the proper authorities.

23

24

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 142C-6 of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

4 If a victim retains counsel, the victim has the right to have
5 such counsel present during all stages of the investigation or other
6 interaction with representatives from the legal or criminal justice
7 systems within the state. Treatment of the victim should not be
8 affected or altered in any way as a result of the decision of the
9 victim to exercise this right to have counsel present during any
10 interaction with the legal or criminal justice systems within the
11 state.

12 SECTION 8. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 142C-7 of Title 21, unless there
14 is created a duplication in numbering, reads as follows:

15 A. A sexual assault victim has the right to request and receive
16 the results and status of the analysis of the sexual assault
17 forensic evidence of the victim.

18 B. A defendant or person accused or convicted of a crime
19 against a sexual assault victim shall have no standing to object to
20 any failure to comply with this section, and the failure to provide
21 a right or notice to a sexual assault victim under this section may
22 not be used by a defendant to seek to have the conviction or
23 sentence set aside.

24

1 C. A sexual assault victim has the right to retain a copy of
2 the police report from law enforcement at the conclusion of the
3 criminal case.

4 D. No sexual assault forensic evidence shall be used:

5 1. To prosecute a sexual assault victim for any misdemeanor
6 crimes; or

7 2. As a basis to search for further evidence of any unrelated
8 misdemeanor crimes that may have been committed by the sexual
9 assault victim.

10 SECTION 9. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 142C-8 of Title 21, unless there
12 is created a duplication in numbering, reads as follows:

13 Upon initial interaction with a sexual assault victim, a law
14 enforcement officer or medical provider shall provide the victim
15 with a document to be developed by the Office of the Attorney
16 General that explains the rights of sexual assault victims pursuant
17 to this act and other relevant law. This document shall include,
18 but is not limited to:

19 1. A clear statement that a sexual assault victim is not
20 required to participate in the criminal justice system or to receive
21 a medical evidentiary or physical examination in order to retain the
22 rights provided by this act and other relevant law; and

23 2. Instructions for requesting the results of the analysis of
24 the sexual assault forensic evidence.

1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 142C-9 of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

4 Where a crime laboratory has gained possession of sexual assault
5 forensic evidence, the crime laboratory shall retain said evidence
6 for a minimum of fifty (50) years before it is destroyed or until
7 the victim reaches forty (40) years of age, if the victim was a
8 minor when the sexual assault occurred.

9 SECTION 11. AMENDATORY 22 O.S. 2011, Section 40.3A, is
10 amended to read as follows:

11 Section 40.3A A. Any physician, surgeon, resident, intern,
12 physician assistant, registered nurse, or any other health care
13 professional examining, attending, or treating the victim of what
14 appears to be or is reported by the victim to be rape, rape by
15 instrumentation or forcible sodomy, as defined in Section 1111,
16 1111.1 or 888 of Title 21 of the Oklahoma Statutes or any form of
17 sexual assault, shall not be required to report any incident of what
18 appears to be or is reported to be such crimes if:

19 1. Committed upon a person who is over the age of eighteen (18)
20 years; and

21 2. The person is not an incapacitated adult.

22 B. Any physician, surgeon, resident, intern, physician
23 assistant, registered nurse, or any other health care professional
24 examining, attending, or treating a victim shall be required to

1 report any incident of what appears to be or is reported to be rape,
2 rape by instrumentation, forcible sodomy or any form of sexual
3 assault, if requested to do so either orally or in writing by the
4 victim and shall be required to inform the victim of the victim's
5 right to have a report made. A requested report of any incident
6 shall be promptly made orally or by telephone to the nearest law
7 enforcement agency in the county wherein the sexual assault occurred
8 or, if the location where the sexual assault occurred is unknown,
9 the report shall be made to the law enforcement agency nearest to
10 the location where the injury is treated.

11 C. In all cases of what appears to be or is reported to be
12 rape, rape by instrumentation, forcible sodomy or any form of sexual
13 assault, the physician, surgeon, resident, intern, physician
14 assistant, registered nurse, or any other health care professional
15 examining, attending, or treating the victim of what appears to be
16 such crimes, shall clearly and legibly document the incident and
17 injuries observed and reported, as well as any treatment provided or
18 prescribed.

19 D. In all cases of what appears to be or is reported to be
20 rape, rape by instrumentation, forcible sodomy or any form of sexual
21 assault, the physician, surgeon, resident, intern, physician
22 assistant, registered nurse, or any other health care professional
23 examining, attending, or treating the victim of what appears to be
24 rape, rape by instrumentation, forcible sodomy or any form of sexual

1 assault, shall inform the victim of the victim's rights, including
2 those rights set forth in the Oklahoma Victim's Rights Act, and
3 shall refer the victim to sexual assault and victim services
4 programs, including providing the victim with twenty-four-hour
5 statewide telephone communication service established by Section
6 18p-5 of Title 74 of the Oklahoma Statutes.

7 E. Every physician, surgeon, resident, intern, physician
8 assistant, registered nurse, or any other health care professional
9 making a report of rape, rape by instrumentation, forcible sodomy or
10 any form of sexual assault pursuant to this section or examining
11 such victims to determine the likelihood of such crimes, and every
12 hospital or related institution in which the victims were examined
13 or treated shall, upon the request of a law enforcement officer
14 conducting a criminal investigation into the case, provide to the
15 officer copies of the results of the examination or copies of the
16 examination on which the report was based, and any other clinical
17 notes, X-rays, photographs, and other previous or current records
18 relevant to the case.

19 SECTION 12. This act shall become effective November 1, 2019.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
21 April 2, 2019 - DO PASS AS AMENDED and referred to second committee
22 and withdrawn from Appropriations on April 11, 2019
23
24