

SEXUAL ASSAULT KIT PROCESSING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill modifies provisions of the criminal code regarding the testing of sexual assault kits.

Highlighted Provisions:

This bill:

- requires that all sexual assault kits, except for those classified as restricted kits, be tested to obtain DNA profiles;
- provides that testing of a sexual assault kit be completed within a specified amount of time;
- provides the process by which sexual assault kits shall be stored and transmitted for testing;
- provides that a sexual assault kit shall be classified as a restricted kit if the victim chooses not to interview with law enforcement about the sexual assault or sexual

abuse;

- ▶ provides the guidelines and process for the retention and disposal of sexual assault kits;

- ▶ requires medical personnel who conduct sexual assault examinations to inform each victim of specified rights, available treatments, and services;

- ▶ authorizes the Department of Public Safety to develop and implement a statewide sexual assault kit tracking system;

- ▶ requires the Department of Public Safety and the Utah Prosecution Council to develop and offer training to law enforcement officers on responding to cases of sexual assault or sexual abuse;

- ▶ requires the Peace Officers Standards and Training division to provide training to persons seeking certification as a peace officer on sexual assault and sexual abuse;

- ▶ provides rulemaking authority for the Department of Public Safety to implement the tracking system, establish the timelines for processing sexual assault kits, and the submission of information for each sexual assault kit; and

- ▶ requires the Department of Public Safety to report to the Law Enforcement and Criminal Justice Interim Committee each year regarding the processing of sexual assault kits.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

76-5-601, Utah Code Annotated 1953

76-5-602, Utah Code Annotated 1953

76-5-603, Utah Code Annotated 1953

76-5-604, Utah Code Annotated 1953

56 **76-5-605**, Utah Code Annotated 1953
57 **76-5-606**, Utah Code Annotated 1953
58 **76-5-607**, Utah Code Annotated 1953
59 **76-5-608**, Utah Code Annotated 1953
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61 **76-5-610**, Utah Code Annotated 1953

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63 *Be it enacted by the Legislature of the state of Utah:*

64 Section 1. Section **76-5-601** is enacted to read:

65 **Part 6. Sexual Assault Kit Processing Act**

66 **76-5-601. Title.**

67 This part is known as the "Sexual Assault Kit Processing Act".

68 Section 2. Section **76-5-602** is enacted to read:

69 **76-5-602. Definitions.**

70 For purposes of this part:

71 (1) "Collecting facility" means a hospital, health care facility, or other facility that
72 performs sexual assault examinations.

73 (2) "Department" means the Department of Public Safety.

74 (3) "Evidence-based, trauma-informed, victim-centered" means policies, procedures,
75 programs, and practices that:

76 (a) have demonstrated an ability to minimize retraumatization associated with the
77 criminal justice process by recognizing the presence of trauma symptoms and acknowledging
78 the role that trauma has played in the life of a victim of sexual assault or sexual abuse; and

79 (b) encourage law enforcement officers to interact with victims of sexual assault or
80 sexual abuse with compassion and sensitivity in a nonjudgmental manner.

81 (4) "Restricted kit" means a sexual assault kit:

82 (a) that is collected by a collecting facility; and

83 (b) for which a victim who is 18 years of age or older chooses not to provide a personal

statement about the sexual assault to law enforcement, as provided in Subsection 76-5-606(1)(d).

(5) "Sexual assault kit" means a package of items that is used by medical personnel to gather and preserve biological and physical evidence following an allegation of sexual assault.

Section 3. Section **76-5-603** is enacted to read:

76-5-603. All sexual assault kits to be submitted.

(1) Except as provided in Subsection 76-5-604(4), beginning July 1, 2018, all sexual assault kits received by law enforcement agencies shall be submitted to the Utah Bureau of Forensic Services in accordance with the provisions of this part.

(2) The Utah Bureau of Forensic Services shall test all sexual assault kits that the bureau receives with the goal of developing autosomal DNA profiles that are eligible for entry into the Combined DNA Index System.

(3) (a) The testing of all sexual assault kits shall be completed within a specified amount of time, as determined by administrative rule consistent with the provisions of this part.

(b) The ability of the Utah Bureau of Forensic Services to meet the established time frames may be dependent upon the following factors:

(i) the number of sexual assault kits that the Utah Bureau of Forensic Services receives;

(ii) the technology available and improved testing methods;

(iii) fully trained and dedicated staff to meet the full workload needs of the Utah Bureau of Forensic Services; and

(iv) the number of lab requests received relating to other crime categories.

Section 4. Section **76-5-604** is enacted to read:

76-5-604. Sexual assault kit processing -- Restricted kits.

(1) The collecting facility shall enter the required victim information into the statewide sexual assault kit tracking system, defined in Section 76-5-607, within 24 hours of performing a sexual assault examination.

(2) Each sexual assault kit collected by medical personnel shall be taken into custody

by a law enforcement agency as soon as possible and within one business day of notice from the collecting facility.

(3) The law enforcement agency that receives a sexual assault kit shall enter the required information into the statewide sexual assault kit tracking system, provided in Section 76-5-607, within five business days of receiving a sexual assault kit from a collecting facility.

(4) Each sexual assault kit received by a law enforcement agency from a collecting facility that relates to an incident that occurred outside of the jurisdiction of the law enforcement agency shall be transferred to the law enforcement agency with jurisdiction over the incident within 10 days of learning that another law enforcement agency has jurisdiction.

(5) (a) Except for restricted kits, each sexual assault kit shall be submitted to the Utah Bureau of Forensic Services as soon as possible, but no later than 30 days after receipt by a law enforcement agency.

(b) Restricted kits may not be submitted to the Utah Bureau of Forensic Services.

(c) Restricted kits shall be maintained by the law enforcement agency with jurisdiction, in accordance with the provisions of this part.

(d) If a victim chooses to provide a personal statement about the sexual assault or sexual abuse to law enforcement at any time after declining to provide a statement:

(i) the restricted kit shall no longer be classified as restricted; and

(ii) the sexual assault kit shall be transmitted to the Utah Bureau of Forensic Services as soon as possible, but no later than 30 days after the victim chooses to provide a statement to law enforcement.

(6) If available, a suspect standard or a consensual partner elimination standard shall be submitted to the Utah Bureau of Forensic Services:

(a) with the sexual assault kit, if available, at the time the sexual assault kit is submitted; or

(b) as soon as possible, but no later than 30 days from the date the kit was obtained by the law enforcement agency, if not obtained until after the sexual assault kit is submitted.

(7) Failure to meet a deadline established in this part or as part of any rules established

by the department is not a basis for dismissal of a criminal action or a bar to the admissibility of the evidence in a criminal action.

Section 5. Section **76-5-605** is enacted to read:

76-5-605. Sexual assault kit retention and disposal.

Any item of evidence gathered by collecting facility personnel, law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant may not be disposed of before trial of a criminal defendant unless:

(1) 50 years have passed from the date of evidence collection for sexual assault kits relating to an uncharged or unresolved crime; or

(2) 20 years have passed from the date of evidence collection for restricted kits, and:

(a) the prosecution has determined that the defendant will not be tried for the criminal offense;

(b) the prosecution has filed a motion with the court to destroy the evidence; and

(c) an attempt has been made to notify the victim as required in Subsections [77-37-3\(3\)\(b\)\(i\)](#) and [\(ii\)](#).

Section 6. Section **76-5-606** is enacted to read:

76-5-606. Victim notification of rights -- Notification of law enforcement.

(1) Collecting facility personnel who conduct sexual assault examinations shall inform each victim of a sexual assault of:

(a) available services for treatment of sexually transmitted infections, pregnancy, and other medical and psychiatric conditions;

(b) available crisis intervention or other mental health services provided;

(c) the option to receive prophylactic medication to prevent sexually transmitted infections and pregnancy;

(d) the right to determine:

(i) whether to provide a personal statement about the sexual assault to law enforcement; and

(ii) if law enforcement should have access to any paperwork from the forensic examination; and

(e) the victim's rights as provided in Section 77-37-3.

(2) The collecting facility shall notify law enforcement as soon as practicable if the victim of a sexual assault decides to interview and discuss the assault with law enforcement.

(3) If a victim of a sexual assault declines to provide a personal statement about the sexual assault to law enforcement, the collecting facility shall provide a written notice to the victim that contains the following information:

(a) where the sexual assault kit will be stored;

(b) notice that the victim may choose to contact law enforcement any time after declining to provide a personal statement;

(c) the name, phone number, and email address of the law enforcement agency having jurisdiction; and

(d) the name and phone number of a local rape crisis center.

Section 7. Section **76-5-607** is enacted to read:

76-5-607. Statewide sexual assault kit tracking system.

(1) The department shall develop and implement a statewide tracking system by July 1, 2018, that contains the following information for all sexual assault kits collected by law enforcement:

(a) the submission status of sexual assault kits by law enforcement to the Utah Bureau of Forensic Services;

(b) notification by the Utah Bureau of Forensic Services to law enforcement of DNA analysis findings; and

(c) the storage location of sexual assault kits.

(2) The tracking system shall include a secure electronic access that allows the submitting agency, collecting facility, department, and a victim, or his or her designee, to access or receive information, provided that the disclosure does not impede or compromise an active investigation, about the:

196 (a) lab submission status;

197 (b) DNA analysis findings provided to law enforcement; and

198 (c) storage location of a sexual assault kit that was gathered from that victim.

199 Section 8. Section **76-5-608** is enacted to read:

200 **76-5-608. Law enforcement -- Training -- Sexual assault and sexual abuse.**

201 (1) The department and the Utah Prosecution Council shall develop training in
202 trauma-informed responses and investigations of sexual assault and sexual abuse, which
203 include, but are not limited to, the following:

204 (a) recognizing the symptoms of trauma;

205 (b) understanding the impact of trauma on a victim;

206 (c) responding to the needs and concerns of a victim of sexual assault or sexual abuse;

207 (d) delivering services to victims of sexual assault or sexual abuse in a compassionate,
208 sensitive, and nonjudgmental manner;

209 (e) understanding cultural perceptions and common myths of sexual assault and sexual
210 abuse; and

211 (f) techniques of writing reports in accordance with Subsection (5).

212 (2) (a) The department and the Utah Prosecution Council shall offer the training in
213 Subsection (1) to all certified law enforcement officers in the state of Utah by July 1, 2018.

214 (b) The training for all law enforcement officers may be offered through an online
215 course, developed by the department and the Utah Prosecution Council.

216 (3) The training listed in Subsection (1) shall be offered by the Peace Officer Standards
217 and Training division to all persons seeking certification as a peace officer, beginning July 1,
218 2018.

219 (4) (a) The department and the Utah Prosecution Council shall develop and offer an
220 advanced training course by July 1, 2018, for officers who investigate cases of sexual assault or
221 sexual abuse.

222 (b) The advanced training course shall include:

223 (i) all criteria listed in Subsection (1); and

(ii) interviewing techniques in accordance with the curriculum standards in Subsection (5).

(5) The department shall consult with the Utah Prosecution Council to develop the specific training requirements of this section, including evidence-based curriculum standards for report writing and response to sexual assault and sexual abuse, including trauma-informed and victim-centered interview techniques, which have been demonstrated to minimize retraumatizing victims.

Section 9. Section **76-5-609** is enacted to read:

76-5-609. Rulemaking authority.

After consultation with the Utah Bureau of Forensic Services and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules, consistent with this part, regarding:

(1) the procedures for the submission and testing of all sexual assault kits collected by law enforcement and prosecutorial agencies in the state;

(2) the information and evidence that is required to be submitted as part of each sexual assault kit submission; and

(3) goals for the completion of analysis and classification of all sexual assault kit submissions.

Section 10. Section **76-5-610** is enacted to read:

76-5-610. Reporting requirement.

The Department of Public Safety and the Utah Bureau of Forensic Services shall report by July 31 of each year to the Law Enforcement and Criminal Justice Interim Committee and the Executive Offices and Criminal Justice Appropriations Subcommittee regarding:

(1) the timelines set for testing all sexual assault kits submitted to the Utah Bureau of Forensic Services as provided in Subsection [76-5-603\(2\)](#);

(2) the goals established in Section [76-5-609](#);

(3) the status of meeting those goals;

(4) the number of sexual assault kits that are sent to the Utah Bureau of Forensic

252 Services for testing;
253 (5) the number of restricted kits held by law enforcement;
254 (6) the number of sexual assault kits that are not processed in accordance with the
255 timelines established in this part; and
256 (7) future appropriations requests that will ensure that all DNA cases can be processed
257 according to the timelines established by this part.