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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 1877

03/01/2017 Authored by O'Neill, Maye Quade, Newberger, Pinto, Becker-Finn and others
The bill was read for the first time and referred to the Committee on Public Safety and Security Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; establishing procedure for handling sexual assault
1.3 examination kits; providing notice to victims; amending Minnesota Statutes 2016,
1.4 sections 144.6586, subdivision 2; 609.35; proposing coding for new law in
1.5 Minnesota Statutes, chapters 299C; 611A.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2016, section 144.6586, subdivision 2, is amended to read:

1.8 Subd. 2. **Contents of notice.** The commissioners of health and public safety, in
1.9 consultation with sexual assault victim advocates and health care professionals, shall develop
1.10 the notice required by subdivision 1. The notice must inform the victim, at a minimum, of:

1.11 (1) the obligation under section 609.35 of the county where the criminal sexual conduct
1.12 occurred to pay for the examination performed for the purpose of gathering evidence, that
1.13 payment is not contingent on the victim reporting the criminal sexual conduct to law
1.14 enforcement, and that the victim may incur expenses for treatment of injuries; ~~and~~

1.15 (2) the victim's rights if the crime is reported to law enforcement, including the victim's
1.16 right to apply for reparations under sections 611A.51 to 611A.68, information on how to
1.17 apply for reparations, and information on how to obtain an order for protection or a
1.18 harassment restraining order; and

1.19 (3) the opportunity under section 611A.27 to obtain status information about an
1.20 unrestricted sexual assault examination kit, as defined in section 299C.106, subdivision 1,
1.21 paragraph (h).

2.1 Sec. 2. [299C.106] SEXUAL ASSAULT EXAMINATION KIT HANDLING.

2.2 Subdivision 1. Definitions. (a) As used in this section, the terms in this subdivision have
2.3 the meanings given.

2.4 (b) "Forensic laboratory" has the meaning given in section 299C.157, subdivision 1,
2.5 clause (2).

2.6 (c) "Patient" has the meaning given in section 144.291, subdivision 2, paragraph (g),
2.7 and means a person who consents to a sexual assault examination.

2.8 (d) "Release form" means a document provided by the hospital to the patient at the time
2.9 of the sexual assault examination that gives the patient the option of authorizing, in writing,
2.10 the release of the kit to law enforcement.

2.11 (e) "Restricted sexual assault examination kit" means a kit that does not have an
2.12 accompanying release form signed by the patient authorizing law enforcement to submit
2.13 the kit to a forensic laboratory. A health care professional shall provide the patient with
2.14 information about how to convert a restricted sexual assault examination kit to unrestricted
2.15 status.

2.16 (f) "Sexual assault examination kit" means a collection of evidence, including biological
2.17 material, gathered from a patient by a health care professional.

2.18 (g) "Submitted sexual assault examination kit" means an unrestricted kit that has been
2.19 submitted by law enforcement to a forensic laboratory.

2.20 (h) "Unrestricted sexual assault examination kit" means a kit that has an accompanying
2.21 release form signed by the patient allowing law enforcement to submit the kit to a forensic
2.22 laboratory.

2.23 (i) "Unsubmitted sexual assault examination kit" means an unrestricted kit that has not
2.24 been submitted by law enforcement to a forensic laboratory.

2.25 Subd. 2. Transfer of unrestricted sexual assault examination kit from health care
2.26 professional to law enforcement agency. When a sexual assault examination is performed,
2.27 evidence is collected, and the patient requests that law enforcement officials be notified and
2.28 signs a release form, the individual performing the examination, or the individual's designee,
2.29 shall notify the appropriate law enforcement agency of the collection of the evidence in an
2.30 unrestricted sexual assault examination kit. The agency must retrieve an unrestricted sexual
2.31 assault examination kit from the health care professional within ten days of receiving notice
2.32 that the kit is available for transfer. Notification to the agency shall be made in writing.

3.1 Subd. 3. Submission of unrestricted sexual assault examination kit. Within 60 days
 3.2 of receiving an unrestricted sexual assault examination kit, a law enforcement agency shall
 3.3 submit the kit for testing to a forensic laboratory, unless the law enforcement agency deems
 3.4 the result of the kit would not add evidentiary value to the case. If a kit is not submitted
 3.5 during this time, the agency shall make a record, in consultation with the county attorney,
 3.6 stating the reasons why the kit was not submitted. An unsubmitted kit shall be held by the
 3.7 agency for the retention period described in subdivision 4. Restricted sexual assault
 3.8 examination kits shall not be submitted for testing.

3.9 Subd. 4. Retention of restricted sexual assault examination kit. A restricted sexual
 3.10 assault examination kit must be stored for a minimum of 18 months under appropriate
 3.11 chain-of-custody conditions. Nothing in this section shall prevent jurisdictions from retaining
 3.12 a restricted sexual assault examination kit for the duration of the statute of limitations for
 3.13 prosecution.

3.14 Subd. 5. No basis for dismissal or bar to admissibility of evidence. Failure to meet a
 3.15 deadline established in this section is not a basis for dismissal of a criminal action or a bar
 3.16 to the admissibility of the evidence in a criminal action.

3.17 Sec. 3. Minnesota Statutes 2016, section 609.35, is amended to read:

3.18 **609.35 COSTS OF MEDICAL EXAMINATION; SEXUAL ASSAULT.**

3.19 (a) Costs incurred by a county, city, or private hospital or other emergency medical
 3.20 facility or by a private physician for the examination of a victim of criminal sexual conduct
 3.21 when the examination is performed for the purpose of gathering evidence shall be paid by
 3.22 the county in which the criminal sexual conduct occurred. These costs include, but are not
 3.23 limited to, full cost of the ~~rape kit examination~~ sexual assault examination kit as defined in
 3.24 section 299C.106, subdivision 1, paragraph (f), associated tests relating to the complainant's
 3.25 sexually transmitted disease status, and pregnancy status.

3.26 (b) The county shall pay for the examination for the purpose of evidence gathering, as
 3.27 described under this section, and the victim is not liable for these costs and is not obligated
 3.28 to authorize payment by the county. The hospital shall inform the victim of the county's
 3.29 responsibility to pay by providing the notice required under section 144.6586.

3.30 ~~(b)~~ (c) Nothing in this section shall be construed to limit the duties, responsibilities, or
 3.31 liabilities of any insurer, whether public or private. ~~However, a county may seek insurance~~
 3.32 ~~reimbursement from the victim's insurer only if authorized by the victim. This authorization~~
 3.33 ~~may only be sought after the examination is performed. When seeking this authorization,~~

4.1 ~~the county shall inform the victim that if the victim does not authorize this, the county is~~
 4.2 ~~required by law to pay for the examination and that the victim is in no way liable for these~~
 4.3 ~~costs or obligated to authorize the reimbursement. A victim's insurer may only be billed for~~
 4.4 ~~the costs of the examination if specifically authorized by the victim after the examination~~
 4.5 ~~has been performed. If the victim does not provide authorization and the insurer is not billed~~
 4.6 ~~for the costs of the examination, the health care professional may submit a request for~~
 4.7 ~~payment directly to the county for the costs associated with the examination provided for~~
 4.8 ~~in this section.~~

4.9 (d) The health care professional examination report generated as part of this examination
 4.10 shall meet state and federal law requirements for patient confidentiality and include:

4.11 (1) location information supplied by the victim sufficient to identify the county in which
 4.12 the assault occurred;

4.13 (2) documentation of evidence collected from the victim, including biological evidence,
 4.14 physical evidence, detailed history, and photographs; and

4.15 (3) when available, documentation of the victim's authorization for insurance billing.

4.16 (e) If the victim does not report the offense to law enforcement, the county may seek
 4.17 verification of the location of the assault from the health care professional. The health care
 4.18 professional shall provide the information obtained from the examination report in a separate
 4.19 written form to the county in a manner that does not disclose the identity of the victim in
 4.20 accordance with state and federal law.

4.21 (f) If the victim does report the offense but the location of the assault is not known, the
 4.22 law enforcement agency responsible for the jurisdiction where the hospital is located shall
 4.23 take initial custody of the examination kit.

4.24 ~~(e)~~ (g) The applicability of this section does not depend upon whether the victim reports
 4.25 the offense to law enforcement or the existence or status of any investigation or prosecution.

4.26 (h) Nothing in this section shall prevent the collection of costs beyond what is covered
 4.27 as part of the examination under paragraph (a).

4.28 **Sec. 4. [611A.27] VICTIM NOTIFICATION RIGHTS TO SEXUAL ASSAULT**
 4.29 **EXAMINATION KIT.**

4.30 Subdivision 1. **Access to law enforcement data.** (a) Upon written request, a law
 4.31 enforcement agency shall release the following active investigative data, as defined in

5.1 section 13.82, subdivision 7, to a victim of sexual assault about a submitted sexual assault
5.2 examination kit, as defined in section 299C.106, subdivision 1, paragraph (g):

5.3 (1) the date that a sexual assault examination kit was submitted to a forensic laboratory,
5.4 as defined in section 299C.157, subdivision 1, clause (2), and the date that the agency
5.5 received notice of the results of that testing; and

5.6 (2) whether a DNA profile was obtained from the testing.

5.7 (b) The agency may refuse the request under paragraph (a) if the release of that data will
5.8 interfere with the investigation.

5.9 Subd. 2. **Responding to a victim request for data.** No later than January 1, 2018, each
5.10 law enforcement agency shall adopt policies and procedures subject to section 13.82,
5.11 subdivision 7, to provide investigative data under this section that includes but is not limited
5.12 to the following requirements:

5.13 (1) agency identification of a representative or representatives to respond to requests for
5.14 data from sexual assault victims and to serve as a liaison between the agency and the forensic
5.15 laboratory;

5.16 (2) agency response to inquiries within 30 days of receipt, unless the agency declines
5.17 to provide the information under subdivision 1, paragraph (b);

5.18 (3) the sexual assault victim can designate another person to request information on the
5.19 victim's behalf by providing written authorization to the agency except that an agency can
5.20 decline to provide the information under subdivision 1, paragraph (b); and

5.21 (4) agency development of a procedure that allows a sexual assault victim to contact the
5.22 agency representative to request that a restricted kit as defined in section 299C.106,
5.23 subdivision 1, paragraph (e), be reclassified as an unrestricted kit as defined in section
5.24 299C.106, subdivision 1, paragraph (h), if the restricted kit is in the possession of the agency.