

2024 Regular Session

SENATE BILL NO. 124

BY SENATOR MIZELL

CRIMINAL JUSTICE. Creates the Sexual Assault Survivor's Bill of Rights. (8/1/24)

1 AN ACT

2 To amend and reenact R.S. 40:1216.1(A)(1), (2)(b) and (c), (3), and (7) and R.S. 46:1845,
3 relative to victims of sexual assaults; to provide regarding the maintenance of
4 evidence; to provide regarding the billing of services provided to the sexual assault
5 survivor; to create a sexual assault survivor bill of rights; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1216.1(A)(1), (2)(b) and (c), (3), and (7) are hereby amended and
9 reenacted to read as follows:

10 §1216.1. Procedures for victims of a sexually oriented criminal offense; immunity;
11 regional plans; maximum allowable costs; definitions; documents
12 requested by victim

13 A. All licensed hospitals and healthcare providers in Louisiana shall adhere
14 to the following procedures in the event that a person, male or female, presents
15 himself or herself or is presented for treatment as a victim of a sexually oriented
16 criminal offense:

17 (1) The victim shall make the decision of whether or not the incident will be

1 reported to law enforcement officials. No hospital or healthcare provider shall
2 require the person to report the incident in order to receive medical attention or to
3 **collect evidence.**

4 (2)

5 * * *

6 (b) Any examination and treatment shall include the preservation, in strict
7 confidentiality, for a period of at least ~~one year~~ **twenty years** from the time the
8 victim is presented for treatment, of tests or procedures, or both, and samples that
9 may serve as potential evidence. The patient shall be informed of the length of time
10 for which the specimens will be preserved. If the victim does not wish to report the
11 incident to law enforcement authorities, the responsibilities of the hospital or
12 healthcare provider, beyond medical treatment, shall be limited to the collection of
13 tests, procedures, or samples that may serve as potential evidence.

14 (c) Any evidence collected shall be assigned a code number, and the hospital
15 or healthcare provider that performed the forensic medical exam shall maintain code
16 records for a period of at least ~~one year~~ **twenty years** from the date the victim is
17 presented for treatment. The hospital or healthcare provider that performed the
18 forensic medical exam shall assign the code number by affixing to the evidence
19 container a code to be used in lieu of the victim's identifying information to maintain
20 confidentiality. The code number shall be used for identification should the victim
21 later choose to report the incident. The healthcare provider shall provide all
22 information required by the statewide tracking system operated by the office of state
23 police, pursuant to R.S. 15:624.1.

24 * * *

25 (3) If the victim wishes to report the incident to law enforcement officials,
26 the hospital staff or healthcare provider shall contact the appropriate law
27 enforcement agency. ~~After the incident has been reported, the~~ **The** victim shall be
28 examined and treated as any other patient, any injuries requiring medical attention
29 shall be treated in the standard manner, and specimens shall be kept for evidence.

1 The evidence shall be turned over to the law enforcement officers when they arrive
2 to assume responsibility for investigation of the incident and in no event shall the
3 evidence remain at the hospital more than seven days after the law enforcement
4 agency receives the notification from the hospital.

5 * * *

6 (7) The healthcare provider who performed the forensic medical exam and
7 the healthcare facility shall submit a claim for payment for conducting a forensic
8 medical exam directly to the Crime Victim Reparations Board to be paid in strict
9 accordance with the provisions of R.S. 46:1822. A victim of a sexually oriented
10 criminal offense shall not be billed directly or indirectly for the performance of any
11 forensic medical exam. The provisions of this Paragraph shall not be interpreted or
12 construed to apply to ~~either of the following:~~

13 ~~(a) A healthcare provider billing for any medical services that are not~~
14 ~~specifically set forth in this Section or provided for diagnosis or treatment of the~~
15 ~~victim for injuries related to the sexual assault.~~

16 ~~(b) A~~ **a** victim of a sexually oriented criminal offense seeking reparations in
17 accordance with the Crime Victims Reparations Act, R.S. 46:1801 et seq., for the
18 costs for any medical services that are not specifically set forth in this Section ~~or~~
19 ~~provided for the diagnosis or treatment of the victim for injuries related to the sexual~~
20 ~~assault.~~

21 * * *

22 Section 2. R.S. 46:1845 is hereby amended and reenacted to read as follows:

23 §1845. Additional rights for victims of sexual assaults; notification of rights **Sexual**

24 **Assault Survivor Bill of Rights**

25 **A.(1) The legislature hereby finds and declares the urgent need to**
26 **establish a comprehensive sexual assault survivor bill of rights. A bill of rights**
27 **is of paramount importance in addressing the alarming under-reporting of**
28 **sexual assault cases and ensuring that survivors receive the support, protection,**
29 **and justice they deserve.**

1 **(2) The legislature further finds that transparency is a core principle that**
2 **our justice system should uphold. By enacting a Sexual Assault Survivor Bill of**
3 **Rights, barriers that prevent survivors from coming forward and seeking**
4 **justice can be broken down. Transparency allows survivors to share their**
5 **experiences openly, without fear of judgment or retribution. It empowers them**
6 **to reclaim their narratives and break free from the chains of shame and secrecy.**
7 **Access to records is essential for transparency and for survivors to navigate the**
8 **often complex and overwhelming legal process. It is a matter of justice and**
9 **fairness that survivors have the right to access their records, including medical**
10 **reports, forensic evidence, and legal documentation. This access enables**
11 **survivors to make informed decisions about their healthcare, legal options, and**
12 **support services. Granting survivors access to records empowers them to**
13 **actively participate in their healing and seek the justice they so rightfully**
14 **deserve.**

15 **(3) The recognition of rights for survivors is crucial in ensuring their**
16 **well-being and recovery. The legislature finds that the experiences of survivors**
17 **are valid, their voices matter and they deserve to be treated with dignity and**
18 **respect.**

19 **(4) It is therefore the intent of the legislature to provide a Sexual Assault**
20 **Survivor Bill of Rights that ensures survivors are treated with dignity, respect,**
21 **and compassion.**

22 **(5) Subsection C of this Section shall be known and may be cited as the**
23 **Sexual Assault Survivor Bill of Rights.**

24 **B.(1)** The rights provided to ~~victims~~ of sexual assault **survivors** contained in
25 this Section attach **regardless of** whether a ~~victim~~ **survivor** seeks the assistance of
26 ~~either a law enforcement official or a healthcare provider.~~ A ~~victim~~ of sexual assault
27 **survivor** retains all the rights of these provisions regardless of whether the ~~victim~~
28 **survivor** receives a forensic medical examination or whether a sexual assault
29 collection kit is administered.

1 (2) Notwithstanding any other provision of law to the contrary, nothing in
2 this Section shall be construed to negate or impair any provision of law relative to
3 the mandatory reporting of crimes against children under the age of eighteen years
4 or to negate or impair the investigation or prosecution of any crime against children
5 under the age of eighteen.

6 **(3) Notwithstanding any other provision of law to the contrary, a**
7 **defendant or person accused or convicted of a crime against a survivor does not**
8 **have standing to seek to have their conviction or sentence set aside for any**
9 **violation of the Sexual Assault Survivors' Bill of Rights.**

10 B. ~~C.~~ A victim of sexual assault survivor shall have the right to following
11 rights:

12 **(1) The right not to be prevented from, or charged for, receiving a**
13 **forensic medical exam as provided in R.S. 40:1216.1.**

14 **(2) The right to have an unreported sexual assault collection kit**
15 **preserved, without charge, for at least twenty years.**

16 **(3) The right to be informed of any results, updates, status, location, and**
17 **tracking as provided in R.S. 15:624.1.**

18 **(4) The right to be informed in writing of policies governing the**
19 **collection and preservation of a sexual assault collection kit.**

20 **(5) The right to be informed in writing from the appropriate official not**
21 **later than sixty days before the date of the intended destruction or disposal of**
22 **a sexual assault collection kit, and upon written request, the ability to be**
23 **granted further preservation of the kit or its probative contents.**

24 **(6) The right to** ~~A victim of sexual assault shall be notified of the ability to~~
25 ~~request the presence of a sexual assault advocate during~~ **before** ~~the administration~~
26 ~~of a forensic medical examination or a scheduled interview by a law enforcement~~
27 ~~official if a sexual assault advocate is reasonably available. Nothing in this Section~~
28 ~~shall be construed to prohibit the conducting of a forensic medical examination or~~
29 ~~an interview by a law enforcement official in the absence of a sexual assault~~

1 ~~advocate. All victims of sexual assault shall~~

2 (7) The right to have the right to access to and obtain a copy of their forensic
3 medical examination report at no cost to them pursuant to R.S. 40:1216.1(G).

4 (8) The right not to be requested or required to submit to a polygraph
5 examination as a condition of an investigation or prosecution as provided in
6 R.S. 15:241.

7 (9) The right to receive, at no cost, a copy of any records or investigative
8 reports from law enforcement when those records are provided to the defendant
9 through discovery or a year after the offense was reported, whichever is sooner.

10 (10) The right to have privileged communications with a representative
11 or employee of a sexual assault center as provided in R.S. 46:2187.

12 (11) The right not to have the survivor's DNA obtained from a sexual
13 assault collection kit compared with other DNA records to investigate the
14 survivor as provided in R.S. 15:622.1.

15 (12) The right to retain any other rights that a survivor may have under
16 any other law of this state.

17 D. Any complaint about a violation of this Section may be submitted
18 directly to the Senate Select Committee on Women and Children for legislative
19 oversight.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Dawn Romero Watson.

DIGEST

SB 124 Original 2024 Regular Session Mizell

Present law provides special procedures for hospitals and healthcare providers in the event a person presents for treatment as a victim of a sexually oriented criminal offense.

Present law prohibits a hospital or healthcare provider from requiring that the victim report the offense to law enforcement officials in order to receive medical attention.

Proposed law retains present law and adds that a hospital or healthcare provider is also prohibited from requiring that the victim report the offense to law enforcement officials in order for the hospital or healthcare provider to collect evidence of the offense.

Present law provides that any examination and treatment shall include the preservation, in strict confidentiality, for a period of at least one year, of tests or procedures, or both, and samples that may serve as potential evidence.

Proposed law increases the time period for preservation to 20 years.

Present law provides that any evidence collected shall be assigned a code number, and the hospital or healthcare provider that performed the forensic medical exam shall maintain code records for a period of at least one year. Requires the hospital or healthcare provider that performed the forensic medical exam to assign the code number and affixed it to the evidence container in lieu of the victim's identifying information to maintain confidentiality.

Proposed law increases the maintenance of the code records to 20 years.

Present law allows the healthcare provider who performed the forensic medical exam and the healthcare facility to submit a claim for payment for conducting a forensic medical exam directly to the Crime Victim Reparations Board. Provides that a victim of a sexually oriented criminal offense shall not be billed directly or indirectly for the performance of any forensic medical exam.

Present law provides that present law shall not be interpreted or construed to apply to either:

- (1) A healthcare provider billing for any medical services that are not specifically set forth in present law or provided for diagnosis or treatment of the victim for injuries related to the sexual assault.
- (2) A victim of a sexually oriented criminal offense seeking reparations for the costs for any medical services that are not specifically set forth in present law or that are provided for the diagnosis or treatment of the victim for injuries related to the sexual assault.

Proposed law removes the prohibits of present law being interpreted or construed to apply to a healthcare provider billing for medical services not specifically enumerated in present law or for the diagnosis or treatment of the victim for injuries related to the sexual assault. Also removes the prohibition of present law being interpreted or construed to apply to a victim seeking reparations for the costs for diagnosis or treatment for injuries related to the sexual assault.

Proposed law provides that a defendant or person accused or convicted of a crime against a survivor does not have standing to seek to have their conviction or sentence set aside for a violation of the Sexual Assault Survivors' Bill of Rights.

Present law enumerates certain rights for victims of sexual assault that attach whether a victim seeks the assistance of either a law enforcement official or a healthcare provider and regardless of whether the victim receives a forensic medical examination or whether a sexual assault collection kit is administered. Provides that a victim of sexual assault shall have the right:

- (1) To a forensic medical exam.
- (2) To be notified of the ability to request the presence of a sexual assault advocate during the administration of a forensic medical examination or a scheduled interview by a law enforcement official if a sexual assault advocate is reasonably available.
- (3) To have access and obtain a copy of their forensic medical examination report at no cost to them.

Proposed law changes the terminology of "victims of sexual assault" to "sexual assault survivors" and provides for the following additional rights:

- (1) To have an unreported sexual assault collection kit preserved, without charge, for at least 20 years.

- (2) To be informed of any results, updates, status, location, and tracking of the sexual assault collection kit.
- (3) To be informed in writing of policies governing the collection and preservation of a sexual assault collection kit.
- (4) To be informed in writing from the appropriate official, not later than 60 days before the date of the intended destruction or disposal of a sexual assault collection kit and upon written request, the ability to be granted further preservation of the kit or its probative contents.
- (5) The right not to be requested or required to submit to a polygraph examination as a condition of an investigation or prosecution.
- (6) The right to receive, at no cost, a copy of any records or investigative reports from law enforcement when those records are provided to the defendant through discovery or a year after the offense was reported, whichever is sooner.
- (7) The right to have privileged communications with a representative or employee of sexual assault center.
- (8) The right not to have the survivor's DNA obtained from a sexual assault collection kit compared with other DNA records to investigate the survivor.
- (9) The right to retain any other rights that a survivor may have under any other Louisiana law.

Proposed law provides that complaints about a violation of proposed law may be submitted directly to the Senate Select Committee on Women and Children.

Effective August 1, 2024.

(Amends R.S. 40:1216.1(A)(1), (2)(b) and (c), (3), and (7) and R.S. 46:1845)