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## DIGEST

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HB 744 Original

2020 Regular Session

Moore

**Abstract:** Provides for the Louisiana Sexual Assault Survivors' Bill of Rights.

Proposed law provides for the La. Sexual Assault Survivors' Bill of Rights.

Proposed law provides that the rights provided to survivors pursuant to proposed law attach whenever a survivor is subject to a medical evidentiary or physical examination or an interview by a law enforcement officer, prosecutor, or defense attorney, whichever is earlier. Further provides that the rights are retained regardless of whether the survivor agrees to participate in the criminal justice system or in family court and regardless of whether the survivor consents to a medical evidentiary or physical examination to collect sexual assault forensic evidence.

Proposed law provides for certain rights of a sexual assault survivor including:

- (1) The right to consult with a sexual assault counselor, and to have a support person of the survivor's choosing present, during any medical evidentiary or physical examination and during any interview by a law enforcement officer, prosecutor, or defense attorney.
- (2) The right to be interviewed by a law enforcement officer of the gender of the survivor's choosing.
- (3) The right to have counsel present during all stages of any medical examination, interview, investigation, or other interaction with representatives from the legal or criminal justice systems within the state.
- (4) The right to prompt analysis of sexual assault forensic evidence.
- (5) The right to be informed in a secure and confidential message, upon the survivor's request, of the results of the analysis of the survivor's sexual assault forensic evidence.
- (6) In either a civil or criminal case relating to the sexual assault, the right to be reasonably protected from the defendant and persons acting on behalf of the defendant.
- (7) The right to be free from intimidation, harassment, and abuse.
- (8) The right to be treated with fairness and respect for the survivor's privacy and dignity.

- (9) The right to be heard through a survivor impact statement and to provide a sentencing recommendation.

Proposed law provides that communications between a survivor and a sexual assault counselor are confidential and privileged, including information disclosed in the presence of any third persons during a medical evidentiary or physical examination or during any interview by a law enforcement officer, prosecutor, or defense attorney. Further provides that the survivor's communications with a sexual assault counselor, or waiver of the right to a sexual assault counselor, shall not be admissible into evidence for any purpose except with the consent of the survivor.

Proposed law provides that no costs incurred by a medical provider for the medical evidentiary examination portion of the examination of a survivor shall be charged directly or indirectly to the survivor.

Proposed law requires a medical provider to provide a survivor with certain information before commencing a medical evidentiary or physical examination of a survivor, and requires a law enforcement officer, prosecutor, or defense attorney to provide a survivor with certain information before commencing an interview of a survivor.

Proposed law requires a medical provider to, within 24 hours after collecting any sexual assault forensic evidence, to notify the law enforcement agency having jurisdiction over the alleged assault.

Upon receipt of the notification, proposed law requires the law enforcement agency to submit the sexual assault forensic evidence to the crime laboratory within seven days after receiving that notice and assign a criminal complaint number to that evidence within five days after receiving that notice. Further requires the law enforcement agency to notify the survivor of the name, address, and telephone number of the crime laboratory.

Proposed law requires a crime laboratory that receives sexual assault forensic evidence on or after Aug. 1, 2020, to analyze that evidence and upload any available DNA profiles into CODIS within 90 days of receipt of that evidence, unless the survivor has requested in writing for the crime laboratory to defer analysis of that evidence. Further requires the crime laboratory to retain all sexual assault forensic evidence until the time limitation for the institution of prosecution has elapsed or until the survivor reaches 48 years of age if the survivor was under the age of 17 years when the assault occurred.

Proposed law prohibits sexual assault forensic evidence from being used to prosecute a survivor for any misdemeanor crimes or any crime defined under the Uniform Controlled Dangerous Substances Law or as a basis to search for further evidence of any unrelated misdemeanor crimes or any crime under the Uniform Controlled Dangerous Substances Law, that may have been committed by the survivor.

Proposed law requires the La. Commission on Law Enforcement and Administration of Criminal Justice to develop a document to be provided to a survivor that explains the rights of survivors in

clear language that is comprehensible to a person proficient in English at the fifth grade level, accessible to persons with visual disabilities, and available in all major languages of the state.

Proposed law requires a law enforcement officer, upon written request by a survivor, to furnish, within 10 days of receiving such request, a free, complete, and unaltered copy of all law enforcement reports concerning the sexual assault, regardless of whether the report has been closed by the law enforcement agency. Further requires a prosecutor, upon written request by a survivor, to provide certain information to the survivor about the case against the defendant.

Proposed law provides that each person, corporation, agency, officer, or employee who has a responsibility or responsibilities to survivors pursuant to proposed law or other applicable law shall make reasonable efforts to become informed about these responsibilities and to ensure that survivors and witnesses receive such information and services to which they may be entitled under applicable law. Further provides that any failure to make such efforts, or any violation of the enumerated rights or provisions shall be considered a tortious act causing injury to person or property within the state.

Proposed law authorizes the attorney general to take certain action on behalf of the people of La. to enjoin certain acts or practices, including through mandatory injunction, and to obtain restitution for any survivors affected directly or indirectly from any such act or omission.

Proposed law requires the La. State Police Crime Laboratory in consultation with the La. Commission on Law Enforcement and Administration of Criminal Justice to develop, by Aug. 1, 2021, a system by which a sexual assault survivor may track by telephone or internet, the location and status of the survivor's sexual assault forensic evidence kit.

Present law requires the reporting of certain sexually oriented criminal offense data by criminal justice agencies.

Proposed law retains present law and requires the La. Commission on Law Enforcement and Administration of Criminal Justice to make such information publicly available on the commission's website.

Present law provides for the La. Sexual Assault Oversight Commission and provides for certain duties of the commission including to develop recommendations for a standardized sexual assault collection kit and protocols for forensic medical examinations of victims of sexually oriented criminal offenses.

Proposed law retains present law and addition duties of the La. Sexual Assault Oversight Commission including but not limited to the following:

- (1) To study nationally recognized best practices and make recommendations regarding:
  - (a) The development and implementation of an effective mechanism for submitting, tracking, and investigating complaints regarding the handling of, or response to, a sexual assault report or investigation by any agency or organization involved in the response.
  - (b) Whether a need exists for additional sexual assault counselors for victims of sexual assault, and if such a need does exist, the commission shall develop criteria to certify sexual assault counselors and create a plan for how the state can provide additional sexual assault counselors to meet the needs identified.
- (2) To collect data regarding sexual assault reporting, arrest, prosecution rates, access to sexual assault victims services, and any other data important for its deliberations and recommendations.
- (3) To collect feedback from stakeholders, practitioners, and leadership throughout the state and local law enforcement, victim services, forensic science practitioners, and health care communities to inform development of future best practices or clinical guidelines regarding the care and treatment of survivors.
- (4) To report to the legislature and the governor, no later than Jan. 1, 2022, the result of the assessments, developments, and recommendations completed pursuant to proposed law.

Proposed law defines "crime laboratory", "law enforcement officer", "medical provider", "sexual assault counselor", "sexual assault forensic evidence", and "sexual assault survivor" for purposes of proposed law.

(Adds R.S. 46:2191 - 2199.4 and R.S. 15:556(C) - (G))