

2024 Regular Session

SENATE BILL NO. 361

BY SENATOR MIZELL

EVIDENCE. Provides relative to tracking of sexual assault kits. (8/1/24)

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AN ACT

To amend and reenact R.S. 15:622, relative to sexual assault rape kits; to provide for definitions; to provide for processing of sexual assault evidence collection kits; to require testing within certain time limits; to provide for victim notification; to provide for a report; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:622 is hereby amended and reenacted to read as follows:

§622. Sexual assault collection kits

A. As used in this Section:

(1) "Criminal justice agency" means any government agency or subunit thereof, or private agency that, through statutory authorization or a legal formal agreement with a governmental unit or agency, has the power of investigation, arrest, detention, prosecution, adjudication, treatment, supervision, rehabilitation or release of persons suspected, charged, or convicted of a crime; or that collects, stores, processes, transmits, or disseminates criminal history record or crime information.

(2) "Forensic medical examination" means an examination provided to the victim of a sexually oriented criminal offense by a health care provider for the

1 purpose of gathering and preserving evidence of a sexual assault for use in a court
2 of law. A forensic medical examination shall include the following:

3 (a) Examination of physical trauma.
4 (b) Patient interview, including medical history, triage, and consultation.
5 (c) Collection and evaluation of evidence, including but not limited to the
6 following:

7 (i) Photographic documentation.
8 (ii) Preservation and maintenance of chain of custody.
9 (iii) Medical specimen collection.
10 (iv) When determined necessary by the healthcare provider, an alcohol- and
11 drug-facilitated sexual assault assessment and toxicology screening.

12 (3) **"Laboratory" means the Louisiana State Police Crime Laboratory.**
13 **(4) "Reported kit" means a sexual assault evidence kit in which the**
14 **survivor has consented to participate in the criminal justice process through**
15 **reporting the crime to law enforcement.**

16 (5) "Sexual assault collection kit" means a human biological specimen or
17 specimens collected by a health care provider during a forensic medical examination
18 from the victim of a sexually oriented criminal offense.

19 (6) **"Sexual assault nurse examiner" means a registered nurse or**
20 **advanced practice nurse, with a minimum of one year of experience in areas of**
21 **practice that require advanced physical assessment skills, such as emergency,**
22 **critical care and maternal child health.**

23 ~~(4)~~(7) "Sexually oriented criminal offense" shall have the same meaning as
24 sex offense as defined in R.S. 15:541.

25 (8) **"Unreported kit" means a sexual assault evidence kit in which the**
26 **survivor consented to the evidence collection, but has not consented to**
27 **participate in the criminal justice process by reporting the crime to law**
28 **enforcement meaning they are not seeking to have their kit tested.**

29 ~~(5)~~(9) "Untested sexual assault collection kit" means a sexual assault

1 collection kit that has not been submitted to the Louisiana State Police Crime
2 Laboratory or a similar qualified laboratory for either a serology or deoxyribonucleic
3 acid (DNA) test.

4 ~~B. By January 1, 2015, all criminal justice agencies charged with the~~
5 ~~maintenance, storage, and preservation of sexual assault collection kits shall conduct~~
6 ~~a physical inventory of all such kits being stored by the agency and shall compile,~~
7 ~~in writing, a report containing the number of untested sexual assault collection kits~~
8 ~~in the possession of the agency and the date the sexual assault kit was collected. Each~~
9 ~~criminal justice agency shall also provide written notification if it does not have any~~
10 ~~untested sexual assault collection kits in its possession. The report shall be~~
11 ~~transmitted to the director of the Louisiana State Police Crime Laboratory.~~

12 ~~C. By March 1, 2015, the Louisiana State Police Crime Laboratory shall~~
13 ~~prepare and transmit a report to the chairman of the Senate Committee on Judiciary~~
14 ~~B and the chairman of the House of Representatives Committee on Judiciary~~
15 ~~containing the number of untested sexual assault collection kits being stored by each~~
16 ~~parish, by each criminal justice agency, and the date the untested kit was collected.~~
17 ~~The report shall also include the name and contact information of each criminal~~
18 ~~justice agency that failed to submit the report required by Subsection B of this~~
19 ~~Section. **Sexual assault evidence collection kits shall be processed in the**~~
20 ~~**following manner:**~~

21 ~~**(1) Any medical facility that conducts a medical forensic examination or**~~
22 ~~**prepares a sexual assault evidence collection kit shall immediately, but no**~~
23 ~~**longer than four hours after the finalization of examination, contact the**~~
24 ~~**appropriate law enforcement agency to collect the kit. Until the kit is retrieved**~~
25 ~~**by law enforcement, the medical facility shall store the kit in a refrigerated**~~
26 ~~**manner in conformity with the Scientific Working Group for DNA Analysis**~~
27 ~~**Method.**~~

28 ~~**(2) When a law enforcement agency is contacted to collect a sexual**~~
29 ~~**assault evidence kit, the law enforcement agency shall take possession of the kit**~~

1 from the medical facility within twenty-four hours. Upon taking physical
2 possession of the sexual assault evidence collection kit, the law enforcement
3 agency shall transport the kit in a manner that preserves the evidence in the kit.

4 The agency shall either:

5 (a) Store the kit in a secure, refrigerated location in the agency no more
6 than two hours after taking physical possession of the kit.

7 (b) Transport the kit directly to the laboratory.

8 (3) All kits shall be delivered to the laboratory no later than seven
9 calendar days from the date the law enforcement agency took physical
10 possession of the kit.

11 (4) A law enforcement agency that receives a sexual assault collection kit
12 from a healthcare provider that relates to a report of a sexual assault that
13 occurred outside the jurisdiction of that law enforcement agency shall have the
14 sexual assault collection kit delivered to the law enforcement agency having
15 jurisdiction within ten days of learning that the other law enforcement agency
16 has jurisdiction.

17 C.(1) The laboratory shall test sexual assault evidence collection kits
18 within sixty days of receipt from a law enforcement agency. Forensic DNA
19 testing shall be performed according to laboratory methods that determine the
20 presence of DNA suitable for short tandem repeat analysis. Any autosomal,
21 Combined DNA Index System (CODIS) eligible DNA profile shall be entered
22 into the CODIS or equivalency thereof and state or local DNA database. If the
23 laboratory is unable to determine DNA present, other than the victim's DNA,
24 in the sexual assault evidence collection kit, the laboratory shall evaluate the
25 case, when suitable, to determine if any other DNA results could be used for
26 investigative purposes.

27 (2) When laboratory testing does result in a DNA profile foreign to the
28 victim, the laboratory shall enter the foreign DNA profile into the CODIS and
29 any other required state or local DNA databases. The average completion rate

1 for this analysis and classification shall not exceed ninety days.

2 (3) The laboratory may contract with other laboratories to ensure that
3 each kit is tested and the information from the kit is entered into CODIS, when
4 applicable, within the time frames required by this Subsection.

5 D.(1) Upon the request of a sexual assault victim or their designee, the
6 law enforcement agency that is investigating the assault of the victim shall
7 inform the victim of the location of the sexual assault evidence kit or other
8 crime scene evidence from the victim's case and the status of the DNA testing
9 of the sexual assault evidence kit or other crime scene evidence from the
10 victim's case.

11 (2) The law enforcement agency shall respond to the victim's request as
12 soon as possible, but no longer than seven calendar days, with either an oral or
13 written communication, or by email, if an email address is available.

14 (3) The victim of sexual assault shall have the following rights:

15 (a) The right to be informed by the law enforcement agency handling the
16 case whether a DNA profile of the assailant was obtained from the testing of the
17 sexual assault evidence kit or other crime scene evidence from their case.

18 (b) The right to be informed whether the DNA profile of the assailant
19 developed from the sexual assault evidence kit or other crime scene evidence has
20 been entered into the laboratory's DNA identification system or CODIS.

21 (c) The right to be informed whether there is a match between the DNA
22 profile of the assailant developed from the rape kit evidence or other crime
23 scene evidence and a DNA profile contained in the laboratory's DNA
24 identification system, provided that disclosure would not impede or compromise
25 an ongoing investigation.

26 (4) If the law enforcement agency intends to destroy or dispose of the
27 sexual assault evidence kit or any other crime scene evidence from an unsolved
28 sexual assault case, the victim of the case shall be given written notification by
29 the law enforcement agency of that intention within twenty days. The victim

1 shall be granted further preservation of the kit or its probative contents, upon
2 their request.

3 (5) A law enforcement agency shall not destroy or dispose of the sexual
4 assault evidence kit or any other crime scene evidence from an unsolved sexual
5 assault case before twenty years after the collection of the evidence of the crime
6 or, if the victim was under eighteen years of age at the time of the alleged
7 offense, before the victim is forty years of age.

8 (6) A sexual assault victim may designate a sexual assault victim
9 advocate, or other support person of the victim's choosing, to act as a recipient
10 of the above information required to be provided by this Subsection.

11 (7) For the purpose of receiving notice under this Subsection, the victim
12 or the victim's designee shall keep appropriate authorities informed of the
13 name, address, telephone number, and email address of the person to whom the
14 information should be provided, and any changes of the name, address,
15 telephone number, and email address, if an email address is available.

16 (8) A defendant or person accused or convicted of a crime against the
17 victim shall have no standing to object to any failure to comply with this
18 Subsection. The failure to provide a right or notice to a sexual assault victim
19 under this Subsection shall not be used by a defendant to seek to have the
20 conviction or sentence set aside.

21 (9) The sole civil or criminal remedy available to a sexual assault victim
22 for a law enforcement agency's failure to fulfill its responsibilities under this
23 Subsection shall be standing to file a writ of mandamus to require compliance
24 with the requirements of this Section.

25 E.(1) The laboratory, shall conduct a study and issue a report by
26 January 1, 2025, that examines the resources required to implement a rape kit
27 tracking system in the state that shall address all of the following:

28 (a) Be operated and managed by the laboratory for the purpose of
29 tracking all rape kits collected for testing or analysis.

1 **(b) Be accessible to sexual assault victims and other authorized users as**
2 **determined by the Louisiana State Police.**

3 **(c) Function as an online accessible database capable of receiving,**
4 **maintaining, storing and preserving tracking information related to the testing**
5 **and analysis of all rape kits.**

6 **(2) The laboratory shall issue a report of its findings and**
7 **recommendations to the Louisiana Legislature no later than January 1, 2025.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alan Miller.

DIGEST

SB 361 Original

2024 Regular Session

Mizell

Present law requires all criminal justice agencies charged with the maintenance, storage, and preservation of sexual assault collection kits to conduct a physical inventory of all such kits being stored by the agency and compile, in writing, a report containing the number of untested sexual assault collection kits in the possession of the agency and the date the sexual assault kit was collected. Present law requires each criminal justice agency to also provide written notification if it does not have any untested sexual assault collection kits in its possession. Present law requires the report to be transmitted to the director of the La. State Police Crime Laboratory (laboratory).

Present law requires the laboratory to prepare and transmit a report to the chairman of the Senate Committee on Judiciary B and the chairman of the House of Representatives Committee on Judiciary containing the number of untested sexual assault collection kits being stored by each parish, by each criminal justice agency, and the date the untested kit was collected. Present law requires the report to also include the name and contact information of each criminal justice agency that failed to submit the report required by present law.

Proposed law requires that sexual assault evidence collection kits be processed in the following manner:

- (1) Any medical facility that conducts a medical forensic examination or prepares a sexual assault evidence collection kit shall immediately, but no longer than four hours after the finalization of examination, contact the appropriate law enforcement agency to collect the kit. Until the kit is retrieved by law enforcement, the medical facility shall store the kit in a refrigerated manner in conformity with the Scientific Working Group for DNA Analysis Method.
- (2) When a law enforcement agency is contacted to collect a sexual assault evidence kit, the law enforcement agency shall take possession of the kit from the medical facility within 24 hours. Upon taking physical possession of the sexual assault evidence collection kit, the law enforcement agency shall transport the kit in a manner that preserves the evidence in the kit. The agency shall perform either of the following:
 - (a) Store the kit in a secure, refrigerated location in the agency no more than two hours after taking physical possession of the kit.
 - (b) Transport the kit directly to the laboratory.

- (3) All kits must be delivered to the laboratory no later than seven calendar days from the date the law enforcement agency took physical possession of the kit.
- (4) A law enforcement agency that receives a sexual assault collection kit from a healthcare provider that relates to a report of a sexual assault that occurred outside the jurisdiction of that law enforcement agency shall have the sexual assault collection kit delivered to the law enforcement agency having jurisdiction within 10 days of learning that the other law enforcement agency has jurisdiction.

Proposed law requires the laboratory to test sexual assault evidence collection kits within 60 days of receipt from a law enforcement agency. Provides forensic DNA testing shall be performed according to laboratory methods that determine the presence of DNA suitable for STR analysis. Provides any autosomal, Combined DNA Index System (CODIS) eligible DNA profile shall be entered into the CODIS or equivalency thereof and state or local DNA database. Further provides that if the laboratory is unable to determine DNA present, other than the victim's DNA, in the sexual assault evidence collection kit, the laboratory shall evaluate the case, when suitable, to determine if any other DNA results could be used for investigative purposes.

Proposed law requires that when laboratory testing does result in a DNA profile foreign to the victim, to enter the foreign DNA profile into the CODIS and any other required state or local DNA databases within 90 days.

Proposed law authorizes the laboratory to contract other laboratories to ensure that each kit is tested and the information from such kit is entered into CODIS, when applicable, within the time frames required by proposed law.

Proposed law requires that, upon the request of a sexual assault victim or their designee, the law enforcement agency that is investigating the assault of such victim inform the victim of the location of the sexual assault evidence kit or other crime scene evidence from the victim's case and the status of the DNA testing of the sexual assault evidence kit or other crime scene evidence from the victim's case.

Proposed law requires the law enforcement agency to respond to the victim's request as soon as possible, but no longer than seven calendar days, with either an oral or written communication, or by email, if an email address is available.

Proposed law requires that the victim of sexual assault have the following rights:

- (1) The right to be informed by the law enforcement agency handling the case whether a DNA profile of the assailant was obtained from the testing of the sexual assault evidence kit or other crime scene evidence from their case.
- (2) The right to be informed whether the DNA profile of the assailant developed from the sexual assault evidence kit or other crime scene evidence has been entered into the laboratory's DNA identification system or CODIS.
- (3) The right to be informed whether there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the laboratory's DNA identification system, provided that disclosure would not impede or compromise an ongoing investigation.

Proposed law requires that if the law enforcement agency intends to destroy or dispose of the sexual assault evidence kit or any other crime scene evidence from an unsolved sexual assault case, the victim of the case be given written notification by the law enforcement agency of that intention within 20 days. Proposed law requires the victim be granted further preservation of the kit or its probative contents, upon their request.

Proposed law prohibits a law enforcement agency from destroying or disposing of the sexual assault evidence kit or any other crime scene evidence from an unsolved sexual assault case before 20 years after the collection of the evidence of the crime or, if the victim was under eighteen years of age at the time of the alleged offense, before the victim is 40 years of age.

Proposed law authorizes a sexual assault victim to designate a sexual assault victim advocate, or other support person of the victim's choosing, to act as a recipient of the above information required to be provided by proposed law.

Proposed law authorizes the victim or the victim's designee to keep appropriate authorities informed of the name, address, telephone number, and email address of the person to whom the information should be provided, and any changes of the name, address, telephone number, and email address, if an email address is available.

Proposed law prohibits a defendant or person accused or convicted of a crime against the victim from having standing to object to any failure to comply with proposed law.

Proposed law provides that the sole civil or criminal remedy available to a sexual assault victim for a law enforcement agency's failure to fulfill its responsibilities under proposed law be standing to file a writ of mandamus to require compliance with the requirements of proposed law.

Proposed law requires the laboratory to conduct a study and issue a report by January 1, 2025, that examines the resources required to implement a rape kit tracking system in the state and address all of the following:

- (1) Be operated and managed by the laboratory for the purpose of tracking all rape kits collected for testing or analysis.
- (2) Be accessible to sexual assault victims and other authorized users as determined by the La. State Police.
- (3) Function as an online accessible database capable of receiving, maintaining, storing and preserving tracking information related to the testing and analysis of all rape kits.

Proposed law requires the laboratory to issue a report of its findings and recommendations to the legislature no later than January 1, 2025.

Effective August 1, 2024.

(Amends R.S. 15:622)