

Sexual Assault Survivors DNA Justice Act

Sample Statutory Language



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§ 101. Short title.

This chapter shall be called the "Sexual Assault Survivors DNA Justice Act."

§ 102. Purpose.

A. Forensic DNA and DNA databases have become powerful tools for the criminal justice system response to sexual assault cases, making it possible to identify unknown offenders and link crimes to each other, thereby discovering serial criminals. Timely testing of DNA evidence is key to securing justice for survivors, accountability for offenders, and safety for communities.

B. Victims of these crimes have a strong interest in the progress of their case. Victims also have a strong interest in privacy, in being treated with dignity and respect, and in being kept informed from the time they make a report of sexual assault until the conclusion of all related justice proceedings.

C. Law enforcement has an obligation to victims of sexual assaults in the proper handling, retention, and timely DNA testing of sexual assault forensic evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.

§ 103. Definitions.

As used in this chapter:

A. "Cold case" means a felony crime reported to law enforcement that has remained unsolved for over one year after the crime was initially reported to law enforcement and for which the applicable statute of limitations has not expired.

B. "Sexual assault" shall include offenses defined in §§ _____, _____, _____, _____.

C. "Victim" shall mean a person against whom the sexual assault has been committed. For purposes of the victim's rights to notification, the term includes the parent or guardian of a minor victim, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent, sibling, any other person related to the person by consanguinity or affinity to the second degree, or any other lawful representative of the person, unless the person's parent, guardian, spouse, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree, or other lawful representative is the accused.

D. "Victim advocate" means a person who is employed or authorized by a public or private entity to provide counseling, treatment, or other supportive assistance to crime victims.

§ 201. Rights related to sexual assault medical forensic exam.

A. Victims of sexual assault have a right to receive a medical forensic exam provided at state expense if timely sought.

B. Law enforcement officers with reason to believe a sexual assault has occurred shall assist the victim upon request in obtaining medical treatment necessitated by the sexual assault, including providing assistance in obtaining transportation to a health care facility offering comprehensive post-sexual assault medical care and medical forensic exams.

C. Victims have the right to be accompanied by a victim advocate at any proceeding related to an assault, including a sexual assault medical forensic examination.

D. Standards for consent for the collection, testing, and release of test results of the forensic medical evidence shall be developed by the (*insert agency with primary responsibility*), in consultation with the state sexual assault coalition and (*insert entity representing sexual assault nurse examiners*). Standards shall include:

- (1) Consent forms that notify persons of the potential effects of each step of the process, including the collection and testing of medical forensic evidence and release of criminal laboratory test results, and require acknowledgment of consent for each step of the process;

- (2) Who may give consent and when it is required;
- (3) Who may withdraw consent and when it may be withdrawn; and
- (4) When, how, to whom, and for what purposes the results of any tests may be released.

E. Law enforcement and medical personnel shall not, for any reason, discourage a victim of sexual assault from receiving a medical forensic examination.

§ 301. Victims' right to notice regarding the investigation and forensic evidence.

A. At the time of the initial contact between a victim and a law enforcement agency, the agency shall provide the victim notice of his or her rights under section 201.

B. After the initial contact between a victim and a law enforcement agency, the agency shall provide the victim written notice of his or her rights under this section.

C. The victim, guardian of a victim, or surviving family member of a deceased victim has the following rights upon request:

- (1) the right to receive a free copy of the initial incident report;
- (2) the right to be informed regarding the status of any analysis being performed on any DNA evidence that was collected during the investigation of the offense, including:
 - (a) at the time a request is submitted to a crime laboratory to process and analyze any evidence that was collected during the investigation of the offense;
 - (b) whether a DNA profile of the assailant was obtained from that analysis;
 - (c) at the time of the submission of a request to compare any biological evidence collected during the investigation of the offense with DNA profiles maintained in a state or federal DNA database; and
 - (d) of the results of the comparison described by paragraph (c), unless disclosing the results would unduly interfere with the investigation of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which that information is expected to be disclosed.
- (3) the right to be timely informed by law enforcement if:
 - (a) the agency elects not to analyze DNA evidence within time limits established by law; or

(b) the sexual assault forensic evidence kit or other crime scene evidence from an unsolved sexual assault case will be destroyed or disposed of. Notice under this subsection shall be provided 60 days prior to such destruction or disposal and shall include information about how to appeal the decision.

§ 302. Victims' right to notice in cold cases.

The law enforcement agency responsible for investigating a crime shall provide the victim in a cold case with information concerning any change in the status of the case, including the re-opening of the case to resume investigation, unless such disclosure would unreasonably interfere with the investigation. In addition, upon the written request of the victim, the law enforcement agency shall provide an update at least annually to the victim concerning the status of a cold case.

§ 303. Victims' right to be notified of a final decision not to charge.

If a sexual assault victim has requested notice, the investigating law enforcement agency shall provide timely notice to a victim of any final decision not to file criminal charges against a person accused of committing a sexual assault against the victim.

§ 304. Victim request for information.

A. A victim who requests to be notified under sections 301, 302, or 303, must provide a current address, telephone phone number, and email address, if an email address is available, to the attorney representing the state and the law enforcement agency that is investigating the offense. The victim must inform the attorney representing the state and the law enforcement agency of any change in the address or phone number.

B. A victim may designate a person, including an entity that provides services to victims of sexual assault or the victim's attorney, to receive any notice requested under sections 301, 302, or 303. The designation must include a current address, telephone number, and email address, if an email address is available, for that designee.

§ 401. Right to victim compensation.

Section _____ of the Crime Victim Compensation Law shall be amended to provide:

A. Notwithstanding the provisions of this chapter that limit the time period for which expenses may be submitted or a claim for compensation may be filed, where further investigation into a previously reported crime is initiated by a law enforcement agency, any victim of such crime committed may apply for reimbursement as set forth in paragraph (B) of this section.

B. A victim may apply for reimbursement under the circumstances set forth in paragraph (A) of this section for the following:

1. The cost of mental health counseling services;
2. Reasonable expenses incurred due to attendance at court proceedings and other justice-related proceedings;
3. Expenses for essential personal safety property, not to exceed \$_____;
4. Reasonable medical expenses;
5. Reasonable attorney's fees not to exceed \$_____, at an hourly rate set by the compensation program, for the provision of legal assistance to the victim in any legal matter arising from or relating to the victimization.

§ 501. Defendant or convicted person without standing to object; Lack of compliance with chapter not grounds to set aside conviction or sentence.

A defendant or person accused or convicted of a crime against the victim shall have no standing to object to any failure to comply with this section. The failure to provide a right or notice to a sexual assault victim under this section may not be used by a defendant to seek to have the conviction or sentence set aside.