

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 HOUSE BILL 2639

 By: Munson

7 AS INTRODUCED

8 An Act relating to sexual assault victims; creating
9 the Sexual Assault Victims' Right to Information Act;
10 providing short title; defining terms; declaring
11 rights of sexual assault victims; declaring right to
12 consult with sexual assault advocate; providing for
13 confidentiality of communications; prohibiting
14 certain entities from charging sexual assault victims
15 for examination and treatment costs; directing
16 medical facility to inform victims of certain rights;
17 directing law enforcement and district attorneys to
18 inform victims of certain rights; declaring victims'
19 right to counsel during proceedings; declaring
20 victims' right to results and status of forensic
21 evidence; declaring victims' right to retain copy of
22 police report; prohibiting use of forensic evidence
23 for certain purposes; directing law enforcement and
24 medical providers to provide certain document;
 providing for the development of document outlining
 rights of victims; stating contents of document;
 directing crime laboratories to retain evidence for
 time certain; amending 22 O.S. 2011, Section 40.3A,
 which relates to duties of health care professionals
 to report certain crimes; directing health care
 professionals to inform victims of their rights;
 providing for codification; and providing an
 effective date.

24 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 142C of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

4 Sections 1 through 10 of this act shall be known and may be
5 cited as the "Sexual Assault Victims' Right to Information Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 142C-1 of Title 21, unless there
8 is created a duplication in numbering, reads as follows:

9 For the purposes of this act:

10 1. "Forensic laboratory" means a laboratory operated by or
11 contracted with the state or any unit of municipal, county, city or
12 other local government that examines physical evidence in criminal
13 matters and provides opinion testimony in a court of law;

14 2. "Law enforcement officer" means any sheriff, police officer,
15 peace officer, tribal law enforcement officer, federal law
16 enforcement officer, campus police officer or any other law
17 enforcement officer who has been certified by the Council on Law
18 Enforcement Education and Training and whose duty it is to enforce
19 and preserve the public peace or any other first responder;

20 3. "Sexual assault victims' advocate" means any person who is
21 certified as a behavioral health professional, or as a victims'
22 advocate working in a center that offers sexual assault services,
23 who has received formalized training through a government agency,
24 tribal organization, tribal agency or victim services agency, in

1 providing trauma-informed direct services to victims of sexual
2 assault;

3 4. "Sexual assault forensic evidence" means any human
4 biological specimen collected by a medical provider during a
5 forensic medical examination from an alleged sexual assault victim
6 including, when circumstances indicate the need, a toxicology kit;
7 and

8 5. "Sexual assault victim" or "victim" means any person who is
9 a victim of a sexual assault defined under Section 142.20 of Title
10 21 of the Oklahoma Statutes. If the victim is incompetent, the term
11 shall include the parent, guardian, spouse or any other person
12 related to the incompetent victim by consanguinity or affinity to
13 the second degree, or any other lawful representative of the
14 incompetent victim.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 142C-2 of Title 21, unless there
17 is created a duplication in numbering, reads as follows:

18 A sexual assault victim retains all the rights of this act
19 regardless of whether the victim agrees to participate in the
20 criminal justice system at any time and regardless of whether the
21 victim agrees to receive a medical evidentiary examination to
22 collect sexual assault forensic evidence.

1 SECTION 4. NEW LAW

A new section of law to be codified

2 in the Oklahoma Statutes as Section 142C-3 of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A sexual victims' assault victim has the right to consult,
5 either in person or via telemedicine, with a sexual assault victims'
6 advocate during any medical evidentiary or physical examination and
7 during any interview by law enforcement authorities or district
8 attorneys. A sexual assault victim retains this right even if the
9 victim has waived the right in a previous examination or interview.
10 Where a sexual assault victims' advocate is not available for an in-
11 person consultation, consultations via telemedicine must be
12 provided.

13 B. Communications between a sexual assault victim and a sexual
14 assault victims' advocate are confidential and privileged, including
15 information disclosed in the presence of any third persons
16 conducting a medical evidentiary or physical examination.

17 C. The presence of a sexual assault victims' advocate does not
18 operate to defeat any existing privilege otherwise guaranteed by
19 law.

20 D. The waiving of the right to a sexual assault victims'
21 advocate by a sexual assault victim is privileged information.

22 SECTION 5. NEW LAW

A new section of law to be codified

23 in the Oklahoma Statutes as Section 142C-4 of Title 21, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Costs incurred by a qualified health care professional,
2 hospital or other emergency medical facility for the medical
3 evidentiary examination portion of the examination and any
4 medications which are related to the sexual assault and deemed
5 necessary by the health care professional in the treatment of a
6 sexual assault victim shall not be charged directly or indirectly to
7 the victim, as set forth in Section 142.20 of Title 21 of the
8 Oklahoma Statutes.

9 B. Before a medical facility commences a medical evidentiary or
10 physical examination of a sexual assault victim, the medical
11 facility shall inform the victim of the following:

12 1. The rights of the victim pursuant to this act and other
13 relevant law in a document to be developed by the Office of the
14 Attorney General; and

15 2. The right of the victim to consult with a sexual assault
16 victims' advocate who is to be requested by the medical facility
17 before the commencement of the medical evidentiary or physical
18 examination, unless no sexual assault victims' advocate is
19 available.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 142C-5 of Title 21, unless there
22 is created a duplication in numbering, reads as follows:

23 A. Before commencing an interview of a sexual assault victim, a
24 law enforcement officer or district attorney shall inform the victim

1 of the right to consult with a sexual assault victims' advocate
2 during any interview by a law enforcement officer or district
3 attorney and the right to have a sexual assault victims' advocate
4 requested by the interviewer and present before the commencement of
5 the interview, unless no sexual assault victims' advocate is
6 available.

7 B. No person, for any reason, shall discourage a sexual assault
8 victim from receiving a medical evidentiary or physical examination
9 or discourage the victim from reporting to the proper authorities.

10 SECTION 7. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 142C-6 of Title 21, unless there
12 is created a duplication in numbering, reads as follows:

13 If a victim retains counsel, the victim has the right to have
14 such counsel present during all stages of the investigation or other
15 interaction with representatives from the legal or criminal justice
16 systems within the state. Treatment of the victim should not be
17 affected or altered in any way as a result of the decision of the
18 victim to exercise this right to have counsel present during any
19 interaction with the legal or criminal justice systems within the
20 state.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 142C-7 of Title 21, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. A sexual assault victim has the right to request and receive
2 the results and status of the analysis of the sexual assault
3 forensic evidence of the victim.

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

10 C. A sexual assault victim has the right to retain a copy of
11 the police report from law enforcement at the conclusion of the
12 criminal case.

13 D. No sexual assault forensic evidence shall be used:

14 1. To prosecute a sexual assault victim for any misdemeanor
15 crimes; or

16 2. As a basis to search for further evidence of any unrelated
17 misdemeanor crimes that may have been committed by the sexual
18 assault victim.

19 SECTION 9. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 142C-8 of Title 21, unless there
21 is created a duplication in numbering, reads as follows:

22 Upon initial interaction with a sexual assault victim, a law
23 enforcement officer or medical provider shall provide the victim
24 with a document to be developed by the Office of the Attorney

1 General that explains the rights of sexual assault victims pursuant
2 to this act and other relevant law. This document shall include,
3 but is not limited to:

4 1. A clear statement that a sexual assault victim is not
5 required to participate in the criminal justice system or to receive
6 a medical evidentiary or physical examination in order to retain the
7 rights provided by this act and other relevant law; and

8 2. Instructions for requesting the results of the analysis of
9 the sexual assault forensic evidence.

10 SECTION 10. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 142C-9 of Title 21, unless there
12 is created a duplication in numbering, reads as follows:

13 Where a crime laboratory has gained possession of sexual assault
14 forensic evidence, the crime laboratory shall retain said evidence
15 for a minimum of fifty (50) years before it is destroyed or until
16 the victim reaches forty (40) years of age, if the victim was a
17 minor when the sexual assault occurred.

18 SECTION 11. AMENDATORY 22 O.S. 2011, Section 40.3A, is
19 amended to read as follows:

20 Section 40.3A A. Any physician, surgeon, resident, intern,
21 physician assistant, registered nurse, or any other health care
22 professional examining, attending, or treating the victim of what
23 appears to be or is reported by the victim to be rape, rape by
24 instrumentation or forcible sodomy, as defined in Section 1111,

1 1111.1 or 888 of Title 21 of the Oklahoma Statutes or any form of
2 sexual assault, shall not be required to report any incident of what
3 appears to be or is reported to be such crimes if:

4 1. Committed upon a person who is over the age of eighteen (18)
5 years; and

6 2. The person is not an incapacitated adult.

7 B. Any physician, surgeon, resident, intern, physician
8 assistant, registered nurse, or any other health care professional
9 examining, attending, or treating a victim shall be required to
10 report any incident of what appears to be or is reported to be rape,
11 rape by instrumentation, forcible sodomy or any form of sexual
12 assault, if requested to do so either orally or in writing by the
13 victim and shall be required to inform the victim of the victim's
14 right to have a report made. A requested report of any incident
15 shall be promptly made orally or by telephone to the nearest law
16 enforcement agency in the county wherein the sexual assault occurred
17 or, if the location where the sexual assault occurred is unknown,
18 the report shall be made to the law enforcement agency nearest to
19 the location where the injury is treated.

20 C. In all cases of what appears to be or is reported to be
21 rape, rape by instrumentation, forcible sodomy or any form of sexual
22 assault, the physician, surgeon, resident, intern, physician
23 assistant, registered nurse, or any other health care professional
24 examining, attending, or treating the victim of what appears to be

1 such crimes, shall clearly and legibly document the incident and
2 injuries observed and reported, as well as any treatment provided or
3 prescribed.

4 D. In all cases of what appears to be or is reported to be
5 rape, rape by instrumentation, forcible sodomy or any form of sexual
6 assault, the physician, surgeon, resident, intern, physician
7 assistant, registered nurse, or any other health care professional
8 examining, attending, or treating the victim of what appears to be
9 rape, rape by instrumentation, forcible sodomy or any form of sexual
10 assault, shall inform the victim of the victim's rights, including
11 those rights set forth in the Oklahoma Victim's Rights Act, and
12 shall refer the victim to sexual assault and victim services
13 programs, including providing the victim with twenty-four-hour
14 statewide telephone communication service established by Section
15 18p-5 of Title 74 of the Oklahoma Statutes.

16 E. Every physician, surgeon, resident, intern, physician
17 assistant, registered nurse, or any other health care professional
18 making a report of rape, rape by instrumentation, forcible sodomy or
19 any form of sexual assault pursuant to this section or examining
20 such victims to determine the likelihood of such crimes, and every
21 hospital or related institution in which the victims were examined
22 or treated shall, upon the request of a law enforcement officer
23 conducting a criminal investigation into the case, provide to the
24 officer copies of the results of the examination or copies of the

1 examination on which the report was based, and any other clinical
2 notes, X-rays, photographs, and other previous or current records
3 relevant to the case.

4 SECTION 12. This act shall become effective November 1, 2019.

5
6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2019 - DO
7 PASS.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24