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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- VICTIMS' RIGHTS

Introduced By: Senators Mack, Murray, DiMario, Mendes, Anderson, Calkin, Acosta,
Bell, Cano, and Goldin

Date Introduced: February 25, 2021

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 28.1

4 SEXUAL ASSAULT SURVIVORS' BILL OF RIGHTS

5 **12-28.1-1. Short title.**

6 This act shall be known and may be cited as the "Sexual Assault Survivors' Bill of Rights."

7 **12-28.1-2. Definitions.**

8 Definitions. As used in this section the following terms shall have the following meanings
9 unless the context clearly requires otherwise:

10 (1) "Crime laboratory" means the state crime laboratory as established in chapter 1.2 of
11 title 12.

12 (2) "Law enforcement official" means any peace officer as defined in § 12-7-21 or any
13 person employed by a private police agency of any educational institution located in this state.

14 (3) "Medical provider" means any qualified health care professional, hospital, other
15 emergency medical facility, or any other facility conducting a medical evidentiary or physical
16 examination of a sexual assault survivor.

17 (4) "Sexual assault forensic evidence" or "sexual assault collection kit" or "kit" means a
18 human biological specimen or specimens collected by a medical provider during a forensic medical
19 examination from the victim of a sexually oriented criminal offense or a sexual assault survivor,

1 including, but not limited to, toxicology kits.

2 (5) "Sexual assault survivor" means any person who is a victim of a crime defined under
3 chapters 11 or 67.1 of title 11 and if the survivor is incompetent as defined in § 40.1-5-2(8),
4 deceased, or a minor who is unable to consent to counseling services, the parent, guardian, spouse,
5 or any other person related to the survivor by consanguinity or affinity to the second degree, or any
6 other lawful representative of the survivor, unless such person is the alleged assailant.

7 **12-28.1-3. Attachment and duration of rights.**

8 (a) The rights provided to survivors in this chapter attach whenever a survivor is subject to
9 a medical evidentiary, or physical examination and whenever a survivor is subject to an interview
10 by a law enforcement official, prosecutor, or defense attorney, during and in relation to any
11 investigation or court hearing of a sexual assault complaint made by the survivor.

12 (b) A survivor retains all the rights contained in this chapter at all times, regardless of
13 whether the survivor agrees to participate in any investigation or generally, in the criminal justice
14 system of any court of this state and regardless of whether the survivor consents to a medical
15 evidentiary or physical examination to collect sexual assault forensic evidence.

16 **12-28.1-4. Rights - Generally.**

17 (a) A sexual assault survivor has the right to be reasonably protected from the defendant
18 and persons acting on behalf of the defendant, pursuant to § 11-37.2.

19 (b) A sexual assault survivor has the right to be free from intimidation, harassment, and
20 abuse and the courts shall make reasonable efforts to provide the survivor and the survivor's family
21 members, friends, and witnesses with a secure waiting area or room that is separate from the waiting
22 area of the defendant and the defendant's family members, friends, witnesses, and attorneys; and
23 separate from the district attorney's office.

24 (c) A sexual assault survivor has the right to be treated with fairness and respect for his or
25 her privacy and dignity and the courts shall, upon the request of the survivor, clear the courtroom
26 of all persons when the survivor is testifying regarding the sexual assault in any civil or criminal
27 trial, except that parties to the cause and their immediate families or guardians, attorneys and their
28 secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and,
29 at the request of the survivor, witnesses designated by the prosecutor may remain in the courtroom.

30 (d) A sexual assault survivor shall not be required to submit to a polygraph examination as
31 a prerequisite to filing an accusatory pleading or to participating in any part of the criminal justice
32 system.

33 (e) A sexual assault survivor has the right to be heard through a survivor impact statement
34 at any proceeding involving a post-arrest release decision, plea, sentencing, post-conviction release

1 decision, or any other proceeding where a right of the survivor is at issue, pursuant to chapter 28
2 of title 12 and the right to provide a sentencing recommendation to the probation department official
3 conducting a pre-sentence investigation.

4 **12-28.1-5. Right to a sexual assault counselor and support person.**

5 (a) A survivor has the right to consult with a sexual assault counselor during any medical
6 evidentiary or physical examination, as well as the right to have a support person of the survivor's
7 choosing present during any interview by a law enforcement official, prosecutor, or defense
8 attorney. A survivor retains this right even if the survivor has previously waived it during prior
9 examinations or interviews.

10 (b) Communications between a survivor and a sexual assault counselor are confidential
11 and privileged, including any information disclosed in the presence of any third parties during a
12 medical evidentiary or physical examination or during any interview by a law enforcement official,
13 prosecutor or defense attorney.

14 (c) The presence of a sexual assault counselor during any medical evidentiary or physical
15 examination or during any interview by any law enforcement official, prosecutor or defense
16 attorney, is privileged and does not operate as a waiver of any other existing privilege guaranteed
17 by law.

18 (d) Notwithstanding any waiver of privilege, a survivor's communications with a sexual
19 assault counselor, or waiver of the right to a sexual assault counselor, shall not be admissible into
20 evidence for any purpose except with the consent of the survivor.

21 **12-28.1-6. Collection of sexual assault forensic evidence.**

22 (a) No costs incurred by a medical provider for the medical evidentiary examination portion
23 of the examination of a survivor shall be charged directly or indirectly to the survivor.

24 (b) Before a medical provider commences a medical evidentiary or physical examination
25 of a survivor, the medical provider shall:

26 (1) Provide a copy of the survivor's rights on a form prepared by the department of health
27 in conjunction with the department of attorney general, which copy shall be signed by the survivor
28 prior to any medical evidentiary or physical examination;

29 (2) Inform the survivor of the right to consult with a sexual assault counselor, who shall be
30 summoned by the medical provider prior to the commencement of any medical evidentiary or
31 physical examination, unless a sexual assault counselor cannot be summoned in a reasonably timely
32 manner; and the survivor's right to have at least one support person of the survivor's choosing
33 present during any examination;

34 (3) Inform the survivor of the ramifications of delaying the medical evidentiary or physical

1 examination in the event a sexual assault counselor cannot be summoned in a reasonably timely
2 manner;

3 (4) Permit the survivor, after the medical evidentiary or physical examination, to shower
4 at the medical facility, at no cost. If there is no shower facility available, the survivor shall be so
5 notified.

6 **12-28.1-7. Interview with law enforcement, prosecutor or defense attorney.**

7 (a) Prior to the commencement of an interview of a survivor, a law enforcement official,
8 prosecutor or defense attorney shall inform the survivor of the following:

9 (1) The survivor's rights pursuant to this chapter and other relevant law by providing the
10 survivor with a document prepared in accordance with § 12-28.1-5(b)(1). The survivor shall sign
11 the document acknowledging its receipt.

12 (2) The survivor's right to consult with a sexual assault counselor during any interview by
13 a law enforcement official, prosecutor or defense attorney, to be summoned by the interviewer prior
14 to any commencement of any questioning, unless no sexual assault counselor can be summoned in
15 a reasonably timely manner;

16 (3) The survivor's right to have a support person of the survivor's choosing, present during
17 any interview, unless the law enforcement official, prosecutor or defense attorney determines in
18 their good faith professional judgment, that the presence of a support person would be detrimental
19 to the purpose of the interview; and

20 (4) The survivor, during interviews by law enforcement officials, shall have the right to
21 choose the gender of the interviewer. If no law enforcement official of that gender is reasonably
22 available, the survivor may be interviewed by an available law enforcement officer only with the
23 survivor's consent.

24 (b) No law enforcement official, prosecutor or defense attorney shall, for any reason,
25 discourage a survivor from seeking or receiving a medical evidentiary or physical examination.

26 **12-28.1-8. Right to counsel.**

27 A survivor retains the right to have counsel present during all stages of any medical
28 examination, interview, investigation, or other interaction with representatives from the legal or
29 criminal justice system within the state. Treatment of the survivor should not be affected or altered
30 in any way as a result of the survivor's decision to exercise the right to have counsel present at any
31 stage of the investigation.

32 **12-28.1-9. Analysis of sexual assault forensic evidence.**

33 (a) A survivor has the right to prompt analysis of sexual assault forensic evidence obtained
34 as a result of or from any medical evidentiary or physical examination,

1 (b) A medical care provider shall, upon conducting and completing a medical evidentiary
2 and/or physical examination to collect sexual assault forensic evidence, inform the survivor that:

3 (1) The sexual assault forensic evidence shall be transported to the crime laboratory and
4 analyzed within ninety (90) days, unless the survivor requests in writing at any time prior to
5 analysis, for the crime laboratory to defer analysis of the evidence;

6 (2) If the survivor requests the analysis be deferred, they can request the crime laboratory
7 to conduct the analysis at any later date before the expiration of the retention period contained in
8 subsection (3) of this section.

9 (3) The crime laboratory shall retain the sexual assault forensic evidence for a period of
10 time to be no less than the conclusion of any prosecution of the offender and subsequent appeals,
11 or alternatively, if the testing is deferred at the request of the survivor pursuant to subsection (b)(1)
12 of this section, for a period of time up to the expiration of the statute of limitations for the offense(s)
13 charged, and if the survivor was a minor at the time of the assault, until the survivor reaches the
14 age of forty (40) years of age.

15 (c) Upon completion of collecting sexual assault forensic evidence, the medical provider
16 shall, within twenty-four (24) hours, notify the law enforcement agency having jurisdiction over
17 the investigation.

18 (d) The relevant law enforcement agency shall, upon receiving notification from the
19 medical provider that the forensic evidence has been collected, collect and take possession of the
20 evidence and within forty-eight (48) hours, assign the evidence criminal complaint numbers,
21 preserve it according to accepted standards of chain of custody and deliver the forensic evidence to
22 the crime laboratory for further testing.

23 (e) If it is determined that the investigating law enforcement agency does not have
24 jurisdiction over the alleged assault, it shall notify the appropriate law enforcement agency having
25 proper jurisdiction within twenty-four (24) hours of making that determination and within forty-
26 eight (48) hours, transmit all evidence, reports, notes witness statements, and any other physical
27 evidence to the appropriate law enforcement agency. The law enforcement agency having proper
28 jurisdiction shall adhere to all guidelines and rights set out in this chapter.

29 (f) Any law enforcement agency that submits sexual assault forensic evidence to the crime
30 laboratory shall, immediately following such submission, notify the survivor of the name, address,
31 and telephone number of the laboratory. The law enforcement agency shall further notify the
32 survivor of the information listed in this section.

33 (g) The state crime laboratory shall within ninety (90) days of receipt and testing of any
34 forensic evidence, upload any available deoxyribonucleic acid (DNA) profiles into combined DNA

1 index system (CODIS) and otherwise comply with the mandates of chapter 1.5 of title 12 relative
2 to DNA detection.

3 (h) A survivor has the right to be informed, upon their request, of the results of the analysis
4 of their sexual assault forensic evidence kits, including whether the analysis yielded any a DNA
5 profile, and whether the analysis yielded a DNA match, either to the named perpetrator to a suspect
6 already in CODIS. This information shall be provided to the survivor through a secure and
7 confidential message, in writing, from the state crime laboratory.

8 (i) A defendant or suspect in a sexual assault investigation, shall have no standing to object
9 to any failure to comply with any provisions of this section and the failure to comply may not be
10 used by a defendant to have the conviction or sentence vacated or overturned.

11 (j) The failure of a law enforcement agency to take possession of and deliver sexual assault
12 forensic evidence within the time frames set out in this section shall not alter its authority to take
13 possession of the evidence or submit the evidence to the crime laboratory for testing. Further, any
14 delay shall not alter the authority of the crime laboratory to take possession of the evidence from
15 the law enforcement agency, conduct testing or enter the evidence into CODIS. The failure to
16 comply with the requirements of this chapter shall not constitute grounds in any criminal or civil
17 proceeding for challenging the validity of the information and no court shall exclude the evidence
18 on those grounds.

19 **12-28.1-10. Bar to prosecution.**

20 (a) No sexual assault forensic evidence shall be used:

21 (1) To prosecute a survivor for any misdemeanor crimes of any defined under chapter 28
22 of title 21;

23 (2) As a basis to search for further evidence of any unrelated misdemeanor crime of any
24 crime under chapter 28 of title 21, that may have been committed by the survivor.

25 **12-28.1-11. Notice to survivors.**

26 (a) Upon initial interaction with a survivor, a law enforcement officer or medical provider
27 shall provide the survivor with a document prepared in accordance with § 12-28.1-5(b)(1). The
28 document shall also include other relevant law and shall be in clear language that is comprehensible
29 to a person proficient in English at the fifth grade level, be accessible to persons with visual
30 disabilities and be available in all major languages of the state. The document, in addition to
31 informing the survivor of the rights contained in this chapter, shall contain:

32 (1) A clear statement that a survivor is not required to participate in the criminal justice
33 system or to receive a medical evidentiary or physical examination in order to retain the rights
34 contained in this chapter;

1 (2) Telephone and Internet means of contacting nearby rape crisis centers and sexual
2 assault counselors;

3 (3) Forms of law enforcement protection available to the survivor, including the availability
4 of temporary protection orders, and the process for obtaining such orders;

5 (4) Instructions for requesting the results of the analysis of the survivor's sexual assault
6 forensic evidence; and

7 (5) Information on state and federal compensation funds for medical and other costs
8 associated with the sexual assault; information on any municipal, state, or federal right to restitution
9 for survivors in the event of a criminal trial.

10 (b) A law enforcement agency shall, upon written request by survivor, furnish within ten
11 (10) business days of receiving such a request, a free, complete and unaltered copy of, subject to
12 the limitations contained in chapter 2 of title 38, all law enforcement reports concerning the sexual
13 assault, regardless of whether the investigation has been closed by the law enforcement agency.

14 (c) The department of attorney general shall, upon written request by a survivor, provide:

15 (1) Timely notice of any pretrial disposition of the case as provided in chapter 28 of title
16 12;

17 (2) Timely notice of the final disposition of the case, including the conviction, sentence,
18 and place and time of incarceration, if any;

19 (3) Timely notice of a convicted defendant's location, including, whenever the defendant
20 receives a temporary, provisional, or final release from custody; escapes from custody; is moved
21 from a secure facility to a less secure facility; or re-enters custody; and

22 (4) A convicted defendant's information on a sex offender registry, if any.

23 **12-28.1-12. Creation of tracking system for SAEC Kits.**

24 There shall be established by the Rhode Island crime laboratory in consultation with Rhode
25 Island state police and the department of health, within one year of the enactment of this chapter, a
26 system for tracking sexual assault evidence collection (SAEC) Kits that permits a victim of sexual
27 assault to track, by telephone or Internet, the location and status of his or her kit. Once established,
28 whoever administers a kit shall furnish the victim of sexual assault with written information, created
29 by department of health, about how to use and access the tracking system.

30 **12-28.1-13. Reporting on backlog of SAEC Kits.**

31 (a) Inventory of unanalyzed SAEC Kits.

32 (1) By January 1, 2022, all law enforcement agencies and departments charged with the
33 maintenance, storage and preservation of SAEC Kits shall conduct an inventory of all such kits
34 being stored by the agency or department which have not been submitted for testing. The inventory

1 shall be transmitted to the department of attorney general.

2 (2) By June 1, 2022 the department of attorney general shall prepare and transmit a report
3 to the president of the senate and speaker of the house of representatives containing the number of
4 untested SAEC Kits being stored by each county, by each law enforcement agency or department,
5 the date the untested kit was collected, the corresponding statute of limitations for prosecution for
6 the crime associated with each kit, and shall consult with the Rhode Island crime laboratory on a
7 plan for addressing the untested kits.

8 (b) Annual Report.

9 (1) The department of health shall obtain annually the number of SAEC Kits taken
10 possession of by each law enforcement agency in the state, the number of SAEC Kits analyzed and
11 unanalyzed by the Rhode Island crime laboratory or the department of health, the date each kit was
12 collected, the time taken for each kit to be analyzed, and the corresponding statute of limitations
13 for prosecution of the crime associated with each kit.

14 (2) The department of health shall compile all of the data into an annual report that shall
15 be posted on a publicly accessible Internet website by June 30 of each year. The report shall also
16 be issued to the legislature by June 1 of each year.

17 **12-28.1-14. Creation of the Rights of Victims of Sexual Assault Task Force.**

18 (a) There is hereby established a rights of victims of sexual assault task force, whose board
19 members shall serve without compensation. The board shall be selected, unless otherwise indicated,
20 and staffed by the department of health and shall consist of:

21 (1) The director of the department of health, or designee;

22 (2) A survivor who is a citizen or lawful resident of Rhode Island;

23 (3) A representative of the department of attorney general;

24 (4) A representative of a rape crisis center licensed by the state of Rhode Island;

25 (5) The superintendent of the Rhode Island state police, or designee;

26 (6) A law enforcement official working for a city or town police department designated by
27 the Rhode Island Police Chiefs' Association;

28 (7) A representative of the Rhode Island Crime Laboratory;

29 (8) An attorney designated by the Rhode Island Bar Association;

30 (9) A representative from either the University of Rhode Island or Rhode Island College
31 whose occupational duties include the provision of direct services to victims of sexual assault and
32 whose employers are not under investigation by the department of education for alleged violations
33 of the federal Clery Act or Title IX of the United States Education Amendment Act of 1972;

34 (10) A representative of organizations that provide services, education, or outreach to

1 communities of color or immigrant communities;

2 (11) A representative of an organization that provides services, education, or outreach to
3 lesbian, gay, bisexual, and transgender individuals;

4 (12) A certified sexual assault nurse examiner; and

5 (13) Other individuals or representatives selected by department of health.

6 (14) The board shall not exceed fifteen (15) members.

7 (b) The task force shall study nationally recognized best practices and make
8 recommendations regarding:

9 (1) The development and implementation of an effective mechanism for submitting,
10 tracking, and investigating complaints regarding the handling of, or response to, a sexual assault
11 report or investigation by any agency or organization involved in the response;

12 (2) Whether a need exists for additional sexual assault counselors for victims of sexual
13 assault, and if such a need does exist, the task force shall:

14 (i) Develop criteria to certify sexual assault counselors;

15 (ii) Create a plan for how Rhode Island can provide, in conjunction with rape crisis centers,
16 victim's advocates organizations, additional sexual assault counselors to meet the needs identified;
17 and

18 (iii) Determine the cost of funding such a plan;

19 (3) Whether a need exists to expand the right to a sexual assault counselor beyond the
20 hospital and law enforcement interview settings, such as meetings and conversations with
21 prosecutors, and if such a need does exist, the task force shall:

22 (i) Identify the scope and nature of the need; and

23 (ii) Make recommendations on how best to fill that need, whether legislatively or
24 otherwise; and

25 (4) Whether a need to exists to provide for ongoing evaluation of the implementation of
26 these rights, and if such a need does exist, the task force shall:

27 (i) Identify the scope and nature of the need; and

28 (ii) Make recommendations on how best to fill that need, whether legislatively or
29 otherwise; and

30 (5) Whether there is an ongoing need to maintain the task force after it issues its final report,
31 pursuant to subsection (e) of this section.

32 (c) In fulfilling its requirements under subsection (b) of this section, the task force shall
33 collect data regarding sexual assault reporting, arrest, prosecution rates, access to sexual assault
34 victims services, and any other data important for its deliberations and recommendations. If such

1 data does not exist, then the task force shall encourage its creation and maintenance by the
2 department of health.

3 (d) In fulfilling its requirements under subsection (b) of this section, the task force shall
4 collect feedback from stakeholders, practitioners, and leadership throughout the state and local law
5 enforcement, victim services, forensic science practitioners, and health care communities to inform
6 the development of future best practices or clinical guidelines regarding the care and treatment of
7 sexual assault survivors.

8 (e) No later than eighteen (18) months after enactment of this chapter, the task force shall
9 produce a report that includes the result of the assessments, developments, and recommendations
10 completed pursuant to subsections (b), (c), and (d) of this section. The task force shall transmit the
11 report to the legislature, the governor, the attorney general, the superintendent of the state police,
12 the director of department of health and victims' rights organizations and rape crisis centers.

13 (f) The task force shall be reconvened on an ongoing basis every five (5) years in
14 perpetuity, or until it is determined that all rights contained within this chapter have been effectively
15 implemented to ensure the rights of all survivors in Rhode Island. A determination of effective
16 implementation of the rights contained in this chapter such that the task force is no longer needed
17 shall only be made by a majority vote of the current members of the task force at the completion of
18 their duties as delineated in subsections (b), (c), and (d) of this section.

19 (g) In undertaking its duties, the task force shall be empowered to retain independent
20 experts who may:

21 (1) Request files and records from any law enforcement official, but all such information
22 shall be kept strictly confidential and reported on only as aggregated or anonymized;

23 (2) Conduct confidential interviews with law enforcement officials, medical examiners,
24 sexual assault counselors, and others with direct knowledge of how the sexual assault response
25 process is functioning; and

26 (3) Within the bounds of confidentiality, provide advice and recommendations to the task
27 force.

28 **12-28.1-15. Authorization of appropriations.**

29 (a) There is hereby appropriated out of money not otherwise appropriated, the sum of two
30 hundred fifty thousand dollars (\$250,000) for each of fiscal years 2022 through 2025 for the
31 operation and maintenance of this program.

32 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE -- VICTIMS' RIGHTS

1 This act would establish a sexual assault survivors' bill of rights and would provide that no
2 sexual assault victim can be questioned without being provided his or her rights under this act
3 which include the right to consent to the police pursuing any charges or investigation of a complaint
4 of sexual assault, the right to be provided an attorney before questioning, the right to be provided
5 a sexual assault counselor before questioning. It would also impose time limits on when the police
6 must transport evidence to the crime lab or department of health and impose time limits on when
7 those entities must test and file the results. It would make all arrest reports and lab results available
8 to the complaining witness and would mandate that the prosecuting authorities and the courts
9 provide the complaining witness with the right to be heard relative to any disposition of the case or
10 sentencing. It would allow the complaining witness to request that all court proceedings be closed
11 to the public during his or her testimony, with certain exceptions. It would also create a rights of
12 victims of sexual assault task force. Appropriations for operating this program would be granted in
13 the amount of \$250,000 per year through 2025.

14 This act would take effect upon passage.

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