

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2546

By: Munson

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9 COMMITTEE SUBSTITUTE

10 An Act relating to sexual assault victims; creating
11 the Sexual Assault Victims' Right to Information Act;
12 providing short title; defining terms; declaring
13 rights of sexual assault victims; declaring right to
14 consult with sexual assault advocate; providing for
15 confidentiality of communications; directing medical
16 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 to
 sexual assault victims; 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.

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 forensic evidence" means any human
21 biological specimen collected by a medical provider during a
22 forensic medical examination from an alleged sexual assault victim
23 including, when circumstances indicate the need, a toxicology kit;

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1 4. "Sexual assault victim" or "victim" means any person who is
2 a victim of a sexual assault defined under Section 142.20 of Title
3 21 of the Oklahoma Statutes. If the victim is incompetent, the term
4 shall include the parent, guardian, spouse or any other person
5 related to the incompetent victim by consanguinity or affinity to
6 the second degree, or any other lawful representative of the
7 incompetent victim; and

8 5. "Sexual assault victims' advocate" means any person who is
9 certified as a behavioral health professional, or as a victims'
10 advocate working in a center that offers sexual assault services,
11 who has received formalized training through a government agency,
12 tribal organization, tribal agency or victim services agency, in
13 providing trauma-informed direct services to victims of sexual
14 assault.

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.

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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 assault victim has the right to consult, either in
5 person or via telemedicine, with a sexual assault victims' advocate
6 before the commencement of any medical evidentiary or physical
7 examination, unless no sexual assault victims' advocate is
8 available, and during any interview by law enforcement authorities
9 or district attorneys. A sexual assault victim retains this right
10 even if the victim has waived the right in a previous examination or
11 interview. Where a sexual assault victims' advocate is not
12 available for an in-person consultation, consultations via
13 telemedicine must be provided.

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

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

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

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 142C-4 of Title 21, unless there
3 is created a duplication in numbering, reads as follows:

4 Before a medical facility commences a medical evidentiary or
5 physical examination of a sexual assault victim, the medical
6 facility shall inform the victim of the following:

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

10 2. The right of the victim to consult with a sexual assault
11 victims' advocate who is to be requested by the medical facility
12 before the commencement of the medical evidentiary or physical
13 examination, unless no sexual assault victims' advocate is
14 available.

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

18 A. Before commencing an interview of a sexual assault victim, a
19 law enforcement officer or district attorney shall inform the victim
20 of the right to consult with a sexual assault victims' advocate
21 during any interview by a law enforcement officer or district
22 attorney and the right to have a sexual assault victims' advocate
23 requested by the interviewer and present before the commencement of
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1 the interview, unless no sexual assault victims' advocate is
2 available.

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

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

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

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

20 A. A sexual assault victim has the right to request and receive
21 the results and status of the analysis of the sexual assault
22 forensic evidence of the victim.

23 B. A sexual assault victim has the right to retain a copy of
24 the police report as soon as it has been completed.

1 C. No sexual assault forensic evidence shall be used:

2 1. To prosecute a sexual assault victim for any misdemeanor
3 crimes; or

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

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

10 Upon initial interaction with a sexual assault victim, a law
11 enforcement officer and medical provider shall provide the victim
12 with victim's rights information and specific documentation that
13 explains the rights of sexual assault victims pursuant to this act
14 and other relevant law prepared and distributed by the Office of the
15 Attorney General.

16 SECTION 10. AMENDATORY 22 O.S. 2011, Section 40.3A, is
17 amended to read as follows:

18 Section 40.3A A. Any physician, surgeon, resident, intern,
19 physician assistant, registered nurse, or any other health care
20 professional examining, attending, or treating the victim of what
21 appears to be or is reported by the victim to be rape, rape by
22 instrumentation or forcible sodomy, as defined in Section 1111,
23 1111.1 or 888 of Title 21 of the Oklahoma Statutes or any form of
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1 sexual assault, shall not be required to report any incident of what
2 appears to be or is reported to be such crimes if:

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

5 2. The person is not an incapacitated adult.

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

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

1 injuries observed and reported, as well as any treatment provided or
2 prescribed.

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

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

1 notes, X-rays, photographs, and other previous or current records
2 relevant to the case.

3 SECTION 11. This act shall become effective November 1, 2021.
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5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated
6 02/24/2021 - DO PASS, As Amended.
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