

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 430

By: Senator B. Ballinger
By: Representative Gazaway

For An Act To Be Entitled

AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 12 OF
THE ARKANSAS CODE CONCERNING LAW ENFORCEMENT
AGENCIES; AND FOR OTHER PURPOSES.

Subtitle

TO MAKE TECHNICAL CORRECTIONS TO TITLE
12 OF THE ARKANSAS CODE CONCERNING LAW
ENFORCEMENT AGENCIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 12, Chapter 12, Subchapter 4, is amended to read as follows to reorganize defined terms and to clarify references:

Subchapter 4

– Sexual Assault – Medical-Legal Examinations

12-12-401. Definitions.

As used in this subchapter:

(1) “Anonymous kit” means a sexual assault collection kit that is collected from a possible victim of a sexual assault who has not decided whether to report the sexual assault to a law enforcement agency;

~~(1)(A)~~(2)(A) “Appropriate emergency medical-legal examinations” means health care delivered with emphasis on the collection of evidence for the purpose of prosecution.



(B) It shall include, but not be limited to, the appropriate components contained in an evidence collection kit for sexual assault examination distributed by the Forensic DNA Section of the State Crime Laboratory;

(3) "Law enforcement agency" means a police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal laws, traffic laws, or highway laws of this state;

~~(2)~~(4) "Licensed health care healthcare provider" means a person licensed in a healthcare field who conducts medical-legal examinations;

~~(3) "Medical facility" means any healthcare provider or a medical facility that is currently licensed by the Department of Health and providing emergency services; and~~

(5) "Medical-legal examination" means health care delivered to a possible victim of a sexual assault, with an emphasis on the gathering and preserving of evidence for the purpose of serving criminal justice;

(6) "Sexual assault" means an offense described in § 5-14-101 et seq. or § 5-26-202;

(7) "Sexual assault collection kit" means a human biological specimen or specimens collected during a medical-legal examination from the alleged victim of a sexual assault; and

~~(4)~~(8) "Victim" means any person who has been a victim of any alleged sexual assault or incest as defined by § 5-14-101 et seq. and § 5-26-202.

12-12-402. Procedures governing medical treatment.

(a) All ~~medical facilities or~~ licensed healthcare providers conducting medical-legal examinations in Arkansas shall adhere to the procedures set forth in this section in the event that a person presents himself or herself or is presented for treatment as a victim of rape, attempted rape, any other type of sexual assault, or incest.

(b)(1)(A) Any adult victim presented for medical treatment shall make the decision of whether or not the incident will be reported to a law enforcement agency.

(B) No ~~medical facility or~~ licensed healthcare provider may require an adult victim to report the incident in order to receive

medical treatment.

(C)(i) Evidence will be collected only with the permission of the victim.

(ii) However, permission shall not be required when the victim is unconscious, mentally incapable of consent, or intoxicated.

(2)(A) Should an adult victim wish to report the incident to a law enforcement agency, the appropriate law enforcement agencies shall be contacted by the ~~medical facility or~~ licensed healthcare provider or the victim's designee.

(B)(i) The victim shall be given a medical screening examination by a qualified medical person as provided under the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, as in effect on January 1, 2001, if the victim arrives at the emergency department of a hospital, and the person shall be examined and treated and any injuries requiring medical attention will be treated in the standard manner.

(ii) A medical-legal examination shall be conducted and specimens shall be collected for evidence.

(C) If a law enforcement agency has been contacted and with the permission of the victim, the evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

(c)(1) Any victim under eighteen (18) years of age shall be examined and treated, and any injuries requiring medical attention shall be treated in the standard manner.

(2) A medical-legal examination shall be performed, and specimens shall be collected for evidence.

(3) The reporting ~~medical facility or~~ licensed healthcare provider shall follow the procedures set forth in Subchapter 4 of the Child Maltreatment Act, § 12-18-101 et seq., regarding the reporting of injuries to victims under eighteen (18) years of age.

(4) The evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

(d) Reimbursement for the medical-legal examinations shall be available to the ~~medical facility or~~ licensed healthcare provider pursuant to the procedures set forth in § 12-12-403.

(e) A ~~medical facility or~~ licensed healthcare provider shall not transfer the victim to another ~~medical facility~~ licensed healthcare provider unless:

(1) The victim or a parent or guardian of a victim under eighteen (18) years of age requests the transfer, or a physician or other qualified medical personnel when a physician is not available has signed a certification that the benefits to the victim's health would outweigh the risks to the victim's health as a result of the transfer; and

(2) The transferring ~~medical facility or~~ licensed healthcare provider provides all necessary medical records and ensures that appropriate transportation is available.

12-12-403. Examinations and treatment – Payment.

(a) All licensed emergency departments shall provide prompt, appropriate emergency medical-legal examinations for sexual assault victims.

(b)(1)(A) All victims shall be exempted from the payment of expenses incurred as a result of receiving a medical-legal examination if the victim receives the medical-legal examination within ninety-six (96) hours of the attack.

(B) However, the time limitation of ninety-six (96) hours may be waived if the victim is a minor or if the Crime Victims Reparations Board finds that good cause exists for the failure to provide the medical-legal examination within the required time.

(2)(A) This subsection does not require a victim of sexual assault to participate in the criminal justice system or to cooperate with law enforcement in order to be provided with a forensic medical exam or reimbursement for charges incurred on account of a forensic medical exam, or both.

(B) Subdivision (b)(2)(A) of this section does not preclude a report of suspected abuse or neglect as permitted or required by the Child Maltreatment Act, § 12-18-101 et seq.

(c)(1) A ~~medical facility or~~ licensed healthcare provider that performs a medical-legal examination shall submit a sexual assault reimbursement form, an itemized statement that meets the requirements of 45 C.F.R. § 164.512(d), as it existed on January 2, 2001, directly to the board for payment.

(2) ~~The medical facility or~~ licensed healthcare provider shall not submit any remaining balance after reimbursement by the board to the victim.

(3) Acceptance of payment of the expenses of the medical-legal examination by the board shall be considered payment in full and bars any legal action for collection.

12-12-404. Reimbursement of medical facility – Rules.

(a) The Crime Victims Reparations Board may reimburse any ~~medical facility or~~ licensed healthcare provider that provides the services outlined in this subchapter for the reasonable cost for such services.

(b) The board is empowered to prescribe minimum standards and rules necessary to implement this subchapter. These shall include, but not be limited to, a cost ceiling for each claim and the determination of reasonable cost.

12-12-405. License suspension or revocation.

Noncompliance with the provisions of this subchapter is grounds for licensure suspension or revocation pursuant to the provisions of § 20-9-215 or any other provisions governing the licensure of ~~medical facilities or~~ healthcare providers.

12-12-406. Sexual assault collection kits – Submission for testing – Definitions.

~~(a) As used in this section:~~

~~(1) “Anonymous kit” means a sexual assault collection kit that is collected from a possible victim of a sexual assault who has not decided whether to report the sexual assault to a law enforcement agency;~~

~~(2) “Healthcare provider” means a person or facility that provides a medical-legal examination;~~

~~(3) “Law enforcement agency” means a police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal laws, traffic laws, or highway laws of this state;~~

~~(4) “Medical-legal examination” means health care delivered to a possible victim of a sexual assault, with an emphasis on the gathering and~~

~~preserving of evidence for the purpose of serving criminal justice;~~

~~(5) "Sexual assault" means an offense described in § 5-14-101 et seq. or § 5-26-202; and~~

~~(6) "Sexual assault collection kit" means a human biological specimen or specimens collected during a medical-legal examination from the alleged victim of a sexual assault.~~

~~(b)(1)(a)(1)~~ A licensed healthcare provider that has collected required victim information as part of a medical-legal examination shall enter the required victim information into a sexual assault collection kit tracking system of the State Crime Laboratory before transferring the sexual assault collection kit to a law enforcement agency with jurisdiction.

(2) The system described in subdivision ~~(b)(1)(a)(1)~~ of this section shall provide secure electronic access that allows a law enforcement agency, a licensed healthcare provider, the laboratory, and a victim to access tracking information.

(3) A sexual assault collection kit collected by a licensed healthcare provider shall be taken into custody by a law enforcement agency as soon as possible and within three (3) business days of notice from the licensed healthcare provider.

~~(e)(1)(b)(1)~~ A law enforcement agency that receives a sexual assault collection kit from a licensed healthcare provider shall enter all necessary information into the system described in subdivision ~~(b)(1)(a)(1)~~ of this section.

(2) A law enforcement agency that receives a sexual assault collection kit from a licensed healthcare provider that relates to a report of a sexual assault that occurred outside of the jurisdiction of the law enforcement agency shall have the sexual assault collection kit delivered to the law enforcement agency having jurisdiction within ten (10) days of learning that the other law enforcement agency has jurisdiction.

~~(d)(c)~~ A sexual assault collection kit shall be submitted to the laboratory by the receiving law enforcement agency as soon as possible, but no later than fifteen (15) days after receipt of the sexual assault collection kit.

~~(e)(1)(d)(1)~~ A law enforcement agency is not required to submit an anonymous kit to the laboratory if the victim does not affirmatively request submission.

(2) If a victim chooses to provide a personal statement about the sexual assault to a law enforcement agency at any time after initially declining to provide a personal statement, the anonymous kit shall be delivered to the laboratory as soon as possible, but no later than fifteen (15) days after the victim chooses to provide a personal statement to the law enforcement agency.

~~(f)~~(e) If available, a suspect standard or a consensual partner elimination standard shall be submitted to the laboratory:

(1) With the sexual assault collection kit, if available, at the time the sexual assault collection kit is submitted; or

(2) As soon as possible, but no later than fifteen (15) days from the date the sexual assault collection kit was obtained by the law enforcement agency, if the suspect standard or consensual partner elimination standard is not obtained until after the sexual assault collection kit is submitted.

~~(g)(1) Starting July 1, 2019, the~~

(f)(1) The laboratory shall test all sexual assault collection kits that are received from a law enforcement agency with the goal of developing autosomal DNA profiles that are eligible for entry into the Combined DNA Index System.

(2) Sexual assault collection kits shall be tested by the laboratory and the tests completed within sixty (60) days of receipt from the law enforcement agency.

(3) The ability of the laboratory to complete all tests within sixty (60) days of receipt may be dependent upon the following factors:

(A) The number of sexual assault collection kits that the laboratory receives;

(B) The technology and improved testing methods available;

(C) The establishment of a fully trained and dedicated staff to meet the caseload; and

(D) The number of lab requests received relating to other crime categories.

(4) Failure to meet a deadline established under this subsection or administrative rule is not a basis for dismissal of a criminal action or a bar to the admissibility of the evidence in a criminal action.

SECTION 2. Arkansas Code § 12-18-607 is amended to read as follows to clarify its application:

12-18-607. When the alleged offender is neither a family member nor a fictive kin and not living in the home with the alleged victim.

If the alleged offender is not a family member or fictive kin living in the home with the alleged victim, the investigation under this chapter shall seek to ascertain:

- (1) The existence, cause, nature, and extent of child maltreatment;
- (2) The identity of the person responsible for the child maltreatment;
- (3) The existence and extent of previous child maltreatment perpetrated by the alleged offender;
- (4) If the report is determined to be true, the names and conditions of any children of the alleged offender and whether these children have been maltreated or are at risk of child maltreatment unless the investigating agency has determined that there is no indication of risk to the children;
- (5) If the report is determined to be true and is a report of sexual abuse, sexual contact, or sexual exploitation, an assessment of any other children previously or currently under the care of the alleged offender, to the extent practical, and whether these children have been maltreated or are at risk of maltreatment unless the investigating agency has determined that there is no indication of risk to the children; and
- (6) All other pertinent and relevant data.

SECTION 3. Arkansas Code § 12-18-620(e)(11)(A), concerning releases of information on pending child maltreatment investigations, is amended to read as follows to clarify a reference:

(11)(A) Federal, state, and local government entities, or any agent of ~~such~~ federal, state, or local government entities, that have a need for such information to carry out their responsibilities under law to protect children from child maltreatment.

SECTION 4. Arkansas Code § 12-18-710(e)(12)(A), concerning releases of information on true child maltreatment investigative determinations pending

due process, is amended to read as follows to clarify a reference:

(12)(A) Federal, state, and local government entities, or any agent of ~~such~~ federal, state, or local government entities, that have a need for such information to carry out their responsibilities under law to protect children from child maltreatment.

SECTION 5. Arkansas Code § 12-18-909(g)(15)(A), concerning the availability of true reports of child maltreatment from the Child Maltreatment Central Registry, is amended to read as follows to clarify a reference:

(15)(A) Federal, state, and local government entities, or any agent of ~~such~~ federal, state, or local government entities, that have a need for such information to carry out their responsibilities under law to protect children from child maltreatment.

SECTION 6. Arkansas Code § 12-18-910(f)(6)(A), concerning the availability of screened-out and unsubstantiated child maltreatment reports, is amended to read as follows to clarify a reference:

(6)(A) Federal, state, and local government entities, or any agent of ~~such~~ federal, state, or local government entities, that have a need for such information to carry out their responsibilities under law to protect children from child maltreatment.

SECTION 7. Arkansas Code § 12-29-118(b)(2)(B), concerning punitive isolation or solitary confinement of inmates who are minors, is amended to read as follows to correct an engrossment error:

(B) The warden of the state correctional facility or his or her designee shall provide the written authorization described in subdivision (b)(2)(A) of this section for every twenty-four-hour period during which the minor remains in punitive isolation or solitary confinement after the initial twenty-four (24) hours.

SECTION 8. Arkansas Code § 12-32-102(c), concerning restraint of a pregnant inmate or detainee, is amended to read as follows to clarify references:

(c) If restraints are used on a pregnant inmate or detainee under

subsection (a) of this section:

(1)(A) The type of restraints shall be the least restrictive type necessary, and the restraints shall be applied in the least restrictive manner necessary.

(B) Leg or waist restraints shall not be used on any pregnant inmate or detainee who is in labor.

(C) Leg restraints shall not be used on a pregnant inmate or detainee who is not in a wheelchair, bed, or gurney;

(2) The restraints shall always be forward-facing, designed to restrain the ~~person's~~ hands of the pregnant inmate or detainee in front of the ~~person~~ pregnant inmate or detainee to protect the ~~person~~ pregnant inmate or detainee and others;

(3) Only soft restraints may be used; and

(4)(A) The correctional or detention facility shall make written findings within ten (10) days regarding the substantial flight risk of that pregnant inmate or detainee or other extraordinary medical or security circumstance that dictated the pregnant inmate or detainee be restrained to ensure the safety and security of the pregnant inmate or detainee, the child, staff of the correctional or detention facility, or medical facility, other inmates or detainees, or the public.

(B) The written findings under subdivision (c)(4)(A) of this section shall be maintained by the correctional or detention facility for at least five (5) years and be made available for public inspection, except that information identifying any pregnant inmate or detainee or that could lead to the identification of the pregnant inmate or detainee shall not be made public.

SECTION 9. Arkansas Code § 12-41-505(b)(3)(B), concerning expenses and support of county jail inmates, is amended to read as follows to clarify a reference:

(B) The remaining funds shall be deposited into or credited to a special revenue fund and used for the maintenance, operation, and capital expenditures of a county jail or regional detention facility and for certificate pay for law enforcement and ~~jailer~~ jail personnel.

SECTION 10. Arkansas Code § 12-64-518(e), concerning issuance of

process under the Military Code of Arkansas, is amended to read as follows to clarify a criminal offense pursuant to § 5-1-107(c), which makes any misdemeanor defined by a statute not a part of the Arkansas Criminal Code that does not specify the class of the misdemeanor or prescribe a limitation on a sentence to imprisonment a Class A misdemeanor, and make stylistic changes:

(e) Any sheriff, constable, jailer, marshal, or other civil officer named in this code, who shall neglect or refuse to obey, execute, or return the lawful warrant or other process of a military court or make a false return thereon, ~~shall be~~ upon conviction is guilty of a Class A misdemeanor and in addition to the ~~penalties attaching thereto~~ criminal penalties, shall forfeit fifty dollars (\$50.00) for each offense or neglect of duty, the money to be recovered in a civil action against the officer and his or her official sureties by the Attorney General for the benefit of the Department of the Military Fund Account.

SECTION 11. DO NOT CODIFY. CONSTRUCTION AND LEGISLATIVE INTENT.

It is the intent of the General Assembly that:

(1) The enactment and adoption of this act shall not expressly or impliedly repeal an act passed during the regular session of the Ninety-Third General Assembly;

(2) To the extent that a conflict exists between an act of the regular session of the Ninety-Third General Assembly and this act:

(A) The act of the regular session of the Ninety-Third General Assembly shall be treated as a subsequent act passed by the General Assembly for the purposes of:

(i) Giving the act of the regular session of the Ninety-Third General Assembly its full force and effect; and

(ii) Amending or repealing the appropriate parts of the Arkansas Code of 1987; and

(B) Section 1-2-107 shall not apply; and

(3) This act shall make only technical, not substantive, changes to the Arkansas Code of 1987.