

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

SENATE BILL 430

5 By: Senator B. Ballinger
6 By: Representative Gazaway
7

For An Act To Be Entitled

9 AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 12 OF
10 THE ARKANSAS CODE CONCERNING LAW ENFORCEMENT
11 AGENCIES; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO MAKE TECHNICAL CORRECTIONS TO TITLE
16 12 OF THE ARKANSAS CODE CONCERNING LAW
17 ENFORCEMENT AGENCIES.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 12, Chapter 12, Subchapter 4, is
23 amended to read as follows to reorganize defined terms and to clarify
24 references:
25

Subchapter 4

26 – Sexual Assault – Medical-Legal Examinations
27
28

29 12-12-401. Definitions.

30 As used in this subchapter:

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

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



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

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

9 ~~(2)~~(4) “Licensed health care healthcare provider” means a person
10 licensed in a healthcare field who conducts medical-legal examinations;

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

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

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

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

22 ~~(4)~~(8) “Victim” means any person who has been a victim of any
23 alleged sexual assault or incest as defined by § 5-14-101 et seq. and § 5-26-
24 202.

25
26 12-12-402. Procedures governing medical treatment.

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

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

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

1 medical treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12
13 12-12-403. Examinations and treatment – Payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (B) The technology and improved testing methods available;

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

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

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

36

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

3 12-18-607. When the alleged offender is neither a family member nor a
4 fictive kin and not living in the home with the alleged victim.

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

8 (1) The existence, cause, nature, and extent of child
9 maltreatment;

10 (2) The identity of the person responsible for the child
11 maltreatment;

12 (3) The existence and extent of previous child maltreatment
13 perpetrated by the alleged offender;

14 (4) If the report is determined to be true, the names and
15 conditions of any children of the alleged offender and whether these children
16 have been maltreated or are at risk of child maltreatment unless the
17 investigating agency has determined that there is no indication of risk to
18 the children;

19 (5) If the report is determined to be true and is a report of
20 sexual abuse, sexual contact, or sexual exploitation, an assessment of any
21 other children previously or currently under the care of the alleged
22 offender, to the extent practical, and whether these children have been
23 maltreated or are at risk of maltreatment unless the investigating agency has
24 determined that there is no indication of risk to the children; and

25 (6) All other pertinent and relevant data.

26
27 SECTION 3. Arkansas Code § 12-18-620(e)(11)(A), concerning releases of
28 information on pending child maltreatment investigations, is amended to read
29 as follows to clarify a reference:

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

34
35 SECTION 4. Arkansas Code § 12-18-710(e)(12)(A), concerning releases of
36 information on true child maltreatment investigative determinations pending

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

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

6
7 SECTION 5. Arkansas Code § 12-18-909(g)(15)(A), concerning the
8 availability of true reports of child maltreatment from the Child
9 Maltreatment Central Registry, is amended to read as follows to clarify a
10 reference:

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

15
16 SECTION 6. Arkansas Code § 12-18-910(f)(6)(A), concerning the
17 availability of screened-out and unsubstantiated child maltreatment reports,
18 is amended to read as follows to clarify a reference:

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

23
24 SECTION 7. Arkansas Code § 12-29-118(b)(2)(B), concerning punitive
25 isolation or solitary confinement of inmates who are minors, is amended to
26 read as follows to correct an engrossment error:

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

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

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

1 subsection (a) of this section:

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

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

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

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

13 (3) Only soft restraints may be used; and

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

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

27
28 SECTION 9. Arkansas Code § 12-41-505(b)(3)(B), concerning expenses and
29 support of county jail inmates, is amended to read as follows to clarify a
30 reference:

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

35
36 SECTION 10. Arkansas Code § 12-64-518(e), concerning issuance of

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

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

16
17 SECTION 11. DO NOT CODIFY. CONSTRUCTION AND LEGISLATIVE INTENT.

18 It is the intent of the General Assembly that:

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

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

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

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

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

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

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