

CHAPTER 89

AN ACT

SB 1571

Relating to sexual assault forensic evidence kits; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 5 of this 2016 Act shall be known and may be cited as “Melissa’s Law.”

SECTION 2. As used in sections 2 to 5 of this 2016 Act:

(1) “Anonymous kit” means a sexual assault forensic evidence kit collected from a victim who either has not made a decision whether or not to participate in the prosecution of the perpetrator of the sexual assault or has chosen not to participate in the prosecution of the perpetrator of the sexual assault.

(2) “Law enforcement agency” has the meaning given that term in ORS 133.741.

(3) “Medical facility” means a hospital, clinic, urgent care center or any other facility that is authorized to provide sexual assault medical assessments as described in ORS 147.395.

(4) “Sexual assault” means the commission of or the attempted commission of an offense described in ORS 163.355 to 163.427.

(5) “Sexual assault forensic evidence kit” means forensic evidence collected using an evidence collection kit during a sexual assault medical assessment as described in ORS 147.395.

(6) “Victim” means a person from whom a sexual assault forensic evidence kit has been collected.

SECTION 3. (1) The Department of State Police shall adopt rules concerning the prioritization of testing untested sexual assault forensic evidence kits in the department’s possession. The rules must contain a requirement to test all nonanonymous kits and a prohibition on the testing of anonymous kits.

(2) The department shall test any untested sexual assault forensic evidence kits, other than anonymous kits, in the department’s possession in accordance with the rules adopted pursuant to subsection (1) of this section.

(3)(a) The department shall designate an entity, position or class of positions to receive inquiries from law enforcement agencies and victims seeking information concerning the testing of sexual assault forensic evidence kits.

(b) The department shall prohibit victims from directly contacting a forensic laboratory performing testing of sexual assault forensic evidence kits and may not publicize a means for victims to contact the laboratory.

(4)(a) As soon as practicable, the department shall ensure that the results from testing sexual

assault forensic evidence kits that are eligible to be entered into the Combined DNA Index System are entered into the system after the testing results are obtained.

(b) No later than July 1, 2019, the department shall provide a written report to the interim committees of the Legislative Assembly related to the judiciary, in the manner provided in ORS 192.245, describing the department’s progress in entering results from testing sexual assault forensic evidence kits into the Combined DNA Index System.

(5) No later than January 15 of each calendar year, the department shall provide a written report to the interim committees of the Legislative Assembly related to the judiciary in the manner provided in ORS 192.245. The report must detail the progress made on the backlog of untested sexual assault forensic evidence kits and include the number of new kits that have been received during the previous calendar year, the number of kits that have been tested during the previous calendar year, and the number of remaining untested kits in the possession of the department.

SECTION 4. (1) No later than January 1, 2017, each law enforcement agency within this state shall adopt policies and procedures concerning the collection, submission for testing, retention and destruction of sexual assault forensic evidence kits. The policies and procedures must be in writing, must be made available to the public as soon as possible upon request and must include:

(a) Procedures for investigating reports of sexual assault.

(b) A time limit by which the law enforcement agency must obtain a sexual assault forensic evidence kit from a medical facility that is within seven days after the medical facility notifies the agency that the kit has been collected.

(c) A time limit by which a sexual assault forensic evidence kit must be submitted to the Department of State Police for testing that is within 14 days after taking possession of the kit from a medical facility.

(d) A requirement that the law enforcement agency submit to the department information sufficient to allow the department to prioritize the testing of a sexual assault forensic evidence kit according to the rules of the department.

(e) A prohibition on the submission of an anonymous kit to the department for testing.

(f) A requirement that all sexual assault forensic evidence kits, including anonymous kits, be retained for no less than 60 years after the collection of the evidence.

(2) No later than January 1, 2017, each law enforcement agency within this state shall adopt policies and procedures concerning contact with the victims and the provision of information to

victims concerning sexual assault forensic evidence kits. The policies and procedures must include:

(a) A requirement that the agency designate at least one person within the agency to receive all telephone inquiries concerning sexual assault forensic evidence kits and to serve as a liaison between the agency and the Department of State Police.

(b) A requirement that, at the time that a sexual assault forensic evidence kit is collected, a victim be provided with the contact information of a person described in paragraph (a) of this subsection.

(c) Provisions allowing sexual assault victims to request and receive information concerning sexual assault forensic evidence kits, including but not limited to the location, testing date and testing results of a kit, whether a DNA sample was obtained from the kit, whether or not there are matches to DNA profiles in state or federal databases and the estimated destruction date for the kit.

(d) A requirement that a person described in paragraph (a) of this subsection provide, in response to a victim inquiry concerning a sexual assault forensic evidence kit, any information the victim requests in a manner of communication designated by the victim, as soon as possible and within 30 days of the inquiry, unless the agency declines to provide the information pursuant to paragraph (e) of this subsection.

(e) Provisions allowing the agency to decline to provide information that interferes with the investigation or prosecution of a case.

(f) A procedure that allows a sexual assault victim to provide the agency with written authorization for a designee to access information on the victim's behalf.

(g) Provisions allowing a victim to contact a person described in paragraph (a) of this subsection to request that an untested nonanonymous kit be reclassified as an anonymous kit, or an untested anonymous kit be reclassified as a nonanonymous kit, and a requirement that the agency notify the department of the reclassification.

SECTION 5. A medical facility collecting sexual assault forensic evidence kits shall, within seven days after the collection of a kit, notify the law enforcement agency with jurisdiction over a possible sexual assault criminal investigation that the kit has been collected.

SECTION 6. Section 4 of this 2016 Act is amended to read:

Sec. 4. (1) [No later than January 1, 2017,] Each law enforcement agency within this state shall [adopt] have policies and procedures concerning the collection, submission for testing, retention and destruction of sexual assault forensic evidence kits. The policies and procedures must be in writing, must

be made available to the public as soon as possible upon request and must include:

(a) Procedures for investigating reports of sexual assault.

(b) A time limit by which the law enforcement agency must obtain a sexual assault forensic evidence kit from a medical facility that is within seven days after the medical facility notifies the agency that the kit has been collected.

(c) A time limit by which a sexual assault forensic evidence kit must be submitted to the Department of State Police for testing that is within 14 days after taking possession of the kit from a medical facility.

(d) A requirement that the law enforcement agency submit to the department information sufficient to allow the department to prioritize the testing of a sexual assault forensic evidence kit according to the rules of the department.

(e) A prohibition on the submission of an anonymous kit to the department for testing.

(f) A requirement that all sexual assault forensic evidence kits, including anonymous kits, be retained for no less than 60 years after the collection of the evidence.

(2) [No later than January 1, 2017,] Each law enforcement agency within this state shall [adopt] have policies and procedures concerning contact with victims and the provision of information to victims concerning sexual assault forensic evidence kits. The policies and procedures must include:

(a) A requirement that the agency designate at least one person within the agency to receive all telephone inquiries concerning sexual assault forensic evidence kits and to serve as a liaison between the agency and the Department of State Police.

(b) A requirement that, at the time that a sexual assault forensic evidence kit is collected, a victim be provided with the contact information of a person described in paragraph (a) of this subsection.

(c) Provisions allowing sexual assault victims to request and receive information concerning sexual assault forensic evidence kits, including but not limited to the location, testing date and testing results of a kit, whether a DNA sample was obtained from the kit, whether or not there are matches to DNA profiles in state or federal databases and the estimated destruction date for the kit.

(d) A requirement that a person described in paragraph (a) of this subsection provide, in response to a victim inquiry concerning a sexual assault forensic evidence kit, any information the victim requests in a manner of communication designated by the victim, as soon as possible and within 30 days of the inquiry, unless the agency declines to provide the information pursuant to paragraph (e) of this subsection.

(e) Provisions allowing the agency to decline to provide information that interferes with the investigation or prosecution of a case.

(f) A procedure that allows a sexual assault victim to provide the agency with written authorization

for a designee to access information on the victim's behalf.

(g) Provisions allowing a victim to contact a person described in paragraph (a) of this subsection to request that an untested nonanonymous kit be reclassified as an anonymous kit, or an untested anonymous kit be reclassified as a nonanonymous kit, and a requirement that the agency notify the department of the reclassification.

SECTION 7. (1) The Task Force on the Testing of Sexual Assault Forensic Evidence Kits is established.

(2) The task force consists of 16 members appointed as follows:

(a) The President of the Senate, in consultation with the Senate Minority Leader, shall appoint two nonvoting members from among members of the Senate. The two members appointed under this paragraph may not be from the same political party.

(b) The Speaker of the House of Representatives, in consultation with the House Minority Leader, shall appoint two nonvoting members from among members of the House of Representatives. The two members appointed under this paragraph may not be from the same political party.

(c) The Governor shall appoint 12 members as follows:

(A) The coordinator of the Attorney General's Sexual Assault Task Force.

(B) Two survivors of sexual assault with experience with the sexual assault forensic evidence kit collection.

(C) A sexual assault nurse examiner.

(D) A person designated by the Superintendent of State Police who has expertise in the analysis of sexual assault forensic evidence kits.

(E) A person with experience seeking and applying for grants and other private funding.

(F) A person representing law enforcement agencies located in rural jurisdictions.

(G) A person representing law enforcement agencies located in urban jurisdictions.

(H) A person representing the Oregon Association Chiefs of Police.

(I) An attorney with experience prosecuting crimes.

(J) An attorney with experience in criminal defense.

(K) A sexual assault victims' advocate from a community-based organization.

(3) The task force shall:

(a) Examine the process for gathering and analyzing sexual assault forensic evidence kits in this state;

(b) Examine and identify improvements for law enforcement training on responding to and investigating sexual assaults;

(c) Examine and identify improvements for victim access to evidence other than sexual as-

sault forensic evidence kits, including but not limited to police reports and other physical evidence;

(d) Examine and identify possible procedures for the testing of anonymous kits;

(e) Examine and identify additional rights of victims concerning the sexual assault forensic evidence kit testing process; and

(f) Identify and pursue grants and other funding sources in order to eliminate the backlog of untested sexual assault forensic evidence kits, reduce testing wait times, provide victim notification and improve efficiencies in the kit testing process.

(4) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the voting members of the task force.

(6) The task force shall elect one of its members to serve as chairperson.

(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(8) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.

(9) The task force may adopt rules necessary for the operation of the task force.

(10)(a) The task force shall complete the duties described in subsection (3) of this section no later than July 31, 2018.

(b) The task force shall submit, in the manner provided by ORS 192.245, a report that includes recommendations for legislation to an interim committee of the Legislative Assembly related to the judiciary no later than December 1, 2018.

(11) The Committee Services office of the Legislative Assembly shall provide staff support to the task force.

(12) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds appropriated to the Committee Services office of the Legislative Assembly for purposes of the task force.

(13) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of the task force's duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice the members of the task force consider necessary to perform their duties.

SECTION 8. Section 7 of this 2016 Act is repealed on June 30, 2019.

SECTION 9. The amendments to section 4 of this 2016 Act by section 6 of this 2016 Act become operative on January 1, 2017.

SECTION 10. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of State Police by section 1 (3), chapter 696, Oregon Laws 2015, for the biennium beginning July 1, 2015, is in-

creased by \$1,500,000 for increased capacity in the Forensic Services Division to process sexual assault forensic evidence kits.

SECTION 11. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Approved by the Governor March 29, 2016
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