

# SENATE BILL No. 1263

April 15, 2010, Introduced by Senators HUNTER, BASHAM, WHITMER, CLARKE, OLSHOVE, CLARK-COLEMAN, BIRKHOLZ, JACOBS, BARCIA, JANSEN, SCOTT, BRATER and CHERRY and referred to the Committee on Judiciary.

A bill to create the sexual assault victim's rights act; to require the prompt collection and processing of sexual assault evidence; to provide for certain victim's rights in sexual assault cases; to require certain notifications and reports; to require certain duties of certain state and local officials and agencies; to provide remedies; and to limit causes of action.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "sexual assault victim's rights act".

3           Sec. 2. As used in this act:

4           (a) "Sexual assault case" means a criminal investigation or

1 criminal prosecution to which either of the following applies:

2 (i) An individual is reporting that he or she was a victim of a  
3 sexual assault offense.

4 (ii) There is physical evidence that a sexual assault offense  
5 was committed against any individual. As used in this subparagraph,  
6 physical evidence includes photographic evidence.

7 (iii) There is eyewitness evidence that a sexual assault offense  
8 was committed against any individual.

9 (b) "Sexual assault evidence kit" means that term as defined  
10 in section 21527 of the public health code, 1978 PA 368, MCL  
11 333.21527.

12 (c) "Sexual assault offense" means a violation or attempted  
13 violation of sections 520b to 520g of the Michigan penal code, 1931  
14 PA 328, MCL 750.520b to 750.520g.

15 (d) "Victim" means an individual subjected to a sexual assault  
16 offense and, for the purposes of making communications and  
17 receiving notices under this act, his or her designee appointed  
18 under section 7.

19 Sec. 3. The law enforcement agency with the primary  
20 responsibility for investigating a sexual assault case shall  
21 collect and analyze, or cause to be collected and analyzed, all  
22 evidence in that sexual assault case in a timely manner in order to  
23 assure the longest possible limitation period for a criminal action  
24 under section 24 of chapter VII of the code of criminal procedure,  
25 1927 PA 175, MCL 767.24.

26 Sec. 4. (1) Upon the request of a victim of a sexual assault  
27 offense, the law enforcement agency with the primary responsibility

1 for investigating that sexual assault case shall inform the victim  
2 of the status of the processing of all evidence collected in that  
3 case. The law enforcement agency may require that the victim's  
4 request under this section be in writing.

5 (2) The law enforcement agency may respond to a victim's  
6 request under this section with a written communication, or by  
7 electronic mail, if an electronic mail address is available. This  
8 subsection does not require the law enforcement agency to  
9 communicate with the victim regarding the status of the processing  
10 of crime scene evidence absent a specific request from the victim  
11 to do so.

12 Sec. 5. Sexual assault victims have the following rights under  
13 this act:

14 (a) The right to be informed of whether a DNA profile of an  
15 assailant was obtained from the processing of evidence in the  
16 sexual assault case.

17 (b) The right to be informed of whether a DNA profile of an  
18 assailant has been entered into any data bank designed or intended  
19 to be used for the retention or comparison of case evidence.

20 (c) The right to be informed of whether there is a match  
21 between the DNA profile of an assailant obtained in the sexual  
22 assault case to any DNA profile contained in any data bank designed  
23 or intended to be used for the retention or comparison of case  
24 evidence. This subdivision does not apply if disclosure would  
25 impede or compromise an ongoing investigation.

26 Sec. 6. (1) The law enforcement agency with the primary  
27 responsibility for investigating a sexual assault case shall

1 promptly analyze evidence obtained in a sexual assault case or  
2 cause that evidence to be analyzed. However, if the evidence is not  
3 or will not be analyzed within 6 months after it is collected, the  
4 law enforcement agency shall inform the victim of that fact in  
5 writing promptly after the law enforcement agency is made aware of  
6 the delay.

7 (2) If a law enforcement agency intends to destroy or  
8 otherwise dispose of any evidence in a sexual assault case before  
9 the expiration of the limitation period applicable under section 24  
10 of chapter VII of the code of criminal procedure, 1927 PA 175, MCL  
11 767.24, the law enforcement agency with the primary responsibility  
12 for investigating the case shall notify the victim of that  
13 intention in writing at least 60 days before the evidence is  
14 destroyed or otherwise disposed of.

15 Sec. 7. A sexual assault victim may designate another person  
16 of his or her own choosing to receive any notice required under  
17 this act.

18 Sec. 8. (1) The law enforcement agency with the primary  
19 responsibility for investigating a sexual assault case shall  
20 provide information to a victim under this act in a timely manner  
21 and, upon request of the victim, advise the victim of any  
22 significant changes in the information of which the law enforcement  
23 agency is aware.

24 (2) To receive notice under this section, the victim shall  
25 keep the law enforcement agency informed of the name, address,  
26 telephone number, and electronic mail address of the person to whom  
27 the information should be provided, and any changes of the name,

1 address, telephone number, and electronic mail address, if an  
2 electronic mail address is available.

3 (3) A person accused or convicted of a crime against the  
4 victim has no standing to object to any failure to comply with this  
5 section. The failure to provide a right or notice to a sexual  
6 assault victim under this section shall not be used to have the  
7 conviction or sentence set aside.

8 Sec. 9. (1) Each law enforcement agency in this state that is  
9 responsible for taking or processing sexual assault evidence shall  
10 annually report to the attorney general, in the manner determined  
11 by the attorney general, the total number of sexual assault  
12 evidence kits in its possession that it has not tested or analyzed.  
13 The law enforcement agency shall include in its report the number  
14 of untested or unanalyzed sexual assault evidence kits in its  
15 possession by year, covering at least the previous 5 years.

16 (2) Each law enforcement agency in this state shall annually  
17 report to the attorney general, in the manner determined by the  
18 attorney general, the total number of sexual assault offenses  
19 reported in its jurisdiction.

20 (3) Each law enforcement agency in a county shall provide a  
21 copy of the reports required under subsections (1) and (2) to the  
22 prosecuting attorney of that county.

23 Sec. 10. The sole civil or criminal remedy available to a  
24 sexual assault victim for a law enforcement agency's failure to  
25 fulfill its responsibilities under this act is to file a writ of  
26 mandamus to require compliance with this act.