**A** **BILL**

TO ENACT THE “SEXUAL ASSAULT SURVIVORS’ BILL OF RIGHTS ACT”; TO AMEND CHAPTER 3, TITLE 16 OF THE 1976 CODE, RELATING TO OFFENSES AGAINST THE PERSON, BY ADDING ARTICLE 21, TO PROVIDE CERTAIN RIGHTS TO A SURVIVOR OF SEXUAL ASSAULT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Sexual Assault Survivors’ Bill of Rights Act”.

SECTION 2. Chapter 3, Title 16 of the 1976 Code is amended by adding:

“ARTICLE 23

Sexual Assault Survivors’ Bill of Rights

Section 16‑3‑2310. For the purposes of this article:

(1) ‘Health care provider’ means:

(a) any of the following persons who are licensed, certified, or registered to perform specified health services consistent with state law:

(i) a physician;

(ii) a physician assistant;

(iii) a nurse; or

(iv) an advanced practice registered nurse; or

(b) any other qualified person conducting a medical evidentiary or physical examination of a survivor.

(2) ‘Sexual assault’ means any violation of Article 7 involving criminal sexual conduct or sexual battery.

(3) ‘Sexual assault forensic evidence’ means any human biological specimen collected by a health care provider during a forensic medical examination from a reported survivor, including, but not limited to, a toxicology kit.

(4) ‘Sexual assault survivor’ or ‘survivor’ means any person who is a victim of sexual assault who reports the sexual assault to a health care provider, law enforcement officer, or victim advocate, including anonymous reporting. ‘Sexual assault survivor’ or ‘survivor’ also includes, if a survivor is incompetent, deceased, or a minor who is unable to consent to counseling services, the parent, guardian, spouse, or any other person related to the survivor by consanguinity or affinity to the second degree or any other lawful representative of the survivor unless such person is the reported assailant.

(5) ‘Victim advocate’ means a ‘victim service provider’, as defined in Section 16‑3‑1420, who speaks a survivor’s preferred language or uses the services of a qualified interpreter.

Section 16‑3‑2320. The rights provided in this article apply when a survivor is subject to or requested to undergo a medical evidentiary or physical examination or is subject to or requested to participate in an interview or deposition by a law enforcement officer, solicitor, or defense attorney if the examination, interview, or deposition relates to or arises out of the sexual assault of the survivor, regardless of whether the survivor consents to the examination, interview, or deposition.

Section 16‑3‑2330. Notwithstanding another provision of law, any communication with a survivor that is privileged, whether by statute, court order, or common law, retains the privilege, regardless of who is present during the communication, so long as the survivor has some basis for privilege with respect to each person present and the communication is in the furtherance of assisting the survivor to overcome the sexual assault.

Section 16‑3‑2340. A person accused or convicted of a crime against a survivor does not have standing to object to any failure to comply with the provisions of this article, and the failure to provide a right or notice to a survivor pursuant to the provisions of this article may not be used by such a person to seek to have his conviction or sentence set aside.

Section 16‑3‑2350. (A) A survivor has the right to consult with and have present a victim advocate of the survivor’s choosing during a medical evidentiary or physical examination by a health care provider. The health care provider shall contact the victim advocate before beginning the medical evidentiary or physical examination, unless declined by the survivor. If an advocate cannot appear in a timely manner, then the health care provider shall inform the survivor of the potential impact of delaying the examination.

(B) A survivor retains the right to consult with and have present a victim advocate at any time during any medical evidentiary or physical examination, regardless of whether the survivor has previously waived such a right.

(C) A survivor has the right to a free forensic medical examination without regard to whether a survivor participates in the criminal justice system or cooperates with law enforcement.

(D) A survivor has the right to shower at no cost after the medical evidentiary or physical examination unless showering facilities are not available.

(E) A survivor has the right to anonymous reporting.

Section 16‑3‑2360. (A) A survivor has the right to consult with or have present a victim advocate of the survivor’s choosing during an interview or a deposition by a law enforcement officer, solicitor, or defense attorney unless no victim advocate is able to appear in a reasonably timely manner. The law enforcement officer, solicitor, or defense attorney shall contact the victim advocate or representative of a victim service provider before beginning the interview or deposition, unless declined by the survivor.

(B) A survivor has the right to be interviewed by a law enforcement officer of the gender of the survivor’s choosing if the request is able to be reasonably accommodated by a law enforcement officer properly trained to conduct such interviews.

(C) A survivor has the right to be interviewed by a law enforcement officer who speaks the survivor’s preferred language or to have a qualified interpreter available, if the request is able to be reasonably accommodated.

(D) A law enforcement officer, solicitor, or defense attorney shall not discourage, for any reason, a survivor from receiving a medical evidentiary or physical examination.

(E) A survivor has the right to have an attorney present during all stages of any interview, deposition, investigation, or other interaction with representatives from the legal or criminal justice system within this State. The provisions of this subsection do not create a new obligation by the State or a political subdivision to appoint or pay for counsel. Treatment of the survivor may not be affected or altered in any way as a result of the survivor’s decision to exercise the right to counsel.

Section 16‑3‑2370. (A) A survivor has the right to a prompt analysis of sexual assault forensic evidence.

(B) A health care provider shall notify the appropriate law enforcement agency of a survivor’s reported sexual assault and submit to law enforcement the sexual assault forensic evidence, if evidence is obtained.

(C) A law enforcement agency shall collect the sexual assault forensic evidence upon notification by a health care provider and shall retain the sexual assault forensic evidence for the longer of the statute of limitations applicable to the sexual assault or the retention period as otherwise provided by law or regulation.

(D) A survivor has a right to contact the investigating law enforcement agency and be provided with information on the status of the processing and analysis of the survivor’s sexual assault forensic evidence if the survivor did not report anonymously.

(E) A survivor has the right to have the results of the analysis of the survivor’s sexual assault forensic evidence uploaded to the appropriate local, state, and federal DNA databases.

(F) A survivor has the right to be informed, upon the survivor’s request, of the results of the analysis of the survivor’s sexual assault forensic evidence, whether the analysis yielded a DNA profile, and whether the analysis yielded a DNA match, either to the named perpetrator or to a suspect already in the Federal Bureau of Investigation’s Combined DNA Index System.

(G) A survivor has the right to request a free and complete copy of all law enforcement reports concerning the sexual assault upon the conclusion of the case. At the discretion of the solicitor, such reports may be redacted to exclude the personal identifying information of other witnesses.

Section 16‑3‑2380. Sexual assault forensic evidence from a survivor may not be used:

(1) to prosecute a survivor for any misdemeanor crime or any crime pursuant to Article 3, Chapter 53, Title 44 relating to narcotics and controlled substances; or

(2) as a basis to search for further evidence of any misdemeanor crime or any crime pursuant to Article 3, Chapter 53, Title 44 relating to narcotics and controlled substances.

Section 16‑3‑2390. In any civil or criminal proceeding relating to a sexual assault:

(1) a survivor has the right to be reasonably protected from the defendant and persons acting on behalf of the defendant;

(2) a survivor has the right to be free from intimidation, harassment, and abuse. The court shall make reasonable efforts to provide the survivor and the survivor’s family members, friends, and witnesses with a secure waiting area or room that is separate from the waiting area used by the defendant and the defendant’s family members, friends, witnesses, and attorneys; and

(3) a survivor has the right to be heard through a victim impact statement at sentencing or any other proceeding where a right of the survivor is at issue.

Section 16‑3‑2400. Law enforcement agencies and their officers and employees shall only disclose the name or identifying information of a survivor to a victim advocate, health care provider, or any other person necessary to carry out the prosecution of a crime or to carry out the rights provided in this article. The name or identifying information of a survivor is not a public record pursuant to Chapter 4, Title 30, the Freedom of Information Act, and may not be disclosed except as provided in this section.

Section 16‑3‑2410. (A) Upon an initial interaction with a survivor relating to or arising from a sexual assault, a health care provider or law enforcement officer and, if the survivor is a minor child, the Department of Social Services shall provide the survivor with information that explains the rights of survivors pursuant to this article and any other relevant provision of law. The information must be provided in clear language that is comprehensible to a person proficient in English at the fifth grade level, accessible to persons with visual disabilities, and available in all major languages spoken in this State. This information must include, but is not limited to:

(1) a clear statement that a survivor is not required to participate in the criminal justice system or to receive a medical evidentiary or physical examination in order to retain the rights provided by this article and any other relevant provision of law;

(2) the contact information for appropriate services provided by professionals in the fields of domestic violence and sexual assault, including victim advocates;

(3) forms of state and federal relief available to victims of crimes;

(4) forms of law enforcement protection available to the survivor, including domestic violence protection orders, harassment protection orders, and sexual assault protection orders and the process to obtain such protection;

(5) instructions for requesting information regarding the survivor’s sexual assault forensic evidence as provided in Section 16‑3‑2370; and

(6) state and federal compensation funds for medical and other costs associated with the sexual assault and information on any municipal, state, or federal right to restitution for a survivor in the event of a conviction.

(B) The information to be provided pursuant to subsection (A) must be developed by the Attorney General and the South Carolina Law Enforcement Division with input from survivors of sexual assault and any organizations with a statewide presence with expertise on domestic violence, sexual assault, and child sexual assault.

(C) The information to be provided pursuant to subsection (A) must be made available for viewing and downloading on the websites of the Office of the Attorney General and the South Carolina Law Enforcement Division. Other relevant state agencies are also encouraged to make such information available on their websites.”

SECTION 3. If the provisions of this act conflict with any other provision of law relating to protections offered to victims of crime, then the provisions most advantageous to the victim shall control.

SECTION 4. This act takes effect upon approval by the Governor.

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