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SECOND REPRINT

S.B. 321

SENATE BILL NO. 321—SENATORS KRASNER, D. HARRIS, SEEVERS
GANSERT, OHRENSCHALL; FLORES, NGUYEN, PAZINA,
SCHEIBLE, SPEARMAN AND STONE

MARCH 20, 2023

JOINT SPONSORS: ASSEMBLYMEN THOMAS, GORELOW,
MCARTHUR, KASAMA; MARZOLA, C.H. MILLER,
ORENTLICHER, PETERS, TAYLOR AND WATTS

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to crimes. (BDR 14-550)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to evidence; prohibiting a law enforcement agency or forensic laboratory from taking certain actions relating to the DNA profile and DNA record of a survivor of sexual assault; expanding certain prohibitions against the use of certain evidence secured in connection with an investigation or prosecution of a sexual assault; requiring certain entities to conduct an audit of certain biological specimens, DNA profiles and DNA records, to the extent money is available; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Sexual Assault Survivors' Bill of Rights, which grants a survivor certain rights relating to the investigation or prosecution of an alleged sexual assault perpetrated against the survivor. (Chapter 178A of NRS) Among other requirements, the Bill of Rights grants a survivor the right to not have forensic evidence from a sexual assault used: (1) to prosecute the survivor for any misdemeanor or offense related to a controlled substance; or (2) as a basis to search for further evidence of any unrelated misdemeanor or any offense related to a controlled substance that may have been committed by the survivor. (NRS 178A.260) **Section 6** of this bill expands this right by prohibiting a law enforcement agency from using any biological evidence obtained from the sexual assault forensic evidence kit of a survivor or any biological evidence secured in



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connection with the investigation or prosecution of the alleged sexual assault of the survivor: (1) to prosecute the survivor for any crime; (2) as a basis to search for further evidence of any criminal offense that may have been committed by the survivor; or (3) for any other purpose that is not directly related to the investigation or prosecution of the alleged sexual assault of the survivor.

Existing law prescribes requirements relating to certain biological evidence secured in connection with an investigation or prosecution of a criminal offense. (NRS 176.0912) With limited exception, **section 3** of this bill prohibits a law enforcement agency from sharing with or disclosing to any person or entity any biological evidence of a survivor secured in connection with the investigation or prosecution of the alleged sexual assault of the survivor. **Section 2** of this bill defines the term “biological evidence” for purposes of the Bill of Rights. **Section 4** of this bill makes a conforming change to indicate the proper placement of **section 2** in the Nevada Revised Statutes. **Section 5** makes a conforming change related to the definition of “biological evidence” set forth in **section 2**.

Existing law prescribes certain requirements relating to sexual assault forensic medical kits. Among other requirements, existing law requires: (1) a law enforcement agency to submit a sexual assault forensic evidence kit to the appropriate forensic laboratory; and (2) a forensic laboratory to accept and analyze such evidence and upload a DNA profile obtained from such evidence to CODIS or the State DNA Database. (NRS 178A.220, 200.3786) With limited exception, **section 3** prohibits a law enforcement agency or forensic laboratory from including the DNA profile of a survivor obtained from the sexual assault forensic evidence kit of the survivor in any database that allows for the storage and exchange of DNA records.

Section 7 of this bill requires, to the extent money is available for this purpose, the Central Repository for Nevada Records of Criminal History, the State DNA Database and each forensic laboratory to: (1) conduct an audit of certain biological specimens, DNA profiles and DNA records; and (2) submit the results of the audit to the Joint Interim Standing Committee on Judiciary and the Director of the Legislative Counsel Bureau on or before January 1, 2024.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 178A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *“Biological evidence” has the meaning ascribed to it in NRS 176.0912 and includes, without limitation, a sexual assault forensic evidence kit.*

Sec. 3. 1. *A law enforcement agency or forensic laboratory shall not include the DNA profile of a survivor obtained from the sexual assault forensic evidence kit of the survivor in any database that allows for the storage and exchange of DNA records unless the law enforcement agency or forensic laboratory is authorized to include the DNA profile in CODIS pursuant to 34 U.S.C. § 12592(b).*

2. *Except as otherwise provided in subsection 3 and except as otherwise required by state or federal law, a law enforcement agency that has in its possession or custody any biological*



evidence of a survivor secured in connection with the investigation or prosecution of the alleged sexual assault of the survivor shall not share such evidence with or disclose such evidence to any person or entity, including, without limitation, any other law enforcement agency, except pursuant to:

(a) A court order; or

(b) A request from another law enforcement agency, if the law enforcement agency determines that such action is necessary to identify or prosecute the person who committed the alleged sexual assault of the survivor.

3. The provisions of subsection 2 do not apply if the disclosure is necessary for purposes of satisfying discovery obligations, including, without limitation, any obligation prescribed by the Federal Rules of Criminal Procedure.

4. As used in this section:

(a) "Any database" includes, without limitation, the State DNA Database, CODIS or any other database that allows for the storage and exchange of DNA records, including, without limitation, any local, state or national database.

(b) "DNA record" means a database record stored in any database, that includes the DNA profile of a person and data required to manage the record.

Sec. 4. NRS 178A.020 is hereby amended to read as follows:

178A.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 178A.030 to 178A.140, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 178A.220 is hereby amended to read as follows:

178A.220 1. A survivor has the right to prompt genetic marker analysis of a sexual assault forensic evidence kit pursuant to NRS 200.3786.

2. A sexual assault forensic evidence kit must be transported to a forensic laboratory and analyzed pursuant to NRS 200.3786, unless the survivor requests in writing at any time before such analysis, for the forensic laboratory to defer analysis of the sexual assault forensic evidence kit.

3. Biological evidence ~~[, including, without limitation, a sexual assault forensic evidence kit.]~~ secured in connection with the investigation or prosecution of a criminal case must be preserved and stored in accordance with the provisions of this subsection and NRS 176.0912. A sexual assault forensic evidence kit that is in the custody of an agency of criminal justice must be retained for:

(a) If the sexual assault forensic evidence kit is associated with an uncharged or unsolved sexual assault, at least 50 years.



(b) If the sexual assault forensic evidence kit is associated with an unreported or anonymous sexual assault, at least 20 years.

4. If a survivor has requested to defer analysis pursuant to subsection 2, the survivor may request that the forensic laboratory analyze the sexual assault forensic evidence kit at any later date before the expiration of the retention period pursuant to subsection 3.

5. A survivor has the right to the information regarding the timeline of the genetic marker analysis of sexual assault forensic evidence kits pursuant to NRS 200.3786.

Sec. 6. NRS 178A.260 is hereby amended to read as follows:

178A.260 ~~Forensic~~ *A law enforcement agency shall not use any biological evidence obtained from ~~a sexual assault may not be used~~ the sexual assault forensic evidence kit of a survivor or any biological evidence secured in connection with the investigation or prosecution of the alleged sexual assault of the survivor:*

1. To prosecute ~~a~~ the survivor for any ~~:~~

~~—(a) Misdemeanor; or~~

~~—(b) Offense related to a controlled substance.~~ *crime;*

2. As a basis to search for further evidence of ~~any unrelated misdemeanor or~~ any *criminal* offense ~~related to a controlled substance~~ that may have been committed by the survivor ~~;~~ *or*

3. For any other purpose that is not directly related to the investigation or prosecution of the alleged sexual assault of the survivor.

Sec. 7. 1. To the extent money is available for this purpose, the Central Repository, the State DNA Database and each forensic laboratory shall:

(a) Conduct an audit of any biological specimen, DNA profile or DNA record stored or maintained in the Central Repository, the State DNA Database or forensic laboratory, as applicable, for the period beginning on January 1, 2021, and ending on December 31, 2021. Any such audit must:

(1) Include, without limitation, an examination and analysis of compliance with NRS 176.0911 to 176.0919, inclusive; and

(2) Identify the number of DNA profiles that should have been collected during the period beginning on January 1, 2021, and ending on December 31, 2021, and were not collected during that period; and

(b) Submit the results of the audit to the Joint Interim Standing Committee on Judiciary and the Director of the Legislative Counsel Bureau on or before January 1, 2024.

2. As used in this section:

(a) “Biological specimen” has the meaning ascribed to it in NRS 176.09112.



1 (b) “Central Repository” means the Central Repository for
2 Nevada Records of Criminal History.

3 (c) “DNA profile” has the meaning ascribed to it in
4 NRS 176.09115.

5 (d) “DNA record” has the meaning ascribed to it in
6 NRS 176.09116.

7 (e) “Forensic laboratory” has the meaning ascribed to it in
8 NRS 176.09117.

9 (f) “State DNA database” means the database established by
10 NRS 176.09121.

