SUMMARY—Revises provisions relating to sexual assault. (BDR 14-582)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

Effect on the State Highway Fund: No.

AN ACT relating to sexual assault; establishing certain rights of a survivor of sexual assault; revising provisions relating to a sexual assault forensic evidence kit; requiring certain information to be provided to a survivor of sexual assault; 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 Sexual Assault Survivors' Bill of Rights grants a survivor the right to be informed of the results of a sexual assault forensic evidence kit. (NRS 178A.230) **Section 2** of this bill expands this right by providing a survivor the right to be informed of the status and location of the sexual assault forensic evidence kit of the survivor.

Existing law establishes a statewide program to track sexual assault forensic evidence kits. (NRS 200.3788) **Section 4** of this bill requires a law enforcement agency or forensic laboratory to

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update the statewide program within 14 days after certain changes relating to a sexual assault forensic evidence kit.

Existing law prescribes certain requirements relating to sexual assault forensic evidence kits. Under certain circumstances, existing law requires an agency of criminal justice to retain a sexual assault forensic evidence kit for a minimum of 20 or 50 years. (NRS 178A.220) **Section 1** of this bill requires an agency of criminal justice or forensic laboratory that has custody of a sexual assault forensic evidence kit to provide written notice to the survivor at least 60 days before the intended destruction of the kit. **Section 1** also authorizes a survivor to request one or more additional 10-year periods of retention of the kit.

Existing law requires the Office of the Attorney General to develop and make available a document containing certain information for a survivor regarding his or her sexual assault. (NRS 178A.270) Existing law further requires certain persons to inform a survivor of his or her rights by presenting the document to the survivor. (NRS 178A.190, 178A.200) **Section 3** of this bill requires the document to include: (1) an explanation of the rights of a survivor under relevant state and federal law; (2) information concerning the policies and procedures governing sexual assault forensic evidence kits; and (3) instructions for obtaining certain information concerning a kit and requesting additional periods of retention for the kit of the survivor.

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

Section 1. 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 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. ***An agency of criminal justice or forensic laboratory that has custody of a sexual assault forensic evidence kit shall:***

(a) Provide written notice to the survivor at least 60 days before the intended destruction of the sexual assault forensic evidence kit of the survivor; and

(b) Upon written request of the survivor, retain the sexual assault forensic evidence kit for an additional period of 10 years beyond the date on which the kit would otherwise be eligible for destruction. A survivor may request additional periods of retention pursuant to this paragraph.

5. 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~~]~~ ***subsections*** 3 ~~[.]~~ ***and 4.***

~~[~~5.~~]~~ ***6.*** 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. 2. NRS 178A.230 is hereby amended to read as follows:

178A.230 Upon the request of a survivor, he or she has the right to be informed of:

1. ***The status and location of the sexual assault forensic evidence kit of the survivor;***

2. The results of the genetic marker analysis of the sexual assault forensic evidence kit of the survivor;

~~[~~2.~~]~~ ***3.*** Whether the analysis yielded a DNA profile; and

~~[~~3.~~]~~ ***4.*** Whether the analysis yielded the DNA profile of the defendant or person accused or convicted of a crime against the survivor or a person already in CODIS.

Sec. 3. NRS 178A.270 is hereby amended to read as follows:

178A.270 1. The Office of the Attorney General shall:

(a) Develop a document that explains ~~[the]~~ ***:***

(1) The rights of a survivor pursuant to the Sexual Assault Survivors' Bill of Rights and other relevant ***state and federal*** law; and

(2) The policies and procedures governing the collection, tracking, retention and destruction of sexual assault forensic evidence kits.

(b) Make the document available to medical providers, law enforcement officials and prosecutors.

2. The document must be in clear language that is comprehensible to a person proficient in English at the reading level of a fifth grader, accessible to persons with visual disabilities and available in all major languages of this State.

3. The document must include, without limitation:

(a) A clear statement that the survivor is not required to participate in the criminal justice system or to receive a forensic medical examination in order to retain the rights provided by the Sexual Assault Survivors' Bill of Rights and other relevant ***state and federal*** law;

(b) Means of contacting, by telephone or Internet, nearby sexual assault victims' advocates and centers for support for victims of sexual assault;

(c) Information about the availability of temporary and extended orders of protection pursuant to NRS 200.378;

(d) ***Instructions for requesting updates on the status and location of the sexual assault forensic evidence kit of the survivor;***

(e) Instructions for requesting the results of the genetic marker analysis of the sexual assault forensic evidence kit of the survivor;

(f) Information concerning destruction of the sexual assault forensic evidence kit of the survivor and instructions for requesting additional periods of retention of the kit pursuant to NRS 178A.220;

~~[(e)]~~ ***(g)*** Information concerning state and federal funds for compensation for medical and other costs associated with the sexual assault;

~~[(f)]~~ ***(h)*** Information concerning any municipal, state or federal right to restitution for survivors in the event of a criminal trial; and

~~[(g)]~~ ***(i)*** Information concerning testing for the human immunodeficiency virus and other common sexually transmitted diseases.

Sec. 4. NRS 200.3786 is hereby amended to read as follows:

200.3786 1. Within 72 hours after conducting a forensic medical examination, a medical provider shall notify the law enforcement agency having jurisdiction over the alleged sexual assault of the victim and the law enforcement agency shall take possession of the sexual assault forensic evidence kit.

2. If a law enforcement agency determines it does not have jurisdiction over an alleged sexual assault, the law enforcement agency shall notify the law enforcement agency having proper jurisdiction of such an assault within 5 days after taking possession of the sexual assault forensic evidence kit. After receiving such notice, the law enforcement agency with proper jurisdiction shall take possession of the sexual assault forensic evidence kit.

3. Except as otherwise provided in this subsection, a law enforcement agency shall, not later than 30 days after receiving notice pursuant to subsection 1 or 2 of a sexual assault forensic evidence kit, submit the sexual assault forensic evidence kit to the applicable forensic laboratory responsible for conducting a genetic marker analysis. The provisions of this subsection do not apply to any noninvestigatory sexual assault forensic evidence kit associated with a victim who has chosen to remain anonymous.

4. A law enforcement agency shall, not later than 5 days after receiving notice of a sexual assault forensic evidence kit, assign a criminal complaint number to the evidence.

5. Any law enforcement agency that submits a sexual assault forensic evidence kit to a forensic laboratory shall, immediately following such a submission, notify the victim of the information contained in subsections 1, 2 and 3.

6. A forensic laboratory shall, not later than 120 days after receiving a sexual assault forensic evidence kit from a law enforcement agency, test the sexual assault forensic evidence kit, unless the victim requests, in writing, to defer the genetic marker analysis of the sexual assault forensic evidence kit pursuant to NRS 178A.220.

7. Upon completion of a genetic marker analysis, the forensic laboratory shall include an eligible DNA profile obtained from the genetic marker analysis in the State DNA Database and CODIS.

8. ***Except as otherwise provided in this subsection, a law enforcement agency or forensic laboratory shall update the statewide program established pursuant to NRS 200.3788 within 14 days after any change in the custody or status of a sexual assault forensic evidence kit,***

including, without limitation, the completion of genetic marker analysis, entry of a DNA profile into CODIS or identification of a match in CODIS. The agency or laboratory shall also update the statewide program before the intended destruction of the kit. If the agency or laboratory cannot update the statewide program within 14 days after the change, the agency or laboratory shall document the reason for the delay in the statewide program and update the statewide program as soon as practicable.

9. As used in this section:

(a) "CODIS" has the meaning ascribed to it in NRS 176.09113.

(b) "State DNA Database" has the meaning ascribed to it in NRS 176.09119.