

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date** Jan. 13, 2019  
**Bill No:** HB135

**Sponsor:** Elizabeth "Liz" Thomson  
**Short Title:** Sexual Assault Survivor's Bill of Rights

**Agency Code:** 264  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

## **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	minimal	minimal	minimal	recurring	general

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

HB135 enacts a new section of the Criminal Code entitled “Sexual Assault Survivor’s Bill of Rights.”

HB135 includes provisions:

- Setting out the responsibilities of health care providers and law enforcement agencies regarding the handling of sexual assault examination kits, requiring the survivor’s consent at multiple stages of the process, and providing specified information to the survivor.
- Requiring a crime laboratory to complete the processing of a sexual assault examination kit within sixty days of receipt of the kit. (Subsection D.)
- Regarding interviews of a survivor, including requiring law enforcement officers, prosecutors and defense attorneys to inform the survivor of the survivor’s rights according to a document to be developed by the department of public safety, the right to consult with a sexual assault counselor during the interview, the right to have a support person of the survivor’s choosing present during an interview, and the right when interviewed by a law enforcement officer to be interviewed by a law enforcement officer of the gender of the survivor’s choosing.
- Governing the survivor’s rights in a civil or criminal case relating to the sexual assault to be reasonably protected from the defendant and persons acting on behalf of the defendant; to not be required to submit to a polygraph examination as a prerequisite to filing an accusatory pleading or participating in any part of the criminal justice system; to be heard through a survivor impact statement; to provide sentencing recommendations to the probation department; to have legal counsel present during all stages of any medical examination, interview, investigation or other interaction with representatives from the civil or criminal justice systems.
- Allowing a survivor to designate another person to receive notifications and information, or in the case of a survivor who is deceased, setting out who may receive notifications.
- Prohibiting a prosecutor from prosecuting a survivor for minor criminal offenses, including underage consumption of alcohol, drug use or prostitution, if the evidence of the commission of the offense is obtained through the examination of and collection of a sexual assault examination kit from the survivor.

Each person who has a responsibility to survivors pursuant to the section must make reasonable efforts to become informed about these responsibilities. Any failure to make such efforts, or any violation of the enumerated rights or provisions, shall be considered a tortious act causing injury to person or property within New Mexico, and the court may award reasonable attorney fees to a plaintiff who prevails on a claim.

## **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

District attorneys will have additional costs related to training on the requirements of HB135, and will be subject to civil suits for violating its provisions.

Health care providers, law enforcement entities and laboratories will also have costs, and will bear additional significant responsibilities regarding collection and use of sexual assault examination kits, and keeping survivors informed during the process.

## **SIGNIFICANT ISSUES**

1. Because “sexual assault” is not defined, it is not clear which victims are covered under HB135.

HB135 sets out a “bill of rights” specific to sexual assault survivors. HB135 does not define “sexual assault.” Although the initial provisions regarding sexual assault examination kits would apply only to criminal sexual penetration or perhaps criminal sexual contact, other provisions in HB135 are more general. If the general provisions of HB135 are intended to apply only in situations in which a sexual assault examination kit is collected, that should be made clear. Because HB135 is enacted as a section of Chapter 30, Article 9 NMSA 1978, it presumably addresses the crimes in that article. However, some of those crimes, such as accepting earnings of a prostitute, do not fit within the definition of assault, and other crimes, such as indecent waiting, aren’t normally thought of as having victims categorized as sexual assault survivors. If HB135 is intended to apply only to specific crimes within Article 9, such as criminal sexual penetration and criminal sexual contact, that should be made clear. Also note that some sexual crimes do not appear in Article 9, such as sexual exploitation of a child by requiring a child to engage in a sex act (see NMSA 1978, Section 30-6A-3) and human trafficking (see NMSA 1978, Section 30-52-1), which can involve forced prostitution. If HB135 is intended to apply to victims of those crimes, that should also be made clear.

2. HB135 duplicates some existing provisions.

New Mexico already has a general victim’s bill of rights set out in the constitution at Article 2, Section 24, and enacted as the Victims of Crimes Act at NMSA 1978, Section 31-26-1 through 31-26-16. Additional provisions in Article 9 address specific issues related to victims of sexual crimes. HB135 duplicates some of the existing provisions, and adds many new provisions. For example, the Victims of Crimes Act sets out notice provisions, but HB135’s requirements are much more detailed, and include specific provisions regarding notification of the progress of investigations based on sexual assault kit examinations. And NMSA 1978, Section 30-9-17.1

already provides that sexual assault victims cannot be required to submit to a polygraph examination prior to filing an accusatory pleading. By duplicating provision in other statutes, HB135 may cause some confusion. The Victims of Crimes Act already sets out requirements for victim notification, and NMSA 1978, Section 30-9-17.1 already protects victims from being required to submit to a polygraph. Having multiple statutes addressing the same issues can create difficulties if the wording of the provisions is not exactly the same.

3. HB135 appears to create a right to sue the state.

One important difference between existing provisions and HB135 is that, unlike the constitutional provision and unlike the Victims of Crimes Act, HB135 provides a remedy for violations of its provisions: a sexual assault survivor may file a civil suit, and seek attorney fees (presumably in addition to civil damages). This appears to grant survivors a right to sue the state, because state actors, including law enforcement officers, prosecutors, public defenders, and judges are given most of the responsibilities under HB135.

4. HB135 creates some practical challenges.

HB135 requires a crime laboratory to complete the processing of a sexual assault examination kit within sixty days of receipt, or face a possible tort action. New Mexico and other states have had to address backlogs in processing such kits; a sixty day turnaround may not be possible.

Health care providers, prosecutors and law enforcement will face some practical challenges in carrying out the requirements of HB135. Health care providers will have increased administrative duties, and will need to obtain consent. Because a survivor “retains the right to have legal counsel present during all stages of any medical examination,” health care providers may need to delay examinations until counsel can be present, although HB135 requires that “treatment of the survivor should not be affected or altered in any way as a result of the survivor’s decision to exercise the survivor’s right to have counsel present.” See Subsection H. Law enforcement must follow detailed requirements on keeping the survivor informed on the progress of the sexual assault kit examination. All participants in the criminal justice system will have to adjust their interview procedures.

## **PERFORMANCE IMPLICATIONS**

See “Significant Issues,” above.

HB135 prohibits prosecutors from prosecuting a survivor for minor criminal offenses, including underage consumption of alcohol, drug use or prostitution, if the evidence of the commission of the offense is obtained through the examination of and collection of a sexual assault examination kit from the survivor. This should encourage victims to allow a sexual assault examination. Note that a prosecutor may charge such crimes if the evidence is not obtained through the examination of and collection of a kit. So, if the police find evidence of the survivor’s drug use when they arrive at the scene, the prosecutor could still charge the survivor with drug crimes. A person facing a drug crime could not avoid prosecution for minor crimes by falsely claiming to be the victim of a sexual assault.

## **ADMINISTRATIVE IMPLICATIONS**

See “Significant Issues,” above.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None noted.

## **TECHNICAL ISSUES**

None noted.

## **OTHER SUBSTANTIVE ISSUES**

None noted.

## **ALTERNATIVES**

None proposed.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Survivors of sexual assault will have the rights provided by the Victims of Crime Act and specific statutes dealing with sexual assault.

## **AMENDMENTS**

None proposed.