

SENATE BILL No. 146

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-21-8-2; IC 35-31.5-2; IC 35-40.5.

Synopsis: Sexual assault victims' rights. Provides rights to sexual assault victims, including the right to: (1) have a sexual assault counselor present before or during a forensic medical exam or an interview with a law enforcement officer or a defense attorney; (2) the collection of sexual assault forensic evidence; (3) the analysis of the sexual assault forensic evidence; and (4) notice.

Effective: July 1, 2020.

Doriot

January 6, 2020, read first time and referred to Committee on Corrections and Criminal Law.



Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

SENATE BILL No. 146

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-21-8-2, AS AMENDED BY P.L.41-2007,
2 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 2. (a) Each county or regional sexual assault
4 response team shall develop a **trauma informed, victim focused** plan
5 that establishes the protocol for sexual assault victim response and
6 treatment, including the:
7 (1) collection;
8 (2) preservation;
9 (3) secured storage; and
10 (4) destruction;
11 of samples.
12 (b) The plan under subsection (a) shall address the following
13 regarding an alleged sexual assault victim who is at least eighteen (18)
14 years of age and who either reports a sexual assault or elects not to
15 report a sexual assault to law enforcement:
16 (1) The method of maintaining the confidentiality of the alleged
17 sexual assault victim regarding the chain of custody and secured



- 1 storage of a sample.
- 2 (2) The development of a victim notification form that notifies an
- 3 alleged sexual assault victim of his or her rights under the law,
- 4 **including the rights of a victim as described in IC 35-40.5. The**
- 5 **victim notification form must include contact information for**
- 6 **the designated liaison described in subsection (c).**
- 7 (3) How a victim will receive the victim notification form.
- 8 (4) Identification of law enforcement agencies that will be
- 9 responsible to transport samples.
- 10 (5) Agreements between medical providers and law enforcement
- 11 agencies to pick up and store samples.
- 12 (6) Maintaining samples in secured storage.
- 13 (7) Procedures to destroy a sample following applicable statute of
- 14 limitations.
- 15 **(c) The plan under subsection (a) shall require each agency**
- 16 **having temporary or permanent custody of a sexual assault kit to**
- 17 **designate at least one (1) person to receive victim inquiries**
- 18 **concerning sexual assault kits and to serve as a liaison between the**
- 19 **agency and the victim. The designated liaison must be trained in**
- 20 **trauma and victim response.**
- 21 SECTION 2. IC 35-31.5-2-76.5 IS ADDED TO THE INDIANA
- 22 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 23 [EFFECTIVE JULY 1, 2020]: **Sec. 76.5. "Crime laboratory", for**
- 24 **purposes of IC 35-40.5, has the meaning set forth in IC 35-40.5-1-1.**
- 25 SECTION 3. IC 35-31.5-2-185, AS AMENDED BY P.L.238-2015,
- 26 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 27 JULY 1, 2020]: Sec. 185. (a) "Law enforcement officer" means:
- 28 (1) a police officer (including a correctional police officer),
- 29 sheriff, constable, marshal, prosecuting attorney, special
- 30 prosecuting attorney, special deputy prosecuting attorney, the
- 31 securities commissioner, or the inspector general;
- 32 (2) a deputy of any of those persons;
- 33 (3) an investigator for a prosecuting attorney or for the inspector
- 34 general;
- 35 (4) a conservation officer;
- 36 (5) an enforcement officer of the alcohol and tobacco
- 37 commission;
- 38 (6) an enforcement officer of the securities division of the office
- 39 of the secretary of state; or
- 40 (7) a gaming agent employed under IC 4-33-4.5 or a gaming
- 41 control officer employed by the gaming control division under
- 42 IC 4-33-20.



1 (b) "Law enforcement officer", for purposes of IC 35-42-2-1,
 2 includes an alcoholic beverage enforcement officer, as set forth in
 3 IC 35-42-2-1.

4 (c) "Law enforcement officer", for purposes of IC 35-45-15,
 5 includes a federal enforcement officer, as set forth in IC 35-45-15-3.

6 (d) "Law enforcement officer", for purposes of IC 35-44.1-3-1 and
 7 IC 35-44.1-3-2, includes a school resource officer (as defined in
 8 IC 20-26-18.2-1) and a school corporation police officer appointed
 9 under IC 20-26-16.

10 (e) "**Law enforcement officer**", for purposes of IC 35-40.5, has
 11 **the meaning set forth in IC 35-40.5-1-1.**

12 SECTION 4. IC 35-31.5-2-255.5 IS ADDED TO THE INDIANA
 13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2020]: **Sec. 255.5. "Provider", for purposes**
 15 **of IC 35-40.5, has the meaning set forth in IC 35-40.5-1-1.**

16 SECTION 5. IC 35-31.5-2-273.4 IS ADDED TO THE INDIANA
 17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2020]: **Sec. 273.4. "Relative", for purposes**
 19 **of IC 35-40.5, has the meaning set forth in IC 35-40.5-1-1.**

20 SECTION 6. IC 35-31.5-2-288.5 IS ADDED TO THE INDIANA
 21 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2020]: **Sec. 288.5. "Secured storage", for**
 23 **purposes of IC 35-40.5, has the meaning set forth in IC 35-40.5-1-1.**

24 SECTION 7. IC 35-31.5-2-299.5 IS ADDED TO THE INDIANA
 25 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2020]: **Sec. 299.5. "Sexual assault counselor",**
 27 **for purposes of IC 35-40.5, has the meaning set forth in**
 28 **IC 35-40.5-1-1.**

29 SECTION 8. IC 35-31.5-2-299.6 IS ADDED TO THE INDIANA
 30 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2020]: **Sec. 299.6. "Sexual assault**
 32 **examination kit", for purposes of IC 35-40.5, has the meaning set**
 33 **forth in IC 35-40.5-1-1.**

34 SECTION 9. IC 35-31.5-2-299.8 IS ADDED TO THE INDIANA
 35 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2020]: **Sec. 299.8. "Sexual assault forensic**
 37 **evidence", for purposes of IC 35-40.5, has the meaning set forth in**
 38 **IC 35-40.5-1-1.**

39 SECTION 10. IC 35-31.5-2-348, AS ADDED BY P.L.114-2012,
 40 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2020]: Sec. 348. (a) "Victim", for purposes of IC 35-38-1-9
 42 and IC 35-38-1-17, means a person who has suffered harm as a result



- 1 of a crime.
- 2 (b) "Victim", for purposes of IC 35-37-6, has the meaning set forth
3 in IC 35-37-6-3.
- 4 (c) "Victim", for purposes of IC 35-38-7, has the meaning set forth
5 in IC 35-38-7-4.
- 6 (d) "Victim", for purposes of IC 35-40, has the meaning set forth in
7 IC 35-40-4-8.
- 8 **(e) "Victim", for purposes of IC 35-40.5 has the meaning set
9 forth in IC 35-40.5-1-1.**
- 10 ~~(e)~~ (f) "Victim", for purposes of IC 35-45-10, has the meaning set
11 forth in IC 35-45-10-4.
- 12 SECTION 11. IC 35-40.5 IS ADDED TO THE INDIANA CODE
13 AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2020]:
- 15 **ARTICLE 40.5. RIGHTS OF SEXUAL ASSAULT VICTIMS**
16 **Chapter 1. Definitions**
- 17 **Sec. 1. The following definitions apply throughout this article:**
- 18 (1) "Crime laboratory" means a laboratory responsible for
19 examining or testing a sexual assault examination kit.
- 20 (2) "Law enforcement officer" means any of the following:
- 21 (A) A law enforcement officer (as defined in
22 IC 35-31.5-2-185).
- 23 (B) A state educational institution police officer appointed
24 under IC 21-39-4.
- 25 (C) A school corporation officer appointed under
26 IC 20-26-16.
- 27 (D) A school resource officer (as defined in
28 IC 20-26-18.2-1).
- 29 (E) A police officer of a public or private postsecondary
30 educational institution whose board of trustees has
31 established a police department under IC 21-17-5-2 or
32 IC 21-39-4-2.
- 33 (3) "Provider" has the meaning set forth in IC 16-21-8-0.2.
- 34 (4) "Relative" has the meaning set forth in IC 35-42-2-1(b).
- 35 (5) "Secured storage" has the meaning set forth in
36 IC 16-21-8-0.2.
- 37 (6) "Sexual assault counselor" means a victim advocate (as
38 defined in IC 35-37-6-3.5) or a victim service provider (as
39 defined in IC 35-37-6-5).
- 40 (7) "Sexual assault examination kit" has the meaning set forth
41 in IC 16-21-8-0.2.
- 42 (8) "Sexual assault forensic evidence" means the results



1 collected from a forensic medical examination of a victim by
2 a provider.

3 (9) "Victim" means an individual:

4 (A) who is a victim of sexual assault (as defined in
5 IC 5-26.5-1-8); or

6 (B) who:

7 (i) is a relative of or a person who has had a close
8 personal relationship with the individual described
9 under clause (A); and

10 (ii) is designated by the individual described under clause
11 (A) as a representative.

12 The term does not include an individual who is accused of
13 committing an act of sexual assault (as defined in
14 IC 5-26.5-1-8) against the individual described under
15 clause (A).

16 **Chapter 2. Attachment and Duration of Rights**

17 **Sec. 1. The rights provided to victims under this article attach**
18 **whenever a victim is subject to:**

19 (1) a forensic medical exam; or

20 (2) an interview by a law enforcement officer or a defense
21 attorney;

22 in relation to injuries, trauma, or an investigation resulting from
23 an alleged sexual assault.

24 **Sec. 2. A victim continuously retains all the rights under this**
25 **article regardless of whether the victim:**

26 (1) agrees to participate in any civil or criminal proceeding
27 related to the alleged sexual assault; or

28 (2) consents to a forensic medical exam to collect forensic
29 evidence related to the alleged sexual assault.

30 **Chapter 3. Right to a Sexual Assault Counselor**

31 **Sec. 1. (a) A victim has the right to:**

32 (1) consult with a sexual assault counselor before and during
33 any forensic medical examination; and

34 (2) have a sexual assault counselor present during any
35 interview conducted by a law enforcement officer or defense
36 attorney.

37 A victim retains these rights even if the victim has waived one (1)
38 or more of these rights in a previous examination or interview.

39 (b) An examination or interview may not be conducted unless
40 the sexual assault counselor is present or the victim knowingly and
41 voluntarily waives the right to the presence of the sexual assault
42 counselor.



1 **Sec. 2. (a) Communication between a victim and a sexual assault**
 2 **counselor is confidential and privileged, including information**
 3 **disclosed in the presence of a third party during a forensic medical**
 4 **examination or during any interview between a law enforcement**
 5 **officer or a defense attorney.**

6 **(b) The presence of a sexual assault counselor does not operate**
 7 **to defeat any existing privilege otherwise guaranteed by law.**

8 **(c) A victim's communications with a sexual assault counselor**
 9 **are not admissible into evidence for any purpose except with**
 10 **consent of the victim.**

11 **Chapter 4. Collection of Sexual Assault Forensic Evidence**

12 **Sec. 1. As described in IC 16-21-8-6, a provider shall provide**
 13 **forensic medical exams and additional forensic services to a victim**
 14 **without charge.**

15 **Sec. 2. Before a provider commences a forensic medical**
 16 **examination, the provider shall inform the victim of the following:**

17 **(1) The victim's rights under this article and other relevant**
 18 **law in a document to be developed by the county or regional**
 19 **sexual response team as described in IC 16-21-8-2, which shall**
 20 **be signed by the victim to confirm receipt.**

21 **(2) The victim's right to consult with a sexual assault**
 22 **counselor.**

23 **Chapter 5. Interview With a Law Enforcement Official or**
 24 **Defense Attorney**

25 **Sec. 1. Before a law enforcement officer or defense attorney**
 26 **commences an interview of a victim, the law enforcement officer or**
 27 **defense attorney shall inform the victim of the following:**

28 **(1) The victim's rights under this article and other relevant**
 29 **law in a document to be developed by the county or regional**
 30 **sexual response team as described in IC 16-21-8-2, which shall**
 31 **be signed by the victim to confirm receipt.**

32 **(2) The victim's right to consult with a sexual assault**
 33 **counselor during any interview by a law enforcement officer**
 34 **or a defense attorney.**

35 **Chapter 6. Analysis of Sexual Assault Forensic Evidence**

36 **Sec. 1. A victim has the right to prompt analysis of sexual**
 37 **assault forensic evidence collected from a forensic medical**
 38 **examination.**

39 **Sec. 2. The following applies to sexual assault forensic evidence:**

40 **(1) The sexual assault forensic evidence shall be transported**
 41 **to the crime laboratory and analyzed within ninety (90) days,**
 42 **unless the victim waives this requirement in writing at any**



1 time prior to analysis of the evidence.

2 (2) The crime laboratory shall retain the sexual assault
3 forensic evidence, except as provided in subdivision (3), until
4 the later of:

5 (A) the statute of limitations bars prosecution to the
6 offense as described under IC 35-41-4-2; or

7 (B) the victim reaches forty (40) years of age if the victim
8 was a minor when the offense occurred;

9 before the evidence is destroyed.

10 (3) Not earlier than sixty (60) days before the evidence is
11 scheduled to be destroyed under subdivision (1), or under this
12 subdivision if the retention period has been extended, the
13 crime laboratory shall notify the victim of the date of the
14 scheduled destruction. If the victim objects in writing to the
15 destruction, the crime laboratory shall retain the sexual
16 assault forensic evidence for an additional five (5) years.

17 (4) If the victim elects to waive analysis under subdivision (1),
18 the victim can still request that the sexual assault forensic
19 evidence collected be tested before it is destroyed.

20 **Sec. 3.** A law enforcement agency that submits sexual assault
21 forensic evidence to a crime laboratory shall, immediately after
22 submission, notify the victim of:

23 (1) the name, address, and telephone number of the crime
24 laboratory where the evidence has been submitted; and

25 (2) the information described in section 2 of this chapter.

26 **Sec. 4.** (a) A victim has the right to be informed, upon the
27 victim's request, of the following:

28 (1) The results of the analysis of the victim's sexual assault
29 forensic evidence.

30 (2) Whether the analysis yielded a DNA profile.

31 (3) Whether the analysis yielded a DNA match, either to the
32 named perpetrator or to a suspect already in the Combined
33 DNA Index System.

34 (b) The victim has the right to:

35 (1) receive the information in subsection (a):

36 (A) through a secure and confidential message in writing
37 from the state or local crime laboratory; or

38 (B) in a manner selected by the victim; and

39 (2) designate a relative or other person to receive the
40 information on the victim's behalf.

41 The information must include the telephone number of the state or
42 local crime laboratory to permit the victim to call regarding the



- 1 results.
- 2 **Sec. 5. (a) A defendant or a person accused or convicted of a**
- 3 **crime against a victim may not object to any failure in complying**
- 4 **with this article.**
- 5 **(b) The failure to provide a right or notice to a victim under this**
- 6 **section may not be used by a defendant to seek to have the**
- 7 **conviction or sentence set aside.**
- 8 **Sec. 6. (a) The failure of a law enforcement agency to take**
- 9 **possession of any sexual assault forensic evidence or to submit the**
- 10 **evidence for analysis within the time prescribed in this chapter**
- 11 **does not:**
- 12 **(1) affect the authority of a law enforcement agency to take**
- 13 **possession of the evidence or to submit the evidence to the**
- 14 **crime laboratory; or**
- 15 **(2) affect the authority of the crime laboratory to accept and**
- 16 **analyze the evidence or to upload the DNA profile obtained**
- 17 **from that evidence into the Combined DNA Index System.**
- 18 **(b) The failure to comply with the requirements of this chapter**
- 19 **does not constitute grounds in any criminal or civil proceeding for**
- 20 **challenging the validity of a database match or of any database**
- 21 **information. Any evidence of the DNA record may not be excluded**
- 22 **by a court on these grounds.**
- 23 **Chapter 7. Notice to Victims**
- 24 **Sec. 1. (a) Upon initial interaction with a victim, a law**
- 25 **enforcement officer or provider shall provide the victim with a**
- 26 **document developed by a county or regional sexual response team,**
- 27 **as described in IC 16-21-8-2, that explains the rights of victims:**
- 28 **(1) under this article and other relevant law;**
- 29 **(2) in a format accessible to persons with visual disabilities;**
- 30 **and**
- 31 **(3) in English, Spanish, and German.**
- 32 **(b) The document described in subsection (a) shall include the**
- 33 **following:**
- 34 **(1) A clear statement that a victim is not required:**
- 35 **(A) to participate in the criminal justice system; or**
- 36 **(B) to receive a medical evidentiary or physical**
- 37 **examination;**
- 38 **in order to retain the rights provided under this article or**
- 39 **other relevant law.**
- 40 **(2) The instructions for requesting the results of the analysis**
- 41 **of the victim's sexual assault forensic evidence.**
- 42 **(3) Information concerning state and federal victim**



- 1 **compensation funds for medical and other costs associated**
2 **with the sexual assault.**
- 3 **Sec. 2. A prosecutor shall, upon written request by a victim,**
4 **provide timely notice of all legal proceedings that are scheduled for**
5 **a criminal matter in which the victim was involved, as provided**
6 **under IC 35-40-6-4, including:**
- 7 **(1) timely notice of any pretrial hearings and proceedings of**
8 **the case;**
- 9 **(2) timely notice of the final disposition of the case, including:**
10 **(A) the conviction;**
11 **(B) the sentence; and**
12 **(C) the place and time of incarceration;**
- 13 **(3) timely notice of any change in status of the case, including**
14 **if it has been dismissed or reopened; and**
- 15 **(4) timely notice of a convicted defendant's location, including**
16 **whenever the defendant:**
- 17 **(A) receives a temporary, provisional, or final release from**
18 **custody;**
19 **(B) escapes from custody;**
20 **(C) is moved from a secure facility to a less-secure facility;**
21 **or**
22 **(D) reenters custody.**

