HOUSE BILL NO. 16

INTRODUCED BY S. KELLY

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING LAWS RELATED TO THE SEXUAL ASSAULT RESPONSE NETWORK PROGRAM AND COMMITTEE; ESTABLISHING THE SEXUAL ASSAULT RESPONSE NETWORK PROGRAM ACCOUNT; CREATING A SINGLE-PAYOR SEXUAL ASSAULT FORENSIC EXAM EXPENSE REIMBURSEMENT SYSTEM; AUTHORIZING INFLATIONARY ADJUSTMENTS; PROVIDING RULEMAKING AUTHORITY; CLARIFYING STORAGE REQUIREMENTS FOR COLLECTED EVIDENCE; DEFINING "SAFE", "SEXUAL ASSAULT FORENSIC EXAMINER", AND "TELESAFE"; TRANSFERRING FUNDS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 16-12-111, 44-4-1701, 44-4-1702, 44-4-1703, 44-7-303, 46-15-404, 46-15-411, 46-15-412, AND 46-15-413, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Sexual assault response network program account.** (1) There is a sexual assault response network program account in the state special revenue fund established in 17-2-102. The account consists of money deposited into the account pursuant to 16-12-111 and from any other lawful source, including but not limited to gifts, grants, donations, securities, and other assets, public or private.

(2) Money in the account may be used by the department of justice only:

(a) for the purposes provided for in Title 44, chapter 4, part 17;

(b) to purchase and distribute sexual assault evidence kits for use by health care facilities at no cost to collect evidence during a sexual assault medical forensic examination;

(c) to reimburse health care facilities for sexual assault medical forensic examinations of victims of alleged incidents of sexual intercourse without consent, sexual assault, or incest, as provided in 46-15-411; and

(d) to establish and maintain a secure electronic system by which requests for reimbursement pursuant to 46-15-411 and pertinent treatment records may be submitted.

(3) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

Section 2. Section 16-12-111, MCA, is amended to read:

"**16-12-111. Marijuana state special revenue account -- operating reserve -- transfer of excess funds.** (1) There is a dedicated marijuana state special revenue account within the state special revenue fund established in 17-2-102, to be administered by the department.

(2) The account consists of:

(a) money deposited into the account pursuant to this chapter;

(b) the taxes collected pursuant to Title 15, chapter 64, part 1;

(c) license and registered cardholder fees deposited into the account pursuant to this chapter;

(d) taxes deposited into the account pursuant to 16-12-310; and

(e) civil penalties collected under this chapter.

(3) Except as provided in subsection (4), money in the account must be used by the department for the purpose of administering the provisions of this chapter.

(4) At the end of each fiscal year, the department shall transfer funds in excess of a 3-month operating reserve necessary to fund operating costs at the beginning of the next fiscal year in the following order:

(a) 11% must be transferred to the healing and ending addiction through recovery and treatment (HEART) account established in 16-12-122;

(b) the net balance remaining after distribution to the HEART account must be distributed as follows:

(i) 20% to the habitat legacy account provided for in 87-5-811;

(ii) 4% to the state park account established in 23-1-105(1);

(iii) 4% to the trails and recreational facilities account established in 23-2-108;

(iv) 4% to the nongame wildlife account established in 87-5-121;

(v) 3% or $200,000, whichever is less, to the veterans and surviving spouses state special revenue account provided for in 10-2-108;

(vi) 3% to the sexual assault response network program account established in [section 1];

~~(vi)~~ (vii) $150,000 to the board of crime control to fund crisis intervention team training as provided in 44-7-110; and

~~(vii)~~ (viii) the remainder to the general fund."

Section 3. Section 44-4-1701, MCA, is amended to read:

"**44-4-1701. Definitions.** As used in 2-15-2034, 2-15-2035, and this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Committee" means the sexual assault response team committee established in 2-15-2035.

(2) "Department" means the department of justice.

(3) "Program" means the sexual assault response network program established in 2-15-2034.

(4) ~~"SANE"~~ "SAFE" or "sexual assault ~~nurse~~ forensic examiner" means a registered nurse, an advanced practice registered nurse, a physician assistant, or a physician with education and training in conducting forensic examinations of sexual assault victims.

(5) ~~"SANE~~ "SAFE program" means a program that meets the requirements prescribed by the department of justice under 44-4-1702.

(6) "Sexual assault" means a criminal offense that involves sexual contact or sexual intercourse as those terms are defined in 45-2-101.

(7) "Sexual assault response team" means a multidisciplinary team of specially trained members of health care, law enforcement, prosecution, and advocacy that work together to provide coordinated health care and advocacy services to victims of sexual assault, while investigating sexual assault cases for the purpose of criminal prosecution.

(8) ~~"teleSANE"~~ "teleSAFE" means the use of audio, video, or other telecommunications technology or media, including audio-only communication, to provide remote, real-time support by an off-site qualified provider to both the on-site ~~nurse~~ sexual assault forensic examiner and the patient to ensure best practices, proper evidence collection, and a supportive environment."

Section 4. Section 44-4-1702, MCA, is amended to read:

"**44-4-1702. Sexual assault response network program -- establish -- general powers and duties.** (1) The sexual assault response network program established under 2-15-2034 will support efforts to provide uniform sexual assault evidence kit distribution and handling, coordinate a comprehensive, trauma-informed response to survivors of sexual violence, provide discipline-based training and technical assistance for sexual assault responders in accordance with national and state best practices and local laws, and advance access to quality sexual assault forensic examinations and care through ~~teleSANE~~ teleSAFE innovations.

(2) The department of justice shall adopt rules to establish:

(a) minimum standards of sexual assault care;

(b) minimum standards to operate a ~~SANE~~ SAFE program; and

(c) the operation and designation of ~~SANE~~ SAFE programs.

(3) The program's powers and duties include but are not limited to:

(a) coordinating with the sexual assault response team committee;

(b) conducting ongoing adult, adolescent, and pediatric didactic and clinical sexual assault ~~nurse~~ forensic examiner training for medical professionals;

(c) recruiting and organizing sexual assault ~~nurse~~ forensic examiner trainers to increase in-state training capacity;

(d) researching ~~teleSANE~~ teleSAFE models and technological solutions to increase access to sexual assault forensic examinations and sexual assault ~~nurse~~ forensic examiner care;

(e) providing quality, accessible sexual assault response training and technical assistance for law enforcement, prosecution, victim advocates, and other relevant professionals;

(f) organizing the development of community sexual assault response teams;

(g) promoting public education and awareness of sexual violence prevention, available services, and care;

(h) maintaining the statewide sexual assault evidence kit tracking system provided for in 46-15-405;

(i) maintaining the department of justice sexual assault evidence kit hotline; and

(j) coordinating statewide sexual assault evidence kit inventory, materials, and distribution, including making sexual assault evidence kit resources available online.

(4) The department of justice may collaborate with other persons, victim service providers, health care facilities, the Montana hospital association, the Montana nurses association, the Montana coalition against domestic and sexual violence, the Montana sheriffs and peace officers association, the Montana association of chiefs of police, the Montana county attorneys' association, law enforcement agencies, and other government agencies to execute its general powers and duties under this section."

Section 5. Section 44-4-1703, MCA, is amended to read:

"**44-4-1703. Sexual assault response team committee -- rulemaking -- duties.** The sexual assault response team committee established in 2-15-2035 may adopt rules necessary for the implementation, continuation, and enforcement of the authority granted in this section. The committee's duties include but are not limited to:

(1) adopting educational and clinical standards for sexual assault ~~nurse~~ forensic examiners. Standards must comply with national training standards for sexual assault medical forensic examiners, national protocol for sexual assault medical forensic examinations adult/adolescent and pediatric, ~~guidelines from the international association of forensic nurses,~~ and state and local laws.

(2) adopting and implementing an evidence-based sexual assault ~~nurse~~ forensic examiner training curriculum that conforms with national training standards for sexual assault medical forensic examiners, national protocol for sexual assault medical forensic examinations adult/adolescent and pediatric, ~~guidelines from the international association of forensic nurses,~~ and state and local laws;

(3) adopting and implementing the state of Montana medical sexual assault response guidelines;

(4) developing statewide ~~teleSANE~~ teleSAFE partnerships, collaborations with hospital and clinic leadership, and strategies that include interoperability of health care systems, secure health information exchange, and assessment of ~~teleSANE~~ teleSAFE models of care to increase equitable access to quality sexual assault care;

(5) identifying and implementing a statewide ~~forensic nurse~~ platform for sexual assault ~~nurse~~ forensic examiners to engage, mentor, share, and network among colleagues; and

(6) establishing and periodically reviewing payment amounts, eligible services, and reimbursement processes for ~~the~~ sexual assault medical forensic ~~examination~~ examinations in accordance with 46-15-411 ~~and~~

~~periodically reviewing standards and payments for forensic exams performed under the forensic rape examination payment program~~. When establishing payment amounts, the committee shall include an annual adjustment based on a change to the consumer price index for all urban consumers (CPI-U) from the previous year. The adjusted payment amount must be rounded down to the nearest dollar amount."

Section 6. Section 44-7-303, MCA, is amended to read:

"**44-7-303. Restorative justice fund created -- source of funding -- use of fund.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the restorative justice fund.

(2) There must be deposited in the account:

(a) money received from legislative allocations;

(b) a transfer of money from a state or local agency for the purposes of 44-7-302; and

(c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of 44-7-302~~; and~~

~~(d) money received by the department of justice for the purpose of administering 46-15-411(2)~~.

(3) ~~Except as provided in subsection (2)(d), the~~ The fund may be used only to provide grants for restorative justice programs as provided in 44-7-302 to community-based, including faith-based, organizations."

Section 7. Section 46-15-404, MCA, is amended to read:

"**46-15-404. Sexual assault evidence kit collection and storage -- consent of patient -- notice to law enforcement.** (1) Following the completion of hospital emergency services and forensic services for a sexual assault medical forensic examination, the health care professional providing the forensic services shall provide the patient the opportunity to sign a written consent to allow law enforcement to submit the sexual assault evidence kit for testing. The written consent must be on a form included in the kit and must indicate whether the patient consents to the release of information about the sexual assault to law enforcement.

(2) A health care facility that obtains written consent to release a sexual assault evidence kit to law enforcement shall notify the investigating law enforcement agency, if known, or the law enforcement agency that has jurisdiction in the area in which the health care facility is located within 24 hours after the kit is collected.

(3) (a) A health care facility that did not obtain written consent to release the sexual assault

evidence kit to law enforcement shall inform the individual from whom the kit was obtained that the evidence will be forwarded to the office of victim services of the department of justice as an anonymous kit.

(b) The office of victim services shall store a sexual assault evidence kit for a minimum of ~~1 year~~ 75 years before the kit may be destroyed.

(c) The individual from whom an anonymous sexual assault evidence kit was obtained or the individual's agent may provide consent for the kit to be tested at any time during that ~~1-year~~ 75-year period.

(4) (a) A law enforcement agency that receives notice from a health care facility as provided in subsection (2) shall take possession of the sexual assault evidence kit from the health care facility within 5 business days after the evidence is collected.

(b) If the law enforcement agency determines that the alleged sexual assault occurred within the jurisdiction of another law enforcement agency and that it does not otherwise have jurisdiction over that alleged assault, the law enforcement agency in possession of the sexual assault evidence kit shall notify the law enforcement agency that has jurisdiction within 5 days after receiving the kit from the health care facility and shall forward the evidence to that jurisdiction.

(5) An investigating law enforcement agency that takes possession of a sexual assault evidence kit shall submit the evidence and an accompanying police report to a publicly accredited crime laboratory for forensic analysis within 30 days after receiving the kit from either a health care facility or another law enforcement agency.

(6) The failure of a law enforcement agency to submit a request for analysis within the time limits provided in this section does not constitute grounds in a criminal or civil proceeding to challenge the validity of a DNA evidence association, and a court may not exclude any evidence obtained from the sexual assault evidence kit on those grounds."

Section 8. Section 46-15-411, MCA, is amended to read:

"**46-15-411. Payment for medical evidence -- alleged sexual offenses.** (1) ~~The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall pay for the sexual assault medical forensic examination of a victim of the alleged offense when the examination is directed by the agency or when evidence obtained by the examination is used~~

~~for the investigation, prosecution, or resolution of an offense.~~

~~(2) (a)~~ The department of justice shall~~, as long as~~ use funds ~~are available from an appropriation made for this purpose,~~ appropriated from the sexual assault response network program account established in [section 1] to pay for the sexual assault medical forensic examination of a victim of an alleged incident of sexual intercourse without consent, sexual assault, or incest. ~~if the cost is not the responsibility of a local~~ The department shall pay for the examination, conducted in accordance with any rules adopted pursuant to 44-4-1702 and 44-4-1703, regardless of whether a sexual assault evidence kit is collected or submitted to a law enforcement agency ~~under subsection (1)~~.

~~(b) In administering the provisions of subsection (2)(a), the department shall:~~

~~(i) identify priorities for funding services, activities, and criteria for the receipt of program funds;~~

~~(ii) monitor the expenditure of funds by organizations receiving funds under this section;~~

~~(iii) evaluate the effectiveness of services and activities under this section; and~~

~~(iv) adopt rules necessary to implement this subsection (2).~~

~~(3)~~ (2) This section does not require ~~a law enforcement agency or~~ the state to pay any costs of treatment for injuries resulting from the alleged offense."

Section 9. Section 46-15-412, MCA, is amended to read:

"**46-15-412. Testing of sexual assault evidence kits.** Except for a sexual assault evidence kit that is submitted to the department of justice as provided in ~~46-15-411(2)(a)~~ 46-15-404(3), a local law enforcement agency shall submit all other kits to the division of forensic science within 30 days after the local law enforcement agency receives the kit."

Section 10. Section 46-15-413, MCA, is amended to read:

"**46-15-413. Retention and disposal of sexual assault evidence kits -- victim notification.** (1) Sexual assault evidence kits reported to law enforcement pursuant to 46-15-404, anonymous sexual assault evidence kits collected as provided in ~~46-15-411~~ 46-15-404(3), and the related contents of reported or anonymous sexual assault evidence kits must be stored in a secure and reasonable manner that preserves evidence for 75 years from the date of collection.

(2) A victim may request notification before the victim's sexual assault evidence kit and related contents are destroyed.

(3) If requested by the victim, the agency with custody of the victim's sexual assault evidence kit and its contents shall provide written notice to the victim 120 days before the intended destruction or disposal of the sexual assault evidence kit or its contents. The notification must include:

(a) a description of the biological evidence;

(b) a statement of the intended destruction or disposal of the biological evidence in 120 days;

(c) the name, mailing address, and other contact information of the agency with custody of the evidence; and

(d) any other information the agency considers pertinent.

(4) If any party to the offense objects to the destruction or disposal of the biological evidence, the agency has the burden of proving by a preponderance of the evidence that the destruction or disposal of the biological evidence must take place."

NEW SECTION. **Section 11. Appropriations.** (1) There is appropriated from the sexual assault response network program account established in [section 1] to the department of justice for the purposes described in [section 1]:

(a) for the fiscal year beginning July 1, 2027, $1,413,000; and

(b) for the fiscal year beginning July 1, 2028, $1,654,000.

(2) The legislature intends that the appropriations in this section be considered part of the ongoing base for the next legislative session.

NEW SECTION. **Section 12. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. **Section 13. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 44, chapter 4, part 17, and the provisions of Title 44, chapter 4, part 17, apply to [section 1].

NEW SECTION. **Section 14. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2027.

(2) [Sections 1 and 2] and this section are effective on passage and approval.

NEW SECTION. **Section 15. Applicability.** [This act] applies to proceedings begun on or after [the effective date of this act].

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