



House of Representatives

General Assembly

File No. 680

January Session, 2015

Substitute House Bill No. 6923

House of Representatives, April 16, 2015

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING SEXUAL ASSAULT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-86f of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 (a) In any prosecution for sexual assault under sections 53a-70, 53a-
4 70a, and 53a-71 to 53a-73a, inclusive, no evidence of the sexual conduct
5 of the victim may be admissible unless such evidence is (1) offered by
6 the defendant on the issue of whether the defendant was, with respect
7 to the victim, the source of semen, disease, pregnancy or injury, or (2)
8 offered by the defendant on the issue of credibility of the victim,
9 provided the victim has testified on direct examination as to his or her
10 sexual conduct, or (3) any evidence of sexual conduct with the
11 defendant offered by the defendant on the issue of consent by the
12 victim, when consent is raised as a defense by the defendant, or (4)
13 otherwise so relevant and material to a critical issue in the case that
14 excluding it would violate the defendant's constitutional rights. Such
15 evidence shall be admissible only after [a] an in camera hearing on a

16 motion to offer such evidence containing an offer of proof. [On motion
17 of either party the court may order such hearing held in camera,
18 subject to the provisions of section 51-164x.] If the proceeding is a trial
19 with a jury, such hearing shall be held in the absence of the jury. If,
20 after a hearing, the court finds that the evidence meets the
21 requirements of this section and that the probative value of the
22 evidence outweighs its prejudicial effect on the victim, the court may
23 grant the motion. The testimony of the defendant during a hearing on
24 a motion to offer evidence under this section may not be used against
25 the defendant during the trial if such motion is denied, except that
26 such testimony may be admissible to impeach the credibility of the
27 defendant if the defendant elects to testify as part of the defense.

28 (b) Any motion and supporting document filed pursuant to this
29 section shall be filed under seal and may be unsealed only if the court
30 rules the evidence is admissible and the case proceeds to trial. If the
31 court determines that only part of the evidence contained in the
32 motion is admissible, only that portion of the motion and any
33 supporting document pertaining to the admissible portion may be
34 unsealed. The court shall maintain any document remaining under
35 seal for delivery to the Appellate Court in the event of an appeal.

36 (c) The court shall seal each court transcript, recording and record of
37 a proceeding of a hearing held pursuant to this section. The court may
38 unseal a transcript, recording or record only if the court rules the
39 evidence in such transcript, recording or record is admissible and the
40 case proceeds to trial. If the court determines that only part of such
41 evidence is admissible, only the portion of such transcript, record or
42 recording pertaining to the admissible evidence may be unsealed.

43 (d) Evidence described in subsection (a) of this section shall be
44 subject to such other terms and conditions as the court may provide.
45 No defense counsel or his or her agent shall further disclose such
46 evidence disclosed by the state to any person except to persons
47 employed by defense counsel in connection with the investigation or
48 defense of the case, without the prior approval of the prosecuting

49 authority or the court.

50 Sec. 2. Subsection (d) of section 19a-112a of the general statutes is
51 repealed and the following is substituted in lieu thereof (*Effective*
52 *October 1, 2015*):

53 (d) Each health care facility in the state which provides for the
54 collection of sexual assault evidence shall follow the protocol as
55 described in subsection (b) of this section and, with the consent of the
56 victim, shall collect sexual assault evidence. The health care facility
57 shall contact a police department which shall transfer evidence
58 collected pursuant to subsection (b) of this section, in a manner that
59 maintains the integrity of the evidence, to the Division of Scientific
60 Services within the Department of Emergency Services and Public
61 Protection or the Federal Bureau of Investigation laboratory, not later
62 than ten days after the collection of such evidence. The agency that
63 receives such evidence shall analyze the evidence not later than sixty
64 days after the collection of such evidence, except that if the victim
65 chooses to remain anonymous, the agency that receives such evidence
66 shall hold that evidence for [sixty days] five years after such collection.
67 [, except that, if the victim reports the sexual assault to the police, the
68 evidence shall be analyzed upon request of the police department that
69 transferred the evidence to such agency and held by the agency or
70 police department until the conclusion of any criminal proceedings.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	54-86f
Sec. 2	October 1, 2015	19a-112a(d)

Statement of Legislative Commissioners:

In Section 1(b), "Appellate Court" was capitalized for proper form and in Section 1(d), "judicial authority" was changed to "court" for consistency.

JUD Joint Favorable Subst. -LCO

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill makes various procedural changes to evidence in sexual assault cases and does not result in a fiscal impact.

The bill establishes deadlines for the submission and testing of sexual assault evidence by police departments and the Department of Emergency Services and Public Protection's Division of Scientific Services (DESPP/DSS). There is no fiscal impact arising from the bill as the deadlines are consistent with current practice at DESPP/DSS.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sHB 6923*****AN ACT CONCERNING SEXUAL ASSAULT.*****SUMMARY:**

This bill makes various changes affecting evidence in sexual assault cases. If an accused seeks to introduce evidence of the victim's sexual conduct, it requires the hearing on the motion to be held in camera (i.e., in private), rather than allowing the court to grant a motion to hold the hearing in that manner. By law, evidence of a victim's sexual conduct in these cases is admissible only in certain limited circumstances (see BACKGROUND).

The bill requires motions, supporting documents, and related court documents concerning these hearings to be sealed, and unsealed only if the court rules that the evidence is admissible and the case goes to trial.

If the state discloses any such evidence, the bill limits the further disclosure of that evidence by defense counsel.

It also (1) establishes deadlines for the transfer and analysis of sexual assault evidence police obtain from a health care facility that collects this evidence and (2) extends how long the agency receiving the evidence must keep it if the victim chooses to remain anonymous.

EFFECTIVE DATE: October 1, 2015

MOTION ON ADMISSIBILITY OF EVIDENCE IN SEXUAL ASSAULT CASES

Under the bill, any motion and supporting document seeking to admit evidence of a victim's sexual conduct must be filed under seal. These documents may be unsealed only if the court rules that the evidence is admissible and the case proceeds to trial. If the court

determines that only part of the evidence is admissible, only the pertinent part of the motion or documents may be unsealed. If the case is appealed, the court must maintain these documents under seal for delivery to the Appellate Court.

The bill sets similar requirements for the court regarding transcripts, records, and recordings of proceedings on these hearings. The court must seal them, and may unseal them only if it rules that the evidence in the document or recording is admissible and the case proceeds to trial. If the court determines that only part of the evidence is admissible, it may unseal only the related portion of the document or recording.

The bill specifically allows courts to set other terms and conditions as to such evidence of a victim's sexual conduct. For evidence disclosed by the state, the bill prohibits the defendant's attorney or his or her agent from further disclosing the evidence to anyone except to people employed by the attorney in connection with the case investigation or defense, without the prior approval of the prosecutor or the court. (Presumably this provision does not prohibit disclosure by the attorney to the defendant.)

TRANSFER, ANALYSIS, AND RETENTION OF SEXUAL ASSAULT EVIDENCE

By law, when a health care facility collects sexual assault evidence, it must provide the evidence to the police department, who then must transfer it to the (1) state Department of Emergency Services and Public Protection's Division of Scientific Services or (2) FBI. The bill requires the police department to transfer the evidence within 10 days after receiving it.

Current law requires the agency that receives the evidence to hold it for 60 days. But if the victim reports the assault to the police, the agency must analyze it, at the request of the police department that transferred it, and the police department or agency must hold it until the end of any criminal proceedings.

The bill instead requires the agency that receives the evidence to analyze it within 60 days of receipt, unless the victim chooses to remain anonymous. In that case, the bill requires the agency to hold the evidence for five years.

BACKGROUND

Evidence of Victim's Sexual Conduct in Sexual Assault Cases

The law limits when evidence of a victim's sexual conduct is admissible in most sexual assault cases. The evidence is admissible only when its value as proof outweighs the prejudicial effect on the victim and:

1. it is evidence of sexual conduct with persons other than the accused which is offered by the accused on the issue of (a) whether the accused was the source of semen, disease, pregnancy, or injury or (b) the victim's credibility, if the victim testified on direct examination about his or her sexual conduct;
2. it is evidence of sexual conduct with the accused, offered by the accused on the issue of the victim's consent, when consent is raised as a defense; or
3. the evidence is otherwise so relevant and material to a central issue that barring its admission would violate the accused's constitutional rights.

The evidence can only be admitted after a hearing on a motion to offer such evidence, containing an offer of proof.

Sexual Assault Kits

By law, the Commission on the Standardization of the Collection of Evidence in Sexual Assault Investigations must design a sexual assault evidence collection kit, which must include instructions on the proper use of the kit, standardized reporting forms, standardized tests to be performed if the victim consents, and standardized receptacles for collecting and preserving the evidence. The commission must provide the kits to all health care facilities in the state that perform evidence

collection examinations (CGS § 19a-112a(c)).

Related Bill

sHB 6498 (File No. 359), reported favorably by the Public Safety and Security Committee, also requires police departments to transfer sexual assault evidence to the Division of Scientific Services or the FBI within 10 days after receiving it. It requires the division, but not the FBI, to analyze the evidence within 60 days of receipt, unless the victim chose to remain anonymous. In such cases, it requires the division to hold the evidence for 60 days and if the victim reports the assault after the evidence is collected, the division must analyze it, at the police department's request, within 60 days.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 42 Nay 0 (03/27/2015)