

SENATE BILL 789

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3lr2847
CF HB 758

By: **Senator Hettleman**

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2023

CHAPTER _____

1 AN ACT concerning

2 **Sexual Assault Evidence Collection Kits – Preservation and Storage**

3 FOR the purpose of altering requirements for the storage and preservation of sexual assault
4 evidence collection kits; ~~authorizing the Attorney General to direct a certain person~~
5 ~~to comply with provisions of this Act; authorizing the Attorney General to apply to a~~
6 ~~certain court for an order to show cause under certain circumstances requiring~~
7 sexual assault evidence collection kits collected before a certain date to be retained
8 and transferred in a certain manner; requiring the Maryland Sexual Assault
9 Evidence Kit Policy and Funding Committee, on or before a certain date, to make a
10 report on certain recommendations, in consultation with the Consumer Protection
11 Division of the Office of the Attorney General; and generally relating to the
12 preservation and storage of sexual assault evidence collection kits.

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Procedure
15 Section 11–926
16 Annotated Code of Maryland
17 (2018 Replacement Volume and 2022 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
19 That the Laws of Maryland read as follows:

20 **Article – Criminal Procedure**

21 11–926.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(a) (1) In this section the following words have the meanings indicated.

(2) “Child advocacy center” has the meaning stated in § 13–2201 of the Health – General Article.

~~(3) “HEALTH CARE PROVIDER” MEANS A PERSON WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION OR IN AN APPROVED EDUCATION OR TRAINING PROGRAM.~~

~~(4)~~ (3) “Hospital” has the meaning stated in § 19–301 of the Health – General Article.

(4) “QUALIFIED HEALTH CARE PROVIDER” HAS THE MEANING STATED IN § 11–1007 OF THIS ARTICLE.

(5) (I) “SEXUAL ASSAULT EVIDENCE COLLECTION KIT” MEANS PHYSICAL EVIDENCE COLLECTED:

1. BY A QUALIFIED HEALTH CARE PROVIDER;
2. FROM THE BODY OR CLOTHING OF A LIVING OR DECEASED PERSON;
3. ~~IN RELATION TO~~ FOLLOWING AN ALLEGATION OR SUSPICION OF SEXUAL ASSAULT; AND
4. FOR THE PURPOSE OF PRESERVING THE PHYSICAL EVIDENCE ~~FOR USE IN A CRIMINAL INVESTIGATION.~~

(II) “SEXUAL ASSAULT EVIDENCE COLLECTION KIT” DOES NOT INCLUDE PHYSICAL EVIDENCE COLLECTED BEFORE JANUARY 1, 1975 A SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KIT.

(b) A QUALIFIED health care provider that performs a sexual assault evidence collection kit exam on a victim of sexual assault shall provide the victim with:

(1) contact information for the investigating law enforcement agency that the victim may contact about the status and results of the kit analysis; and

(2) written information describing the laws and policies governing the testing, preservation, and disposal of a sexual assault evidence collection kit.

(c) An investigating law enforcement agency that receives a sexual assault evidence collection kit, within 30 days after a request by the victim from whom the evidence was collected, shall provide the victim with:

(1) information about the status of the kit analysis; and

(2) all available results of the kit analysis except results that would impede or compromise an ongoing investigation.

(d) (1) A sexual assault evidence collection kit OR A SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KIT shall be transferred to a law enforcement agency:

(i) by a hospital or a child advocacy center within 30 days after the exam is performed; or

(ii) by a government agency in possession of a kit, unless the agency is otherwise required to retain the kit by law or court rule.

(2) Except as provided in paragraph (3) of this subsection, within [20] 75 years after the evidence is collected, a law enforcement agency, ~~HEALTH CARE PROVIDER, OR HOSPITAL~~ may not destroy or dispose of:

(i) a sexual assault evidence collection kit; or

(ii) other crime scene evidence relating to a sexual assault that has been identified by the State's Attorney as relevant to prosecution.

(3) A law enforcement agency is not required to comply with the requirements in paragraph (2) of this subsection if:

(i) the case for which the evidence was collected resulted in a conviction and the sentence has been completed; or

(ii) all suspects identified by testing a sexual assault evidence collection kit are deceased.

(4) On written request by the victim from whom the evidence was collected, a law enforcement agency, ~~A HEALTH CARE PROVIDER, OR A HOSPITAL~~ with custody of a sexual assault evidence collection kit or other crime scene evidence relating to a sexual assault shall:

(i) notify the victim no later than 60 days before the date of intended destruction or disposal of the evidence; or

(ii) retain the evidence for 12 months longer than the time period specified in paragraph (2) of this subsection or for a time period agreed to by the victim and the law enforcement agency, ~~HEALTH CARE PROVIDER, OR HOSPITAL.~~

(e) ~~(1) [A] FOR A SEXUAL ASSAULT EVIDENCE COLLECTION KIT IN THE CUSTODY OF A LAW ENFORCEMENT AGENCY, THE~~ sexual assault evidence collection kit shall be submitted to a forensic laboratory for analysis unless:

~~[(1)] (I)~~ there is clear evidence disproving the allegation of sexual assault;

~~[(2)] (II)~~ the facts alleged, if true, could not be interpreted to violate a provision of Title 3, Subtitle 2, Title 3, Subtitle 3, Title 3, Subtitle 6, or Title 11, Subtitle 3 of the Criminal Law Article;

~~[(3)] (III)~~ the victim from whom the evidence was collected declines to give consent for analysis; or

~~[(4)] (IV)~~ the suspect's profile has been collected for entry as a convicted offender for a qualifying offense in the Combined DNA Index System (CODIS) maintained by the Federal Bureau of Investigation and the suspect has pleaded guilty to the offense that led to the sexual assault evidence collection kit.

~~(2) FOR A SEXUAL ASSAULT EVIDENCE COLLECTION KIT IN THE CUSTODY OF A PERSON, OTHER THAN AN EMPLOYEE OF A LAW ENFORCEMENT AGENCY, THE PERSON:~~

~~(I) SHALL STORE THE SEXUAL ASSAULT EVIDENCE COLLECTION KIT IN A MANNER THAT:~~

~~1. REASONABLY PREVENTS UNAUTHORIZED ACCESS TO OR TAMPERING WITH THE SEXUAL ASSAULT EVIDENCE COLLECTION KIT; AND~~

~~2. IS NOT LIKELY TO RESULT IN THE DEGRADATION OR LOSS OF THE SEXUAL ASSAULT EVIDENCE COLLECTION KIT; OR~~

~~(II) TRANSFER THE SEXUAL ASSAULT EVIDENCE COLLECTION KIT TO:~~

~~1. A LAW ENFORCEMENT AGENCY THAT AGREES TO TAKE CUSTODY OF THE SEXUAL ASSAULT EVIDENCE COLLECTION KIT; OR~~

~~2. ANOTHER PERSON IN THE STATE WHO WILL STORE THE SEXUAL ASSAULT EVIDENCE COLLECTION KIT IN ACCORDANCE WITH ITEM (I) OF THIS PARAGRAPH.~~

(f) (1) If a victim of sexual assault wishes to remain anonymous and not file a criminal complaint, the victim shall be informed that the victim may file a criminal complaint at a future time.

(2) If a provision of subsection (e) of this section is determined to be satisfied after the submission of the victim's sexual assault evidence collection kit for analysis, testing may be terminated or not initiated.

(g) Except as provided in subsection (e) of this section, an investigating law enforcement agency that receives a sexual assault evidence collection kit shall:

(1) submit the kit and all requested associated reference standards to a forensic laboratory for analysis within 30 days of receipt of the kit and all requested associated reference standards; and

(2) make use of certified sexual assault crisis programs or other qualified community-based sexual assault victim service organizations that can provide services and support to survivors of sexual assault.

(h) (1) (i) A forensic laboratory that receives a sexual assault evidence collection kit and all requested associated reference standards for analysis shall determine suitability and complete screening, testing, and analysis in a timely manner.

(ii) Failure to complete the screening, testing, and analysis in a timely manner as required in subparagraph (i) of this paragraph may not constitute the basis for excluding the analysis or results as evidence in a criminal proceeding.

(2) Forensic laboratories shall report annually to the Maryland Sexual Assault Evidence Kit Policy and Funding Committee regarding the duration required to complete testing, beginning with receipt of the kit until a report is prepared, of each sexual assault evidence collection kit.

(i) (1) The eligible results of an analysis of a sexual assault evidence collection kit shall be entered into CODIS.

(2) The DNA collected from a victim under this section may not be used for any purpose except as authorized by this section.

~~(j) IF A PERSON FAILS TO COMPLY WITH A REQUIREMENT RELATING TO THE STORAGE OF A SEXUAL ASSAULT EVIDENCE COLLECTION KIT UNDER THIS SECTION, THE ATTORNEY GENERAL MAY:~~

~~(1) DIRECT THE PERSON TO COMPLY WITH THE REQUIREMENT; AND~~

~~(2) IF THE PERSON DOES NOT COMPLY, APPLY FOR AN ORDER TO SHOW CAUSE WHY THE REQUIREMENT SHOULD NOT BE COMPLIED WITH TO THE CIRCUIT COURT FOR THE COUNTY;~~

~~(I) IF THE PERSON IS AN INDIVIDUAL, WHERE THE INDIVIDUAL WORKS OR RESIDES; OR~~

~~(H) IF THE PERSON IS NOT AN INDIVIDUAL, WHERE THE PERSON OR THE SEXUAL ASSAULT EVIDENCE COLLECTION KIT IS LOCATED.~~

~~(K)~~ (j) The Attorney General shall adopt regulations for uniform statewide implementation of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply to and interpreted to affect physical evidence of sexual assault collected from victims before and after October 1, 2023.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) A sexual assault evidence collection kit collected before January 1, 2000, and stored by a hospital or child advocacy center shall be:

(1) retained consistent with the requirements of § 11-926(d) of the Criminal Procedure Article, as enacted by Section 1 of this Act; and

(2) transferred to a law enforcement agency for testing within 30 days after being identified as a sexual assault evidence collection kit, or as directed by the Office of the Attorney General.

(b) On or before December 1, 2023, the Maryland Sexual Assault Evidence Kit Policy and Funding Committee shall issue a report to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly making recommendations for:

(1) guidelines for the transfer of sexual assault evidence collection kits collected before January 1, 2000, to be transferred to law enforcement agencies for testing;

(2) guidance on the use of self-administered sexual assault evidence collection kits; and

(3) in consultation with the Consumer Protection Division of the Office of the Attorney General, educating consumers about use of self-administered sexual assault evidence collection kits, including information regarding the kits' admissibility in a criminal prosecution and identifying other resources for victims of sexual assault.

1 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2023.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.