

SENATE BILL 767

E2

9lr2345
CF HB 1096

By: **Senator Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2019

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Sexual Assault Evidence Collection Kits – Analysis**

3 FOR the purpose of requiring a sexual assault evidence collection kit to be submitted to a
4 forensic laboratory for analysis unless a certain requirement is met; requiring a
5 certain victim to be ~~given the option to consent to submission of a certain sexual~~
6 ~~assault evidence collection kit for analysis without making a certain commitment~~
7 informed that the victim may initiate a criminal complaint under certain
8 circumstances; authorizing the termination or discontinuance of testing of a sexual
9 assault evidence collection kit under certain circumstances; requiring a certain law
10 enforcement agency that receives a sexual assault evidence collection kit to take
11 certain actions under certain circumstances; requiring a forensic laboratory that
12 receives a sexual assault evidence collection kit for analysis to take certain actions
13 ~~within a certain number of days of receipt~~ in a timely manner; providing that the
14 failure to take certain actions in a timely manner may not constitute the basis for
15 excluding certain evidence; requiring that the eligible results of a certain analysis be
16 entered into the Combined DNA Index System (CODIS); requiring a forensic
17 laboratory to report to the Maryland Sexual Assault Evidence Kit Policy and
18 Funding Committee annually regarding the duration necessary to complete testing
19 of sexual assault evidence collection kits; prohibiting a certain use of a certain
20 victim's DNA under certain circumstances; requiring the Maryland Sexual Assault
21 Evidence Kit Policy and Funding Committee to establish a certain process to review
22 and make recommendations regarding a certain decision of a law enforcement
23 agency; requiring the Attorney General to adopt certain regulations on or before a
24 certain date; providing for a delayed effective date; and generally relating to sexual
25 assault evidence collection kits.

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.



1 BY repealing and reenacting, with amendments,
2 Article – Criminal Procedure
3 Section 11–926 and 11–927(e)(1)
4 Annotated Code of Maryland
5 (2018 Replacement Volume)

6 BY repealing and reenacting, without amendments,
7 Article – Criminal Procedure
8 Section 11–927(a)
9 Annotated Code of Maryland
10 (2018 Replacement Volume)

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

13 **Article – Criminal Procedure**

14 11–926.

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

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

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

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

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

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

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

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

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

1 (d) (1) A sexual assault evidence collection kit shall be transferred to a law
2 enforcement agency:

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

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

7 (2) Except as provided in paragraph (3) of this subsection, within 20 years
8 after the evidence is collected, a law enforcement agency may not destroy or dispose of:

9 (i) a sexual assault evidence collection kit; or

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

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

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

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

18 (4) On written request by the victim from whom the evidence was collected,
19 a law enforcement agency with custody of a sexual assault evidence collection kit or other
20 crime scene evidence relating to a sexual assault shall:

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

23 (ii) retain the evidence for 12 months longer than the time period
24 specified in paragraph (2) of this subsection or for a time period agreed to by the victim and
25 the law enforcement agency.

26 **(E) A SEXUAL ASSAULT EVIDENCE COLLECTION KIT SHALL BE SUBMITTED**
27 **TO A FORENSIC LABORATORY FOR ANALYSIS UNLESS:**

28 **(1) THERE IS CLEAR EVIDENCE DISPROVING THE ALLEGATION OF**
29 **SEXUAL ASSAULT;**

30 **(2) THE FACTS ALLEGED, IF TRUE, COULD NOT BE INTERPRETED TO**
31 **VIOLATE A PROVISION OF TITLE 3, SUBTITLE 2, TITLE 3, SUBTITLE 3, TITLE 3,**
32 **SUBTITLE 6, OR TITLE 11, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE;**

1 ~~(3) THE KIT CONTAINS AN INSUFFICIENT AMOUNT OF FORENSIC~~
2 ~~EVIDENCE TO ENABLE AN ANALYSIS TO BE PERFORMED;~~

3 ~~(4) (3) THE VICTIM FROM WHOM THE EVIDENCE WAS COLLECTED~~
4 ~~DECLINES TO GIVE CONSENT FOR ANALYSIS; OR~~

5 ~~(5) (4) THE SUSPECT'S PROFILE IS CONTAINED HAS BEEN~~
6 ~~COLLECTED FOR ENTRY AS A CONVICTED OFFENDER FOR A QUALIFYING OFFENSE~~
7 ~~IN THE COMBINED DNA INDEX SYSTEM (CODIS) MAINTAINED BY THE FEDERAL~~
8 ~~BUREAU OF INVESTIGATION AND THE SUSPECT ADMITTED TO CONSENSUAL SEX~~
9 ~~WITH THE VICTIM DURING THE INCIDENT HAS PLEADED GUILTY TO THE OFFENSE~~
10 ~~THAT LED TO THE FORENSIC EXAMINATION SEXUAL ASSAULT EVIDENCE~~
11 ~~COLLECTION KIT.~~

12 (F) (1) ~~A VICTIM OF SEXUAL ASSAULT WHO WISHES TO REMAIN~~
13 ~~ANONYMOUS SHALL BE GIVEN THE OPTION TO CONSENT TO SUBMISSION OF THE~~
14 ~~VICTIM'S SEXUAL ASSAULT EVIDENCE COLLECTION KIT FOR ANALYSIS WITHOUT~~
15 ~~MAKING ANY COMMITMENT TO TAKING FURTHER ACTION~~ IF A VICTIM OF SEXUAL
16 ASSAULT WISHES TO REMAIN ANONYMOUS AND NOT FILE A CRIMINAL COMPLAINT,
17 THE VICTIM SHALL BE INFORMED THAT THE VICTIM MAY FILE A CRIMINAL
18 COMPLAINT AT A FUTURE TIME.

19 (2) IF A PROVISION OF SUBSECTION (E) OF THIS SECTION IS
20 DETERMINED TO BE SATISFIED AFTER THE SUBMISSION OF THE VICTIM'S SEXUAL
21 ASSAULT EVIDENCE COLLECTION KIT FOR ANALYSIS, TESTING MAY BE TERMINATED
22 OR NOT INITIATED.

23 (G) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, AN
24 INVESTIGATING LAW ENFORCEMENT AGENCY THAT RECEIVES A SEXUAL ASSAULT
25 EVIDENCE COLLECTION KIT SHALL:

26 (1) SUBMIT THE KIT AND ALL REQUESTED ASSOCIATED REFERENCE
27 STANDARDS TO A FORENSIC LABORATORY FOR ANALYSIS WITHIN 30 DAYS OF
28 RECEIPT OF THE KIT AND ALL REQUESTED ASSOCIATED REFERENCE STANDARDS;
29 AND

30 (2) MAKE USE OF CERTIFIED SEXUAL ASSAULT CRISIS PROGRAMS OR
31 OTHER QUALIFIED COMMUNITY-BASED SEXUAL ASSAULT VICTIM SERVICE
32 ORGANIZATIONS THAT CAN PROVIDE SERVICES AND SUPPORT TO SURVIVORS OF
33 SEXUAL ASSAULT.

34 (H) (1) (I) A FORENSIC LABORATORY THAT RECEIVES A SEXUAL
35 ASSAULT EVIDENCE COLLECTION KIT AND ALL REQUESTED ASSOCIATED

1 REFERENCE STANDARDS FOR ANALYSIS SHALL DETERMINE SUITABILITY AND
2 COMPLETE SCREENING, TESTING, AND ANALYSIS ~~WITHIN 150 DAYS OF RECEIPT~~ IN A
3 TIMELY MANNER.

4 (II) FAILURE TO COMPLETE THE SCREENING, TESTING, AND
5 ANALYSIS IN A TIMELY MANNER AS REQUIRED UNDER SUBPARAGRAPH (I) OF THIS
6 PARAGRAPH MAY NOT CONSTITUTE THE BASIS FOR EXCLUDING THE ANALYSIS OR
7 RESULTS AS EVIDENCE IN A CRIMINAL PROCEEDING.

8 (2) FORENSIC LABORATORIES SHALL REPORT ANNUALLY TO THE
9 MARYLAND SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE
10 REGARDING THE DURATION REQUIRED TO COMPLETE TESTING, BEGINNING WITH
11 RECEIPT OF THE KIT UNTIL A REPORT IS PREPARED, OF EACH SEXUAL ASSAULT
12 EVIDENCE COLLECTION KIT.

13 (I) (1) THE ELIGIBLE RESULTS OF AN ANALYSIS OF A SEXUAL ASSAULT
14 EVIDENCE COLLECTION KIT SHALL BE ENTERED INTO CODIS.

15 (2) THE DNA COLLECTED FROM A VICTIM UNDER THIS SECTION MAY
16 NOT BE USED FOR ANY PURPOSE EXCEPT AS AUTHORIZED BY THIS SECTION.

17 [(e)] (J) The Attorney General shall adopt regulations for uniform statewide
18 implementation of this section.

19 11-927.

20 (a) In this section, "Committee" means the Maryland Sexual Assault Evidence
21 Kit Policy and Funding Committee.

22 (e) (1) The Committee shall develop and disseminate best practices
23 information and recommendations regarding:

24 (i) the testing and retention of sexual assault evidence collection
25 kits;

26 (ii) coordination between State agencies, victim services providers,
27 local law enforcement, and local sexual assault response teams;

28 (iii) payment for sexual assault evidence collection kits;

29 (iv) increasing the availability of sexual assault evidence collection
30 exams for alleged victims of sexual assault;

31 (v) reducing the shortage of forensic nurse examiners;

1 (vi) increasing the availability of information to sexual assault
2 victims regarding:

- 3 1. criminal prosecutions of sexual assault crimes;
4 2. civil law remedies available to victims of sexual assault;
5 3. sexual assault evidence collection kits; and
6 4. victim rights; [and]

7 (vii) creating and operating a statewide sexual assault evidence
8 collection kit tracking system that is accessible to victims of sexual assault and law
9 enforcement; AND

10 **(VIII) ESTABLISHING AN INDEPENDENT PROCESS TO REVIEW AND**
11 **MAKE RECOMMENDATIONS REGARDING A DECISION OF A LAW ENFORCEMENT**
12 **AGENCY NOT TO TEST A SEXUAL ASSAULT EVIDENCE COLLECTION KIT.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That the Attorney General shall
14 adopt regulations for implementation of § 11–926(e) through (i) of the Criminal Procedure
15 Article, as enacted by Section 1 of this Act, on or before January 1, 2020.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 ~~October 1, 2019~~ January 1, 2020.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.