

# HOUSE BILL 1096

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CF SB 767

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By: Delegates Hettleman, Atterbeary, Barron, Buckel, Cain, Cardin, Charkoudian, Conaway, Dumais, W. Fisher, Gilchrist, Guyton, Healey, Ivey, Kelly, Korman, Lehman, J. Lewis, R. Lewis, Lierman, Lisanti, Love, Luedtke, Moon, Mosby, Queen, Reznik, Shetty, Solomon, Sydnor, Terrasa, Valderrama, Valentino-Smith, C. Watson, ~~and Wilkins~~ Wilkins, Palakovich Carr, Lopez, Grammer, Bartlett, Crutchfield, McComas, Pippy, Arikan, Cox, Anderson, Hartman, and Malone

Introduced and read first time: February 8, 2019

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 2019

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## CHAPTER \_\_\_\_\_

AN ACT concerning

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

FOR the purpose of requiring a sexual assault evidence collection kit to be submitted to a forensic laboratory for analysis unless a certain requirement is met; requiring a certain victim to be ~~given the option to consent to submission of a certain sexual assault evidence collection kit for analysis without making a certain commitment~~ informed that the victim may initiate a criminal complaint under certain circumstances; authorizing the termination or discontinuance of testing of a sexual assault evidence collection kit under certain circumstances; requiring a certain law enforcement agency that receives a sexual assault evidence collection kit to take certain actions under certain circumstances; requiring a forensic laboratory that receives a sexual assault evidence collection kit for analysis to take certain actions ~~within a certain number of days of receipt~~ in a timely manner; requiring that the eligible results of a certain analysis be entered into the Combined DNA Index System (CODIS); requiring a forensic laboratory to report to the Maryland Sexual Assault Evidence Kit Policy and Funding Committee annually regarding the duration necessary to complete testing of sexual assault evidence collection kits; prohibiting a certain use of a certain victim's DNA under certain circumstances; requiring the Maryland Sexual Assault Evidence Kit Policy and Funding Committee to establish

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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 certain process to review and make recommendations regarding a certain decision of a law enforcement agency; requiring the Attorney General to adopt certain regulations on or before a certain date; providing for a delayed effective date for certain provisions of this Act; and generally relating to sexual assault evidence collection kits.

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

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

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

### **Article – Criminal Procedure**

11–926.

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

(b) A 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 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 years after the evidence is collected, a law enforcement agency 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 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.

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

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

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

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

~~(5)~~ (4) THE SUSPECT'S PROFILE ~~IS CONTAINED~~ 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 ADMITTED TO CONSENSUAL SEX WITH THE VICTIM DURING THE INCIDENT HAS PLEADED GUILTY TO THE OFFENSE THAT LED TO THE FORENSIC EXAMINATION SEXUAL ASSAULT EVIDENCE COLLECTION KIT.

(F) (1) ~~A VICTIM OF SEXUAL ASSAULT WHO WISHES TO REMAIN ANONYMOUS SHALL BE GIVEN THE OPTION TO CONSENT TO SUBMISSION OF THE VICTIM'S SEXUAL ASSAULT EVIDENCE COLLECTION KIT FOR ANALYSIS WITHOUT MAKING ANY COMMITMENT TO TAKING FURTHER ACTION~~ 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) 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 ~~WITHIN 150 DAYS OF RECEIPT~~ IN A TIMELY MANNER.**

**(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.**

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

11-927.

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

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

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

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

(iii) payment for sexual assault evidence collection kits;

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

(v) reducing the shortage of forensic nurse examiners;

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That the Attorney General shall adopt regulations for implementation of § 11-926(e) through (i) of the Criminal Procedure Article, as enacted by Section 1 of this Act, on or before ~~January 1, 2020~~ December 1, 2019.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect January 1, 2020.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect ~~October 1, 2019~~ June 1, 2019.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.