

# 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

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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 \_\_\_\_\_

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; requiring that the  
14 eligible results of a certain analysis be entered into the Combined DNA Index System  
15 (CODIS); requiring a forensic laboratory to report to the Maryland Sexual Assault  
16 Evidence Kit Policy and Funding Committee annually regarding the duration  
17 necessary to complete testing of sexual assault evidence collection kits; prohibiting  
18 a certain use of a certain victim's DNA under certain circumstances; requiring the  
19 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.



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

6 BY repealing and reenacting, with amendments,

7 Article – Criminal Procedure  
8 Section 11–926 and 11–927(e)(1)  
9 Annotated Code of Maryland  
10 (2018 Replacement Volume)

11 BY repealing and reenacting, without amendments,

12 Article – Criminal Procedure  
13 Section 11–927(a)  
14 Annotated Code of Maryland  
15 (2018 Replacement Volume)

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

18 **Article – Criminal Procedure**

19 11–926.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6           ~~(4)~~ (3) THE VICTIM FROM WHOM THE EVIDENCE WAS COLLECTED  
7 DECLINES TO GIVE CONSENT FOR ANALYSIS; OR

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

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

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

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

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

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

1           **(H) (1) A FORENSIC LABORATORY THAT RECEIVES A SEXUAL ASSAULT**  
2 **EVIDENCE COLLECTION KIT AND ALL REQUESTED ASSOCIATED REFERENCE**  
3 **STANDARDS FOR ANALYSIS SHALL DETERMINE SUITABILITY AND COMPLETE**  
4 **SCREENING, TESTING, AND ANALYSIS ~~WITHIN 150 DAYS OF RECEIPT~~ IN A TIMELY**  
5 **MANNER.**

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

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

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

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

17 11-927.

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

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

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

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

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

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

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

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

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

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

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

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

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

16                                  SECTION ~~3.~~ 4. AND BE IT FURTHER ENACTED, That, except as provided in  
17 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.