

# SENATE BILL 767

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CF 9lr2343

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By: **Senator Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

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 requiring a certain law enforcement agency that receives a sexual assault evidence  
8 collection kit to take certain actions under certain circumstances; requiring a  
9 forensic laboratory that receives a sexual assault evidence collection kit for analysis  
10 to take certain actions within a certain number of days of receipt; requiring that the  
11 eligible results of a certain analysis be entered into the Combined DNA Index System  
12 (CODIS); requiring the Maryland Sexual Assault Evidence Kit Policy and Funding  
13 Committee to establish a certain process to review and make recommendations  
14 regarding a certain decision of a law enforcement agency; requiring the Attorney  
15 General to adopt certain regulations on or before a certain date; and generally  
16 relating to sexual assault evidence collection kits.

17 BY repealing and reenacting, with amendments,  
18 Article – Criminal Procedure  
19 Section 11–926 and 11–927(e)(1)  
20 Annotated Code of Maryland  
21 (2018 Replacement Volume)

22 BY repealing and reenacting, without amendments,  
23 Article – Criminal Procedure  
24 Section 11–927(a)  
25 Annotated Code of Maryland  
26 (2018 Replacement Volume)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**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.

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

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

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

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

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

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

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

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

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

22 **(3) THE KIT CONTAINS AN INSUFFICIENT AMOUNT OF FORENSIC**  
23 **EVIDENCE TO ENABLE AN ANALYSIS TO BE PERFORMED;**

24 **(4) THE VICTIM FROM WHOM THE EVIDENCE WAS COLLECTED**  
25 **DECLINES TO GIVE CONSENT FOR ANALYSIS; OR**

26 **(5) THE SUSPECT'S PROFILE IS CONTAINED IN THE COMBINED DNA**  
27 **INDEX SYSTEM (CODIS) MAINTAINED BY THE FEDERAL BUREAU OF**  
28 **INVESTIGATION AND THE SUSPECT ADMITTED TO CONSENSUAL SEX WITH THE**  
29 **VICTIM DURING THE INCIDENT THAT LED TO THE FORENSIC EXAMINATION.**

30 **(F) A VICTIM OF SEXUAL ASSAULT WHO WISHES TO REMAIN ANONYMOUS**  
31 **SHALL BE GIVEN THE OPTION TO CONSENT TO SUBMISSION OF THE VICTIM'S SEXUAL**  
32 **ASSAULT EVIDENCE COLLECTION KIT FOR ANALYSIS WITHOUT MAKING ANY**

1 **COMMITMENT TO TAKING FURTHER ACTION.**

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

5 **(1) SUBMIT THE KIT TO A FORENSIC LABORATORY FOR ANALYSIS**  
6 **WITHIN 30 DAYS OF RECEIPT OF THE KIT; AND**

7 **(2) MAKE USE OF CERTIFIED SEXUAL ASSAULT CRISIS PROGRAMS OR**  
8 **OTHER QUALIFIED COMMUNITY-BASED SEXUAL ASSAULT VICTIM SERVICE**  
9 **ORGANIZATIONS THAT CAN PROVIDE SERVICES AND SUPPORT TO SURVIVORS OF**  
10 **SEXUAL ASSAULT.**

11 **(H) A FORENSIC LABORATORY THAT RECEIVES A SEXUAL ASSAULT**  
12 **EVIDENCE COLLECTION KIT FOR ANALYSIS SHALL DETERMINE SUITABILITY AND**  
13 **COMPLETE SCREENING, TESTING, AND ANALYSIS WITHIN 150 DAYS OF RECEIPT.**

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

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

18 11-927.

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

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

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

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

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

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

30 (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.