

SENATE BILL 789

E2

3lr2847
CF HB 758

By: **Senator Hettleman**

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

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; and generally
7 relating to the preservation and storage of sexual assault evidence collection kits.

8 BY repealing and reenacting, with amendments,

9 Article – Criminal Procedure

10 Section 11–926

11 Annotated Code of Maryland

12 (2018 Replacement Volume and 2022 Supplement)

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

15 **Article – Criminal Procedure**

16 11–926.

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

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

20 (3) **“HEALTH CARE PROVIDER” MEANS A PERSON WHO IS LICENSED,**
21 **CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH OCCUPATIONS**
22 **ARTICLE TO PROVIDE HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS OR**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 PRACTICE OF A PROFESSION OR IN AN APPROVED EDUCATION OR TRAINING
2 PROGRAM.

3 (4) "Hospital" has the meaning stated in § 19-301 of the Health – General
4 Article.

5 (5) (I) "SEXUAL ASSAULT EVIDENCE COLLECTION KIT" MEANS
6 PHYSICAL EVIDENCE COLLECTED:

7 1. BY A HEALTH CARE PROVIDER;

8 2. FROM THE BODY OR CLOTHING OF A LIVING OR
9 DECEASED PERSON;

10 3. IN RELATION TO AN ALLEGATION OR SUSPICION OF
11 SEXUAL ASSAULT; AND

12 4. FOR THE PURPOSE OF PRESERVING THE PHYSICAL
13 EVIDENCE FOR USE IN A CRIMINAL INVESTIGATION.

14 (II) "SEXUAL ASSAULT EVIDENCE COLLECTION KIT" DOES NOT
15 INCLUDE PHYSICAL EVIDENCE COLLECTED BEFORE JANUARY 1, 1975.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **(II) TRANSFER THE SEXUAL ASSAULT EVIDENCE COLLECTION**
17 **KIT TO:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **(2) IF THE PERSON DOES NOT COMPLY, APPLY FOR AN ORDER TO**
26 **SHOW CAUSE WHY THE REQUIREMENT SHOULD NOT BE COMPLIED WITH TO THE**
27 **CIRCUIT COURT FOR THE COUNTY:**

28 **(I) IF THE PERSON IS AN INDIVIDUAL, WHERE THE INDIVIDUAL**
29 **WORKS OR RESIDES; OR**

30 **(II) IF THE PERSON IS NOT AN INDIVIDUAL, WHERE THE PERSON**
31 **OR THE SEXUAL ASSAULT EVIDENCE COLLECTION KIT IS LOCATED.**

32 **(K)** The Attorney General shall adopt regulations for uniform statewide
33 implementation of this section.

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

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