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SENATE BILL NO. 291

Offered January 13, 2016

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A *BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 1.2, consisting of sections numbered 19.2-11.5 through 19.2-11.11, relating to the collection, storage, and analysis of physical evidence recovery kits from victims of sexual assault offenses.*

Patrons—Black, Favola and Ebbin; Delegate: Marshall, R.G.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 1.2, consisting of sections numbered 19.2-11.5 through 19.2-11.11, as follows:

CHAPTER 1.2.**PHYSICAL EVIDENCE RECOVERY KITS.****§ 19.2-11.5. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Anonymous physical evidence recovery kit" means a physical evidence recovery kit that is collected from a victim of sexual assault through a forensic medical examination where the victim elects, at the time of the examination, not to report the sexual assault offense to a law-enforcement agency.

"Department" means the Virginia Department of Forensic Science.

"Division" means the Division of Consolidated Laboratory Services of the Virginia Department of General Services.

"Health care provider" means any hospital, clinic, or other medical facility that provides forensic medical examinations to victims of sexual assault.

"Law-enforcement agency" means the state or local law-enforcement agency with the primary responsibility for investigating an alleged sexual assault offense case and includes the employees of that agency.

"Physical evidence recovery kit" means any evidence collection kit supplied by the Department to health care providers for use in collecting evidence from victims of sexual assault during forensic medical examinations or to the Office of Chief Medical Examiner for use during death investigations to collect evidence from decedents who may be victims of sexual assault.

"Sexual assault offense" means a violation or attempted violation of any offense enumerated in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or of any offense specified in § 18.2-361, 18.2-370, or 18.2-370.1.

"Victim of sexual assault" means any person who undergoes a forensic medical examination for the collection of a physical evidence recovery kit connected to a sexual assault offense.

§ 19.2-11.6. Anonymous physical evidence recovery kits.

A. When a victim of sexual assault who undergoes a forensic medical examination elects not to report the offense to law enforcement, the health care provider shall inform the victim that the physical evidence recovery kit shall be forwarded to the Division for storage as an anonymous physical evidence recovery kit. The health care provider shall further inform the victim of the length of time the anonymous physical evidence recovery kit will be stored by the Division and how the victim can have the anonymous physical evidence recovery kit released to a law-enforcement agency at a later date. The health care provider shall forward the anonymous physical evidence recovery kit to the Division in accordance with the policies and procedures established by the Division.

B. The Division shall store any anonymous physical evidence recovery kit received for a minimum of two years. After two years, the Division may destroy the anonymous physical evidence recovery kit or, in its discretion or upon request of the victim or the law-enforcement agency, may elect to retain the anonymous physical evidence recovery kit for a longer period of time. Upon notification from either the law-enforcement agency or the attorney for the Commonwealth that the victim has elected to report the offense to the law-enforcement agency, the Division shall release the anonymous physical evidence recovery kit to the law-enforcement agency.

§ 19.2-11.7. Law enforcement taking possession of physical evidence recovery kits.

A. A health care provider that has collected a physical evidence recovery kit from a victim of sexual assault who has elected to report the offense shall forthwith notify the law-enforcement agency that such kit has been collected.

B. A law-enforcement agency that receives notice from a health care provider that a physical

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59 evidence recovery kit has been collected shall forthwith take possession of the physical evidence
60 recovery kit.

61 **§ 19.2-11.8. Submission of physical evidence recovery kits to the Department.**

62 A. A law-enforcement agency that receives a physical evidence recovery kit shall submit the physical
63 evidence recovery kit to the Department for analysis within 60 days of receipt, except under the
64 following circumstances: (i) it is an anonymous physical evidence recovery kit that shall be forwarded to
65 the Division for storage; (ii) the physical evidence recovery kit was collected by the Office of the Chief
66 Medical Examiner as part of a routine death investigation, and the medical examiner and the
67 law-enforcement agency agree that analysis is not warranted; (iii) the physical evidence recovery kit is
68 connected to an offense that occurred outside of the Commonwealth; or (iv) the physical evidence
69 recovery kit was determined by the law-enforcement agency not to be connected to a criminal offense.

70 B. Upon completion of analysis, the Department shall return the physical evidence recovery kit to the
71 submitting law-enforcement agency. Upon receipt of the physical evidence recovery kit from the
72 Department, the law-enforcement agency shall store the physical evidence recovery kit for a period of
73 10 years or until two years after the victim reaches the age of majority if the victim was a minor at the
74 time of collection, whichever is longer. After the mandatory retention period has lapsed, the
75 law-enforcement agency may destroy the physical evidence recovery kit or, in its discretion, may elect to
76 retain the physical evidence recovery kit for a longer period of time.

77 C. The DNA profiles developed from physical evidence recovery kits submitted to the Department for
78 analysis pursuant to this section shall be uploaded into any local, state, or national DNA data bank
79 only if eligible as determined by Department procedures and in accordance with state and federal law.

80 **§ 19.2-11.9. Lack of compliance with procedures.**

81 The failure of a law-enforcement agency to take possession of a physical evidence recovery kit as
82 provided in this chapter or to submit a physical evidence recovery kit to the Department within the time
83 period prescribed under this chapter does not alter the authority of the law-enforcement agency to take
84 possession of the physical evidence recovery kit or to submit the physical evidence recovery kit to the
85 Department under this chapter or the authority of the Department to accept and analyze the physical
86 evidence recovery kit or to maintain or upload any developed DNA profiles from the physical evidence
87 recovery kit into any local, state, or national DNA data bank if eligible as determined by Department
88 procedures and in accordance with state and federal law.

89 A person accused or convicted of committing a crime against a sexual assault victim has no standing
90 to object to any failure to comply with the requirements of this chapter, and the failure to comply with
91 the requirements of this chapter is not grounds for challenging the admissibility of the evidence or
92 setting aside the conviction or sentence.

93 **§ 19.2-11.10. Expungement of DNA profile.**

94 If the Department receives written confirmation from a law-enforcement agency or attorney for the
95 Commonwealth that a DNA profile that has been uploaded pursuant to this chapter into any local, state,
96 or national DNA data bank was determined not to be connected to a criminal offense or that the DNA
97 profile is of an individual who is not the putative perpetrator, the Department shall expunge the DNA
98 profile from the DNA data bank.

99 The detention, arrest, or conviction of a person based upon a data bank match or data bank
100 information is not invalidated if it is determined that the sample was obtained, placed, or retained in the
101 data bank in good faith pursuant to this chapter, and evidence based upon or derived from the DNA
102 record shall not be excluded by a court.

103 **§ 19.2-11.11. Victim's right to notification of scientific analysis information.**

104 A. In addition to the rights provided under Chapter 1.1 (§ 19.2-11.01 et seq.), a victim of sexual
105 assault, a parent or guardian of a victim of a sexual assault who was a minor at the time of the offense,
106 or a close relative of a deceased victim of sexual assault shall have the right to request and receive
107 information from the law-enforcement agency regarding (i) the submission of any physical evidence
108 recovery kit for forensic analysis that was collected from the victim during the investigation of the
109 offense; (ii) the status of any analysis being performed on any evidence that was collected during the
110 investigation of the offense; and (iii) the results of any analysis, unless disclosing this information would
111 interfere with the investigation or prosecution of the offense, in which case the victim, parent, guardian,
112 or relative shall be informed of the estimated date on which the information may be disclosed, if known.

113 B. The victim, parent, guardian, or relative who requests to be notified under subsection A must
114 provide a current address and telephone number to the attorney for the Commonwealth and to the
115 law-enforcement agency that is investigating the offense and keep such information updated.