2016 SESSION

INTRODUCED

SB291

SENATE BILL NO. 291 Offered January 13, 2016 Prefiled January 7, 2016 A BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 1.2, consisting of sections numbered 19.2-11.3 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. Be it enacted by the General Assembly of Virginia: 11. 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: 12. consisting of sections numbered 19.2-11.5 through 19.2-11.11, as follows: 13. consisting of sections numbered 19.2-11.5 through 19.2-11.11, as follows: 14. 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: 15. formation: A used in this chapter, unless the context requires a different meaning: 15. Anonymous physical evidence recovery kit" means a physical evidence recovery kit that is collected from a victim of sexual assault be parament of formas is a low-enforcement agency. 17. There the Division of Consolidated Laboratory Services of the Virginia Department of General Services. 17. There the Division of consultated Laboratory Services of the Virginia provides forensic medical examination where the victim forensic collection eaventing anni the sitate or local law-enforcement agency with the primary		16102187D
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58 B. A law-enforcement agency that receives notice from a health care provider that a physical

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 Medical Examiner as part of a routine death investigation, and the medical examiner and the 66 law-enforcement agency agree that analysis is not warranted; (iii) the physical evidence recovery kit is 67 connected to an offense that occurred outside of the Commonwealth; or (iv) the physical evidence **68** 69 recovery kit was determined by the law-enforcement agency not to be connected to a criminal offense.

B. Upon completion of analysis, the Department shall return the physical evidence recovery kit to the 70 71 submitting law-enforcement agency. Upon receipt of the physical evidence recovery kit from the Department, the law-enforcement agency shall store the physical evidence recovery kit for a period of 72 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 profile is of an individual who is not the putative perpetrator, the Department shall expunge the DNA 97 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 assault, a parent or guardian of a victim of a sexual assault who was a minor at the time of the offense, 105 or a close relative of a deceased victim of sexual assault shall have the right to request and receive 106 107 information from the law-enforcement agency regarding (i) the submission of any physical evidence recovery kit for forensic analysis that was collected from the victim during the investigation of the 108 109 offense; (ii) the status of any analysis being performed on any evidence that was collected during the investigation of the offense; and (iii) the results of any analysis, unless disclosing this information would 110 111 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

provide a current address and telephone number to the attorney for the Commonwealth and to the 114 115 law-enforcement agency that is investigating the offense and keep such information updated.