

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 398

An Act to amend and reenact § 19.2-11.8 of the Code of Virginia, relating to physical evidence recovery kits; submission to Department of Forensic Science.

[H 303]

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-11.8 of the Code of Virginia is amended and reenacted as follows:

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

A. A law-enforcement agency that receives a physical evidence recovery kit shall submit the physical evidence recovery kit to the Department for analysis within 60 days of receipt, except under the following circumstances: (i) it is an anonymous physical evidence recovery kit that shall be forwarded to 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 law-enforcement agency agree that analysis is not warranted; (iii) the physical evidence recovery kit is connected to an offense that occurred outside of the Commonwealth; ~~or~~ (iv) the physical evidence recovery kit was determined by the law-enforcement agency not to be connected to a criminal offense; *or* (v) *another law-enforcement agency has taken over responsibility for the investigation related to the physical evidence recovery kit.*

B. Upon completion of analysis, the Department shall return the physical evidence recovery kit to the 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 10 years or until 10 years after the victim reaches the age of majority if the victim was a minor at the time of collection, whichever is longer. The law-enforcement agency shall store the physical evidence recovery kit for a period of 10 years following the receipt of a written objection to the destruction of the kit from the victim. After the mandatory retention period or any additional 10-year storage period has lapsed, the law-enforcement agency shall, unless the victim has made a written request not to be contacted for this purpose, make a reasonable effort to notify the victim of the intended destruction of the physical evidence recovery kit no less than 60 days prior to the intended date of such destruction. In the absence of a response from the victim, or with the consent of the victim, the law-enforcement agency may destroy the physical evidence recovery kit or, in its discretion, may elect to retain the physical evidence recovery kit for a longer period of time.

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