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**SENATE BILL NO. 291****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee for Courts of Justice  
on February 1, 2016)

(Patrons Prior to Substitute—Senators Black and Favola [SBs 158 and 159])

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.*

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

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

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

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

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

78 **§ 19.2-11.9. Lack of compliance with procedures.**

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

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

91 **§ 19.2-11.10. Expungement of DNA profile.**

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

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

101 **§ 19.2-11.11. Victim's right to notification of scientific analysis information.**

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

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