

# VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

## CHAPTER 312

*An Act to amend and reenact §§ 19.2-11.5 through 19.2-11.9 and 19.2-11.12 of the Code of Virginia, relating to trace evidence collection kits.*

[H 2150]

Approved March 23, 2023

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-11.5 through 19.2-11.9 and 19.2-11.12 of the Code of Virginia are amended and reenacted as follows:**

### CHAPTER 1.2.

#### PHYSICAL EVIDENCE RECOVERY KITS AND TRACE EVIDENCE COLLECTION 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.

"Anonymous trace evidence collection kit" means a trace evidence collection kit that is collected from a victim of strangulation through a forensic medical examination where the victim elects, at the time of the examination, not to report the strangulation 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.

"Trace evidence collection kit" means any evidence collection kit supplied by the Department to health care providers for use in collecting evidence from victims of strangulation 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 strangulation.

"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.

"Victim of strangulation" means any person who undergoes a forensic medical examination for the collection of evidence in connection with an alleged strangulation.

##### **§ 19.2-11.6. Anonymous physical evidence recovery kits and anonymous trace evidence collection kits.**

A. When a victim of sexual assault *or strangulation* 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 *or trace evidence collection kit* shall be forwarded to the Division for storage as an anonymous physical evidence recovery kit *or anonymous trace evidence collection kit*. The health care provider shall further inform the victim of the length of time the anonymous physical evidence recovery kit *or anonymous trace evidence collection kit* will be stored by the Division, the victim's right to object to the destruction of the anonymous physical evidence recovery kit *or anonymous trace evidence collection kit*, and how the victim can have the anonymous physical evidence recovery kit *or anonymous trace evidence collection kit* released to a law-enforcement agency at a later date. The health care provider shall forward the anonymous physical evidence recovery kit *or anonymous trace evidence collection 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 *or anonymous trace evidence collection kit* received for a minimum of two years. The Division shall store the anonymous physical evidence recovery kit *or anonymous trace evidence collection kit* for an additional period of 10

years following the receipt of a written objection to the destruction of the anonymous physical evidence recovery kit *or anonymous trace evidence collection kit* from the victim. After the initial two years or any additional 10-year storage period, the Division, in the absence of the receipt of a written objection from the victim in the most recent 10-year period, may destroy the anonymous physical evidence recovery kit *or anonymous trace evidence collection 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 *or anonymous trace evidence collection 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 *or anonymous trace evidence collection kit* to the law-enforcement agency.

**§ 19.2-11.7. Law enforcement taking possession of physical evidence recovery kits and trace evidence collection kits.**

A. A health care provider that has collected a physical evidence recovery kit from a victim of sexual assault *or a trace evidence collection kit from a victim of strangulation* 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 *or trace evidence collection kit* has been collected shall forthwith take possession of the physical evidence recovery kit *or trace evidence collection kit*.

**§ 19.2-11.8. Submission of physical evidence recovery kits and trace evidence collection 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; (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. When a state or local law-enforcement agency located within the Commonwealth has taken over responsibility for the investigation related to the physical evidence recovery kit as provided in clause (v), unless one of the exceptions in clause (i) through (iv) also applies, the physical evidence recovery kit shall be transferred to such law-enforcement agency and such law-enforcement agency shall submit the physical evidence recovery kit to the Department within 60 days of receipt from the original receiving law-enforcement agency.

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. For physical evidence recovery kits that meet the exceptions in clause (ii) or (iv) of subsection A or that meet the exception in clause (iii) and (v) of subsection A that are not transferred to the law-enforcement agency outside of the Commonwealth in which the offense occurred or to the law-enforcement agency that has taken over responsibility for the investigation related to the physical evidence recovery kit, the law-enforcement agency that received the physical evidence recovery kit shall store such 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. After the mandatory retention period, 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.

D. A law-enforcement agency that receives a trace evidence collection kit may submit it to the Department for analysis in its discretion to support a prosecution.

E. The DNA profiles developed from physical evidence recovery kits *or trace evidence collection 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.

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

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

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

**§ 19.2-11.12. Costs of physical evidence recovery kits and trace evidence collection kits.**

No victim of sexual assault *or strangulation* shall be charged for the cost of collecting or storing a physical evidence recovery kit ~~or~~, an anonymous physical evidence recovery kit, *a trace evidence collection kit, or an anonymous trace evidence collection kit.*

**2. That the provisions of this act shall become effective on July 1, 2025.**