

23104237D

HOUSE BILL NO. 2150

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 19.2-11.5 through 19.2-11.9, 19.2-11.11, 19.2-11.12, and 19.2-11.13 of the Code of Virginia, relating to trace evidence collection kits.

Patrons—Delaney, Adams, D.M., Anderson, Bennett-Parker, Clark, Guzman, Helmer, Kory, Maldonado, Murphy, Rasoul, Roem, Shin, Simon, Simonds and Williams Graves

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-11.5 through 19.2-11.9, 19.2-11.11, 19.2-11.12, and 19.2-11.13 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

INTRODUCED

HB2150

58 *evidence collection kit* to the Division in accordance with the policies and procedures established by the
59 Division.

60 B. The Division shall store any anonymous physical evidence recovery kit *or anonymous trace*
61 *evidence collection kit* received for a minimum of two years. The Division shall store the anonymous
62 physical evidence recovery kit *or anonymous trace evidence collection kit* for an additional period of 10
63 years following the receipt of a written objection to the destruction of the anonymous physical evidence
64 recovery kit *or anonymous trace evidence collection kit* from the victim. After the initial two years or
65 any additional 10-year storage period, the Division, in the absence of the receipt of a written objection
66 from the victim in the most recent 10-year period, may destroy the anonymous physical evidence
67 recovery kit *or anonymous trace evidence collection kit* or, in its discretion or upon request of the
68 victim or the law-enforcement agency, may elect to retain the anonymous physical evidence recovery kit
69 *or anonymous trace evidence collection kit* for a longer period of time. Upon notification from either the
70 law-enforcement agency or the attorney for the Commonwealth that the victim has elected to report the
71 offense to the law-enforcement agency, the Division shall release the anonymous physical evidence
72 recovery kit *or anonymous trace evidence collection kit* to the law-enforcement agency.

73 **§ 19.2-11.7. Law enforcement taking possession of physical evidence recovery kits and trace**
74 **evidence collection kits.**

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

78 B. A law-enforcement agency that receives notice from a health care provider that a physical
79 evidence recovery kit *or trace evidence collection kit* has been collected shall forthwith take possession
80 of the physical evidence recovery kit *or trace evidence collection kit*.

81 **§ 19.2-11.8. Submission of physical evidence recovery kits and trace evidence collection kits to**
82 **the Department.**

83 A. A law-enforcement agency that receives a physical evidence recovery kit *or trace evidence*
84 *collection kit* shall submit the physical evidence recovery kit *or trace evidence collection kit* to the
85 Department for analysis within 60 days of receipt, except under the following circumstances: (i) it is an
86 anonymous physical evidence recovery kit *or anonymous trace evidence collection kit* that shall be
87 forwarded to the Division for storage; (ii) the physical evidence recovery kit *or trace evidence collection*
88 *kit* was collected by the Office of the Chief Medical Examiner as part of a routine death investigation,
89 and the medical examiner and the law-enforcement agency agree that analysis is not warranted; (iii) the
90 physical evidence recovery kit *or trace evidence collection kit* is connected to an offense that occurred
91 outside of the Commonwealth; (iv) the physical evidence recovery kit *or trace evidence collection kit*
92 was determined by the law-enforcement agency not to be connected to a criminal offense; or (v) another
93 law-enforcement agency has taken over responsibility for the investigation related to the physical
94 evidence recovery kit *or trace evidence collection kit*. When a state or local law-enforcement agency
95 located within the Commonwealth has taken over responsibility for the investigation related to the
96 physical evidence recovery kit *or trace evidence collection kit* as provided in clause (v), unless one of
97 the exceptions in clause (i) through (iv) also applies, the physical evidence recovery kit *or trace*
98 *evidence collection kit* shall be transferred to such law-enforcement agency and such law-enforcement
99 agency shall submit the physical evidence recovery kit *or trace evidence collection kit* to the Department
100 within 60 days of receipt from the original receiving law-enforcement agency.

101 B. Upon completion of analysis, the Department shall return the physical evidence recovery kit *or*
102 *trace evidence collection kit* to the submitting law-enforcement agency. Upon receipt of the physical
103 evidence recovery kit *or trace evidence collection kit* from the Department, the law-enforcement agency
104 shall store the physical evidence recovery kit *or trace evidence collection kit* for a period of 10 years or
105 until 10 years after the victim reaches the age of majority if the victim was a minor at the time of
106 collection, whichever is longer. The law-enforcement agency shall store the physical evidence recovery
107 kit *or trace evidence collection kit* for a period of 10 years following the receipt of a written objection
108 to the destruction of the kit from the victim. After the mandatory retention period or any additional
109 10-year storage period has lapsed, the law-enforcement agency shall, unless the victim has made a
110 written request not to be contacted for this purpose, make a reasonable effort to notify the victim of the
111 intended destruction of the physical evidence recovery kit *or trace evidence collection kit* no less than
112 60 days prior to the intended date of such destruction. In the absence of a response from the victim, or
113 with the consent of the victim, the law-enforcement agency may destroy the physical evidence recovery
114 kit *or trace evidence collection kit* or, in its discretion, may elect to retain the physical evidence
115 recovery kit *or trace evidence collection kit* for a longer period of time.

116 C. For physical evidence recovery kits *or trace evidence collection kits* that meet the exceptions in
117 clause (ii) or (iv) of subsection A or that meet the exception in clause (iii) and (v) of subsection A that
118 are not transferred to the law-enforcement agency outside of the Commonwealth in which the offense
119 occurred or to the law-enforcement agency that has taken over responsibility for the investigation related

to the physical evidence recovery kit *or trace evidence collection kit*, the law-enforcement agency that received the physical evidence recovery kit *or trace evidence collection 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 trace evidence collection kit* or, in its discretion, may elect to retain the physical evidence recovery kit *or trace evidence collection kit* for a longer period of time.

D. 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.

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

A. In addition to the rights provided under Chapter 1.1 (§ 19.2-11.01 et seq.), a victim of sexual assault *or strangulation*, a parent or guardian of a victim of a sexual assault *or strangulation* who was a minor at the time of the offense, or the next of kin of a deceased victim of sexual assault *or strangulation* shall have the right to request and receive information from the law-enforcement agency regarding (i) the submission of any physical evidence recovery kit *or trace evidence collection kit* for forensic analysis that was collected from the victim during the investigation of the offense; (ii) the status of any analysis being performed on any evidence that was collected during the investigation of the offense; (iii) the results of any analysis; and (iv) the time frame for how long the kit will be held in storage and the victim's rights regarding such storage, unless disclosing this information would interfere with the investigation or prosecution of the offense, in which case the victim, parent, guardian, or next of kin shall be informed of the estimated date on which the information may be disclosed, if known. The law-enforcement agency shall inform the victim, parent, guardian, or next of kin of the unique identification number assigned to the physical evidence recovery kit *or trace evidence collection kit* utilized by the health care provider and the personal identification number required to view the status of the physical evidence recovery kit *or trace evidence collection kit* and shall provide information regarding the Physical Evidence Recovery Kit and Trace Evidence Collection Kit Tracking System, unless disclosing this information would interfere with the investigation or prosecution of the offense, in which case the victim, parent, guardian, or next of kin shall be informed of the estimated date on which the information may be disclosed, if known.

B. In the case of a physical evidence recovery kit *or trace evidence collection kit* that was received by a law-enforcement agency prior to July 1, 2016, and that has subsequently been submitted for analysis, the victim, a parent or guardian of a minor victim, or the next of kin of a deceased victim shall be notified by the law-enforcement agency of the completion of the analysis and shall, upon request, receive information from the law-enforcement agency regarding the results of any analysis, unless disclosing this information would interfere with the investigation or prosecution of the offense, in which case the victim, parent, guardian, or next of kin shall be informed of the estimated date on which the information may be disclosed, if known. A good faith attempt to locate the victim, a parent or guardian of a minor victim, or the next of kin of a deceased victim shall be made if a current address for the victim, a parent or guardian of a minor victim, or the next of kin of a deceased victim is unavailable.

C. The victim, parent, guardian, or next of kin who requests to be notified under subsection A shall provide a current address and telephone number to the attorney for the Commonwealth and to the law-enforcement agency that is investigating the offense and keep such information updated.

The victim, parent, guardian, or next of kin who requests to be notified under subsection B may provide a current address and telephone number to the attorney for the Commonwealth and to the

181 law-enforcement agency that is investigating the offense and keep such information updated.

182 D. Nothing contained in this section shall require a law-enforcement agency to disclose any
183 information regarding the results of any analysis to a parent or guardian of a minor victim or to the next
184 of kin of a deceased victim if such parent, guardian, or next of kin is the alleged perpetrator of the
185 offense.

186 **§ 19.2-11.12. Costs of physical evidence recovery kits and trace evidence collection kits.**

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

190 **§ 19.2-11.13. Physical Evidence Recovery Kit and Trace Evidence Collection Kit Tracking**
191 **System.**

192 A. The Department shall maintain a statewide electronic tracking system for physical evidence
193 recovery kits *and trace evidence collection kits*. The Physical Evidence Recovery Kit *and Trace*
194 *Evidence Collection Kit* Tracking System (the System) will utilize an assigned unique identification
195 number to track each physical evidence recovery kit *and trace evidence collection kit* from its
196 distribution as an uncollected kit to the health care provider through to its destruction. The Department
197 shall ensure that each physical evidence recovery kit *and trace evidence collection kit* is assigned a
198 unique identification number.

199 B. The Department shall provide access to the System to health care providers, law-enforcement
200 agencies, the Division, and the Office of the Chief Medical Examiner. All such entities and agencies
201 shall be required to enter the identification number and other information pertaining to the kits in the
202 System as required by the Department and to update the status and location of each kit in the System
203 whenever such status or location changes.

204 C. The health care provider shall inform the victim of sexual assault *or strangulation* of the unique
205 identification number assigned to the physical evidence recovery kit *or trace evidence collection kit*
206 utilized by the health care provider during the forensic medical examination and provide the victim with
207 information regarding the System.

208 D. Records entered into the System are confidential and are not subject to disclosure under the
209 Freedom of Information Act (§ 2.2-3700 et seq.).