

HOUSE BILL 1248

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By: **Delegate Conaway**

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Sexual Assault Evidence Kits – Voluntary Payment for Testing**

3 FOR the purpose of authorizing a certain victim of sexual assault or the victim's insurance
4 carrier to elect to pay for the testing of a certain sexual assault evidence kit under
5 certain circumstances; and generally relating to sexual assault evidence kits.

6 BY repealing and reenacting, with amendments,
7 Article – Criminal Procedure
8 Section 11–926
9 Annotated Code of Maryland
10 (2018 Replacement Volume and 2019 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
12 That the Laws of Maryland read as follows:

13 **Article – Criminal Procedure**

14 11–926.

15 (a) (1) In this section the following words have the meanings indicated.

16 (2) “Child advocacy center” has the meaning stated in § 13–2201 of the
17 Health – General Article.

18 (3) “Hospital” has the meaning stated in § 19–301 of the Health – General
19 Article.

20 (b) A health care provider that performs a sexual assault evidence collection kit
21 exam on a victim of sexual assault shall provide the victim with:

22 (1) contact information for the investigating law enforcement agency that

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 the victim may contact about the status and results of the kit analysis; and

2 (2) written information describing the laws and policies governing the
3 testing, preservation, and disposal of a sexual assault evidence collection kit.

4 (c) An investigating law enforcement agency that receives a sexual assault
5 evidence collection kit, within 30 days after a request by the victim from whom the evidence
6 was collected, shall provide the victim with:

7 (1) information about the status of the kit analysis; and

8 (2) all available results of the kit analysis except results that would impede
9 or compromise an ongoing investigation.

10 (d) (1) A sexual assault evidence collection kit shall be transferred to a law
11 enforcement agency:

12 (i) by a hospital or a child advocacy center within 30 days after the
13 exam is performed; or

14 (ii) by a government agency in possession of a kit, unless the agency
15 is otherwise required to retain the kit by law or court rule.

16 (2) Except as provided in paragraph (3) of this subsection, within 20 years
17 after the evidence is collected, a law enforcement agency may not destroy or dispose of:

18 (i) a sexual assault evidence collection kit; or

19 (ii) other crime scene evidence relating to a sexual assault that has
20 been identified by the State's Attorney as relevant to prosecution.

21 (3) A law enforcement agency is not required to comply with the
22 requirements in paragraph (2) of this subsection if:

23 (i) the case for which the evidence was collected resulted in a
24 conviction and the sentence has been completed; or

25 (ii) all suspects identified by testing a sexual assault evidence
26 collection kit are deceased.

27 (4) On written request by the victim from whom the evidence was collected,
28 a law enforcement agency with custody of a sexual assault evidence collection kit or other
29 crime scene evidence relating to a sexual assault shall:

30 (i) notify the victim no later than 60 days before the date of intended
31 destruction or disposal of the evidence; or

1 (ii) retain the evidence for 12 months longer than the time period
2 specified in paragraph (2) of this subsection or for a time period agreed to by the victim and
3 the law enforcement agency.

4 (e) A sexual assault evidence collection kit shall be submitted to a forensic
5 laboratory for analysis unless:

6 (1) there is clear evidence disproving the allegation of sexual assault;

7 (2) the facts alleged, if true, could not be interpreted to violate a provision
8 of Title 3, Subtitle 2, Title 3, Subtitle 3, Title 3, Subtitle 6, or Title 11, Subtitle 3 of the
9 Criminal Law Article;

10 (3) the victim from whom the evidence was collected declines to give
11 consent for analysis; or

12 (4) the suspect's profile has been collected for entry as a convicted offender
13 for a qualifying offense in the Combined DNA Index System (CODIS) maintained by the
14 Federal Bureau of Investigation and the suspect has pleaded guilty to the offense that led
15 to the sexual assault evidence collection kit.

16 (f) (1) If a victim of sexual assault wishes to remain anonymous and not file a
17 criminal complaint, the victim shall be informed that the victim may file a criminal
18 complaint at a future time.

19 (2) If a provision of subsection (e) of this section is determined to be
20 satisfied after the submission of the victim's sexual assault evidence collection kit for
21 analysis, testing may be terminated or not initiated.

22 (g) Except as provided in subsection (e) of this section, an investigating law
23 enforcement agency that receives a sexual assault evidence collection kit shall:

24 (1) submit the kit and all requested associated reference standards to a
25 forensic laboratory for analysis within 30 days of receipt of the kit and all requested
26 associated reference standards; and

27 (2) make use of certified sexual assault crisis programs or other qualified
28 community-based sexual assault victim service organizations that can provide services and
29 support to survivors of sexual assault.

30 **(H) IF A SEXUAL ASSAULT EVIDENCE COLLECTION KIT HAS NOT BEEN**
31 **SUBMITTED TO A FORENSIC LABORATORY FOR ANALYSIS WITHIN 6 MONTHS AFTER**
32 **BEING TRANSFERRED TO A LAW ENFORCEMENT AGENCY OR IF A PROVISION OF**
33 **SUBSECTION (E) OF THIS SECTION IS DETERMINED TO BE SATISFIED, THE VICTIM OR**
34 **THE VICTIM'S INSURANCE CARRIER MAY PAY TO HAVE THE KIT SUBMITTED TO A**
35 **FORENSIC LABORATORY FOR TESTING.**

1 ~~[(h)]~~ **(I)** (1) (i) A forensic laboratory that receives a sexual assault
2 evidence collection kit and all requested associated reference standards for analysis shall
3 determine suitability and complete screening, testing, and analysis in a timely manner.

4 (ii) Failure to complete the screening, testing, and analysis in a
5 timely manner as required in subparagraph (i) of this paragraph may not constitute the
6 basis for excluding the analysis or results as evidence in a criminal proceeding.

7 (2) Forensic laboratories shall report annually to the Maryland Sexual
8 Assault Evidence Kit Policy and Funding Committee regarding the duration required to
9 complete testing, beginning with receipt of the kit until a report is prepared, of each sexual
10 assault evidence collection kit.

11 ~~[(i)]~~ **(J)** (1) The eligible results of an analysis of a sexual assault evidence
12 collection kit shall be entered into CODIS.

13 (2) The DNA collected from a victim under this section may not be used for
14 any purpose except as authorized by this section.

15 ~~[(j)]~~ **(K)** The Attorney General shall adopt regulations for uniform statewide
16 implementation of this section.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2020.