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HOUSE BILL NO. 2150

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Delaney)

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

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-11.5 through 19.2-11.9, 19.2-11.11, 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.

26 "Law-enforcement agency" means the state or local law-enforcement agency with the primary
27 responsibility for investigating an alleged sexual assault offense case and includes the employees of that
28 agency.

29 "Physical evidence recovery kit" means any evidence collection kit supplied by the Department to
30 health care providers for use in collecting evidence from victims of sexual assault during forensic medical
31 examinations or to the Office of the Chief Medical Examiner for use during death investigations to collect
32 evidence from decedents who may be victims of sexual assault.

33 "Sexual assault offense" means a violation or attempted violation of any offense enumerated in
34 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,
35 or 18.2-370.1.

36 "Trace evidence collection kit" means any evidence collection kit supplied by the Department to
37 health care providers for use in collecting evidence from victims of strangulation during forensic medical
38 examinations or to the Office of the Chief Medical Examiner for use during death investigations to collect
39 evidence from decedents who may be victims of strangulation.

40 "Victim of sexual assault" means any person who undergoes a forensic medical examination for
41 the collection of a physical evidence recovery kit connected to a sexual assault offense.

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

44 **§ 19.2-11.6. Anonymous physical evidence recovery kits and anonymous trace evidence**
45 **collection kits.**

46 A. When a victim of sexual assault or strangulation who undergoes a forensic medical examination
47 elects not to report the offense to law enforcement, the health care provider shall inform the victim that
48 the physical evidence recovery kit or trace evidence collection kit shall be forwarded to the Division for
49 storage as an anonymous physical evidence recovery kit or anonymous trace evidence collection kit. The
50 health care provider shall further inform the victim of the length of time the anonymous physical evidence
51 recovery kit or anonymous trace evidence collection kit will be stored by the Division, the victim's right
52 to object to the destruction of the anonymous physical evidence recovery kit or anonymous trace evidence

53 collection kit, and how the victim can have the anonymous physical evidence recovery kit or anonymous
54 trace evidence collection kit released to a law-enforcement agency at a later date. The health care provider
55 shall forward the anonymous physical evidence recovery kit or anonymous trace evidence collection kit
56 to the Division in accordance with the policies and procedures established by the Division.

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

70 **§ 19.2-11.7. Law enforcement taking possession of physical evidence recovery kits and trace**
71 **evidence collection kits.**

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

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

78 **§ 19.2-11.8. Submission of physical evidence recovery kits and trace evidence collection kits**
79 **to the Department.**

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

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

106 evidence recovery kit or, in its discretion, may elect to retain the physical evidence recovery kit for a
107 longer period of time.

108 C. For physical evidence recovery kits that meet the exceptions in clause (ii) or (iv) of subsection
109 A or that meet the exception in clause (iii) and (v) of subsection A that are not transferred to the law-
110 enforcement agency outside of the Commonwealth in which the offense occurred or to the law-
111 enforcement agency that has taken over responsibility for the investigation related to the physical evidence
112 recovery kit, the law-enforcement agency that received the physical evidence recovery kit shall store such
113 kit for a period of 10 years or until 10 years after the victim reaches the age of majority if the victim was
114 a minor at the time of collection, whichever is longer. After the mandatory retention period, the law-
115 enforcement agency may destroy the physical evidence recovery kit or, in its discretion, may elect to retain
116 the physical evidence recovery kit for a longer period of time.

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

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

123 **§ 19.2-11.9. Lack of compliance with procedures.**

124 The failure of a law-enforcement agency to take possession of a physical evidence recovery kit or
125 trace evidence collection kit as provided in this chapter or to submit a physical evidence recovery kit or
126 trace evidence collection kit to the Department within the time period prescribed under this chapter does
127 not alter the authority of the law-enforcement agency to take possession of the physical evidence recovery
128 kit or trace evidence collection kit or to submit the physical evidence recovery kit or trace evidence
129 collection kit to the Department under this chapter or the authority of the Department to accept and analyze
130 the physical evidence recovery kit or trace evidence collection kit or to maintain or upload any developed
131 DNA profiles from the physical evidence recovery kit or trace evidence collection kit into any local, state,

132 or national DNA data bank if eligible as determined by Department procedures and in accordance with
133 state and federal law.

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

138 **§ 19.2-11.11. Victim's right to notification of scientific analysis information.**

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

157 B. In the case of a physical evidence recovery kit or trace evidence collection kit that was received
158 by a law-enforcement agency prior to July 1, 2016, and that has subsequently been submitted for analysis,

159 the victim, a parent or guardian of a minor victim, or the next of kin of a deceased victim shall be notified
160 by the law-enforcement agency of the completion of the analysis and shall, upon request, receive
161 information from the law-enforcement agency regarding the results of any analysis, unless disclosing this
162 information would interfere with the investigation or prosecution of the offense, in which case the victim,
163 parent, guardian, or next of kin shall be informed of the estimated date on which the information may be
164 disclosed, if known. A good faith attempt to locate the victim, a parent or guardian of a minor victim, or
165 the next of kin of a deceased victim shall be made if a current address for the victim, a parent or guardian
166 of a minor victim, or the next of kin of a deceased victim is unavailable.

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

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

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

176 **§ 19.2-11.12. Costs of physical evidence recovery kits and trace evidence collection kits.**

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

180 **2. That the Department of Forensic Science shall promulgate regulations to implement the**
181 **provisions of this act by July 1, 2025.**

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