

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 29
Committee Substitute Favorable 4/29/19
Senate Appropriations/Base Budget Committee Substitute Adopted 9/10/19

Short Title: Standing Up for Rape Victims Act of 2019. (Public)

Sponsors:

Referred to:

February 7, 2019

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TESTING OF ALL SEXUAL ASSAULT EXAMINATION KITS.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as "The Standing Up for Rape Victims (SURVIVOR) Act of 2019."

SECTION 2. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-266.5A. Statewide sexual assault examination kit testing protocol.

(a) Legislative Intent. – The General Assembly finds that deoxyribonucleic acid (DNA) evidence is a powerful law enforcement tool that can identify unknown suspects, create case linkages, connect crimes to known perpetrators, and exonerate the innocent. Timely testing is vital to solve cases, punish offenders, bring justice to victims, and prevent future crimes. It is the intent of the General Assembly that every sexual assault examination kit reported to law enforcement in this State be tested and to eliminate the inventory of untested sexual assault examination kits located statewide. The purpose of this section is to address the manner in which sexual assault examination kits are processed and the protocol for testing the statewide inventory of untested sexual assault examination kits identified pursuant to the findings of the statewide audit completed pursuant to Section 17.7 of S.L. 2017-57.

(b) Definitions. – The following definitions apply in this section:

(1) CODIS. – As defined in G.S. 15A-266.2.

(2) Collecting agency. – Any agency, program, center, or other entity that collects a sexual assault examination kit.

(3) State DNA database. – As defined in G.S. 15A-266.2.

(4) Reported sexual assault examination kit. – A sexual assault examination kit collected from a person who consented to the collection of the sexual assault examination kit and has consented to participate in the criminal justice process by reporting the crime to law enforcement.

(5) Unfounded sexual assault examination kit. – A reported sexual assault examination kit, whereupon completion of the investigation it was concluded by the investigating law enforcement agency, based on clear and convincing evidence, that a crime did not occur.

(6) Unreported sexual assault examination kit. – A sexual assault examination kit collected from a person who consented to the collection of the sexual assault examination kit, but has not consented to participate in the criminal justice process.



1 (c) Notification and Submission Requirements for Kits Completed On or After July 1,
2 2019. – Any collecting agency that collects a sexual assault examination kit completed on or after
3 July 1, 2019, shall preserve the kit according to guidelines established under G.S. 15A-268(a2)
4 and notify the appropriate law enforcement agency as soon as practicable, but no later than 24
5 hours after the collection occurred. A law enforcement agency notified under this subsection
6 shall do all of the following:

7 (1) Take custody of a sexual assault examination kit from the collecting agency
8 that collected the kit within seven days of receiving notification. The law
9 enforcement agency that takes custody of a kit under this subdivision shall
10 retain and preserve the kit in accordance with the requirements of
11 G.S. 15A-268.

12 (2) Submit a reported sexual assault examination kit to the State Crime
13 Laboratory, or a laboratory approved by the State Crime Laboratory, not more
14 than 45 days after taking custody of the reported sexual assault examination
15 kit.

16 (3) Submit an unreported sexual assault examination kit to the Department of
17 Public Safety not more than 45 days after taking custody of the unreported
18 sexual assault examination kit. The Department of Public Safety shall store
19 any kit it receives under this subdivision pursuant to the authority set forth in
20 G.S. 143B-601(13).

21 (d) Notification and Submission Requirements for Kits Completed On or Before January
22 1, 2018. – Any law enforcement agency that possesses a sexual assault examination kit completed
23 on or before January 1, 2018, shall do the following:

24 (1) Establish a review team that may consist of prosecutors, active or retired law
25 enforcement officers, sexual assault nurse examiners, victim advocacy
26 groups, and representatives from a forensic laboratory. The review team
27 required under this subdivision shall be established as soon as practicable, but
28 no later than three months after the effective date of this section.

29 (2) Utilize the review team established under subdivision (1) of this subsection to
30 survey the law enforcement agency's entire untested sexual assault
31 examination kit inventory and conduct a case review to determine each sexual
32 assault examination kit's testing priority. The survey and review required
33 under this subdivision shall be completed as soon as practicable, but no later
34 than six months after the effective date of this section. The review required
35 under this subdivision shall consider each of the following factors in
36 determining the submission priority of a sexual assault examination kit:

37 a. Investigative and evidentiary value for the individual case.

38 b. CODIS potential to link profiles and identify possible serial offenders.

39 c. Potential for victim participation in the investigation and prosecution.

40 d. Potential value for admission as evidence under Rule 404(b) of the
41 North Carolina Rules of Evidence.

42 e. Age and health of victim.

43 f. Potential for exculpatory value for a convicted person.

44 g. Any other factor the review team deems to be relevant.

45 (3) Upon determination by the review team that a sexual assault examination kit
46 is of priority status and not subject to subsection (e) of this section, the law
47 enforcement agency shall notify the State Crime Laboratory, or a laboratory
48 approved by the State Crime Laboratory, of the sexual assault examination kit
49 and submit a request for testing of the sexual assault examination kit. The law
50 enforcement agency shall continue the process set forth in subdivisions (2)
51 and (3) of this subsection until all untested sexual assault examination kits

1 eligible for submission within its inventory have been submitted for testing.
2 The following untested sexual assault examinations kits are not eligible for
3 submission for testing under this subdivision:

4 a. Unreported sexual assault examination kits. Unreported sexual assault
5 examination kits shall be sent within 45 days of the review required
6 under subdivision (2) of this subsection to the Department of Public of
7 Safety for storage pursuant to the authority set forth in
8 G.S. 143B-601(13).

9 b. Sexual assault examination kits that have been confirmed as
10 unfounded sexual assault examination kits after a comprehensive case
11 review by the law enforcement agency and complete review by the
12 review team established under subdivision (1) of this subsection. The
13 law enforcement agency shall track within the agency the number of
14 sexual assault examination kits which are concluded to be unfounded
15 along with a brief summary indicating the information and evidence
16 supporting the determination of an unfounded sexual assault
17 examination kit. If the law enforcement agency receives any
18 information or evidence that creates investigative or evidentiary value
19 for testing the unfounded sexual assault examination kit, the law
20 enforcement agency shall send the unfounded sexual assault
21 examination kit to the State Crime Laboratory, or a laboratory
22 approved by the State Crime Laboratory, as soon as practicable.

23 c. Sexual assault examination kits in which (i) a criminal prosecution has
24 resulted in conviction, (ii) the convicted person does not seek DNA
25 testing, and (iii) the convicted person's DNA profile is already in
26 CODIS.

27 (e) Submission Requirements for Other Kits. – Sexual assault examination kits that are
28 not subject to the requirements of subsections (c) or (d) of this section shall be submitted to the
29 State Crime Laboratory, or a laboratory approved by the State Crime Laboratory, as soon as
30 practicable.

31 (f) Testing Requirements for Accepted Kits. – As soon as practicable after receiving a
32 written request for testing of a sexual assault examination kit subject to subsection (d) of this
33 section, the State Crime Laboratory, or a laboratory approved by the State Crime Laboratory,
34 shall notify the submitting law enforcement agency of the request's approval and provide
35 shipment instructions for the sexual assault examination kit. The State Crime Laboratory, or a
36 laboratory approved by the State Crime Laboratory, shall pursue DNA analysis of any sexual
37 assault examination kit accepted from a law enforcement agency under this section to develop
38 DNA profiles that are eligible for entry into CODIS and the State DNA Database pursuant to
39 G.S. 15A-266.5 and G.S. 15A-266.7. The State CODIS System Administrator, or the
40 Administrator's designee, shall enter a DNA profile developed under this subsection into the
41 CODIS database pursuant to G.S. 15A-266.8 and into the State DNA Database, provided that the
42 testing of the sexual assault examination kit resulted in an eligible DNA profile.

43 (g) Lack of Compliance. – Lack of compliance with the requirements set forth in this
44 section shall not result in any of the following:

45 (1) Constituting grounds upon which a person may challenge in any hearing, trial,
46 or other court proceeding the validity of DNA evidence in any criminal or
47 civil proceeding.

48 (2) Justification for the exclusion of evidence generated from a sexual assault
49 examination kit.

1 (3) Providing a person who is accused or convicted of committing a crime against
2 a victim a basis to request that the person's case be dismissed or conviction set
3 aside, or providing a cause of action or civil claim.

4 (h) Sexual Assault Response and Training. – The Department of Justice, the North
5 Carolina Coalition Against Sexual Assault, the North Carolina Victims Assistance Network, and
6 the Conference of District Attorneys shall jointly develop and provide response and training
7 programs to law enforcement and their sexual assault examination kit review teams regarding
8 sexual assault investigations, including victim interactions and kit collection, storage, tracking,
9 and testing."

10 **SECTION 3.** G.S. 15A-266.8 is amended by adding a new subsection to read:

11 "(d) A law enforcement agency that receives an actionable CODIS hit on a submitted DNA
12 sample shall provide electronic notice to the State Crime Laboratory as follows:

13 (1) Detailing any arrest of a person made in connection with the CODIS hit, no
14 later than 15 days after the arrest.

15 (2) Detailing any conviction of a person resulting from the CODIS hit, no later
16 than 15 days from the date of conviction."

17 **SECTION 4.** The State Crime Lab shall report to the Joint Legislative Oversight
18 Committee on Justice and Public Safety by March 1, 2020, on the use of funds appropriated in
19 this act to test sexual assault evidence collection kits.

20 **SECTION 5.** There is appropriated from the General Fund to the Department of
21 Justice the sum of (i) three million dollars (\$3,000,000) in nonrecurring funds for the 2019-2020
22 fiscal year and (ii) three million dollars (\$3,000,000) in nonrecurring funds for the 2020-2021
23 fiscal year, to be used to assist with the testing of untested sexual assault examination kits in
24 accordance with G.S. 15A-266.5A, as enacted by Section 2 of this act. These funds shall
25 supplement and not supplant existing funds provided for DNA testing to the North Carolina State
26 Crime Laboratory.

27 **SECTION 6.** Departmental receipts, as defined in G.S. 143C-1-1, are appropriated
28 for each year of the 2019-2021 fiscal biennium up to the amounts needed to implement the
29 provisions in this act for each year of the 2019-2021 fiscal biennium.

30 **SECTION 7.** Notwithstanding any other provision of law, if House Bill 966, 2019
31 Regular Session, becomes law, then Section 17.2 of that act is repealed.

32 **SECTION 8.** If any provision of this act and G.S. 143C-5-4 are in conflict, the
33 provisions of this act shall prevail. The appropriations and the authorizations to allocate and
34 spend funds which are set out in this act shall remain in effect until the Current Operations
35 Appropriations Act for the applicable fiscal year becomes law, at which time that act shall
36 become effective and shall govern appropriations and expenditures. When the Current
37 Operations Appropriations Act for that fiscal year becomes law, the Director of the Budget shall
38 adjust allotments to give effect to that act from July 1 of the fiscal year.

39 **SECTION 9.** This act is effective when it becomes law and applies to CODIS hits
40 received on or after that date.