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SENATE BILL DRS15016-MLa-27A

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

Sponsors: Senators Daniel, Britt, and McKissick (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE TESTING OF ALL SEXUAL ASSAULT EXAMINATION KITS.  
3 The General Assembly of North Carolina enacts:  
4

5 **PART I. TITLE**

6 **SECTION 1.** This act shall be known and may be cited as "The Standing Up for  
7 Rape Victims (SURVIVOR) Act of 2019."  
8

9 **PART II. REQUIRED TESTING OF SEXUAL ASSAULT EXAMINATION KITS**

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

12 **§ 15A-266.5A. Statewide sexual assault examination kit testing protocol.**

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

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

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

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

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

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

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



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

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

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

16           (2)    Submit a reported sexual assault examination kit to the State Crime  
17                   Laboratory, or a laboratory approved by the State Crime Laboratory, not more  
18                   than 45 days after taking custody of the reported sexual assault examination  
19                   kit.

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

25           (d)    Notification and Submission Requirements for Kits Completed On or Before January  
26           1, 2018. – Any law enforcement agency that possesses a sexual assault examination kit completed  
27           on or before January 1, 2018, shall do the following:

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

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

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

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

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

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

46                   e.    Age and health of victim.

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

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

49           (3)    Upon determination by the review team that a sexual assault examination kit  
50                   is of priority status and not subject to subsection (e) of this section, the law  
51                   enforcement agency shall notify the State Crime Laboratory, or a laboratory

1 approved by the State Crime Laboratory, of the sexual assault examination kit  
2 and submit a request for testing of the sexual assault examination kit. The law  
3 enforcement agency shall continue the process set forth in subdivisions (2)  
4 and (3) of this subsection until all untested sexual assault examination kits  
5 eligible for submission within its inventory have been submitted for testing.  
6 The following untested sexual assault examinations kits are not eligible for  
7 submission for testing under this subdivision:

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

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

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

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

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

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

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

- 1           (2)   Justification for the exclusion of evidence generated from a sexual assault  
2           examination kit.  
3           (3)   Providing a person who is accused or convicted of committing a crime against  
4           a victim a basis to request that the person's case be dismissed or conviction set  
5           aside, or providing a cause of action or civil claim.

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

### 13   **PART III. REQUIRE REPORTING ON CODIS HITS**

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

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

- 17           (1)   Detailing any arrest of a person made in connection with the CODIS hit, no  
18           later than 15 days after the arrest.  
19           (2)   Detailing any conviction of a person resulting from the CODIS hit, no later  
20           than 15 days from the date of conviction."

21           **SECTION 3.(b)** This section is effective when it becomes law and applies to CODIS  
22           hits received on or after that date.

### 24   **PART IV. APPROPRIATIONS**

25           **SECTION 4.(a)** There is appropriated from the General Fund to the Department of  
26           Justice the sum of three million dollars (\$3,000,000) in nonrecurring funds for each fiscal year  
27           of the 2019-2021 fiscal biennium to be used to assist with the testing of untested sexual assault  
28           examination kits in accordance with G.S. 114-66, as enacted by Section 2 of this act. These funds  
29           shall supplement and not supplant existing funds provided for DNA testing to the North Carolina  
30           State Crime Laboratory.

31           **SECTION 4.(b)** There is appropriated from the General Fund to the Department of  
32           Justice the sum of eight hundred thousand dollars (\$800,000) in recurring funds for the  
33           2019-2020 fiscal year to be used to create six full-time equivalent forensic scientist positions to  
34           enhance the State Crime Laboratory's ability to test a high submission of sexual assault  
35           examination kits and reduce laboratory turnaround time.

36           **SECTION 4.(c)** This section becomes effective July 1, 2019.

### 38   **PART V. ORDER OF APPROPRIATIONS AND EFFECTIVE DATE**

39           **SECTION 5.(a)** The requirements of G.S. 143C-5-2 do not apply to this act.

40           **SECTION 5.(b)** Except as otherwise provided, this act is effective when it becomes  
41           law.