

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 89

BY SENATORS WOELFEL, GRADY, WOODRUM, HAMILTON,

RUCKER, AND PLYMALE

[Passed February 21, 2023; in effect 90 days from

passage (May 22, 2023)]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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FILED

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1 AN ACT to amend and reenact §15-9B-1a and §15-9B-4 of the Code of West Virginia, 1931, as
2 amended, all relating to sexual assault forensic examinations; defining terms; requiring
3 legislative rules; and requiring hospitals to have health care providers available to conduct
4 sexual assault forensic examinations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.

§15-9B-1a. Definitions.

1 As used in this article:

2 "Biological evidence" includes a sexual assault forensic examination kit, semen, blood,
3 saliva, hair, skin tissue, or other identified biological material.

4 "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides
5 an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of
6 human heredity and forensic identification.

7 "Hospital" means a facility licensed pursuant to the provisions of §16-5B-1 *et seq.* of this
8 code that primarily provides inpatient diagnostic, treatment, or rehabilitative services to the
9 injured, disabled, or sick persons under the supervision of physicians with a 24-hour emergency
10 department.

11 "Nonreported kit" means a kit collected from an alleged victim who has consented to the
12 collection of the kit, but has not consented to participation in the criminal justice process.

13 "Sexual assault forensic examination kit" or "kit" means a set of materials, including, but
14 not limited to, swabs and tools for collecting blood samples, clothing, or other materials used to
15 gather forensic evidence from a victim of a reported sexual offense and the evidence obtained
16 with the materials.

17 "Sexual offense" means any offense or attempted offense in the jurisdiction of the state in
18 which a sexual assault forensic examination kit is collected, including, but not limited to, the
19 following sections:

- 20 (A) §61-8-12 of this code;
- 21 (B) §61-8A-2 of this code;
- 22 (C) §61-8A-4 of this code;
- 23 (D) §61-8A-5 of this code;
- 24 (E) Any offenses listed in §61-8B-1 *et seq.* of this code;
- 25 (F) Any offenses listed in §61-8C-1 *et seq.* of this code;
- 26 (G) Any offenses listed in §61-8D-1 *et seq.* of this code.

27 "Unfounded" means evidence developed after reasonable investigation and supported by
28 proper documentation proving no crime occurred or where the alleged victim has recanted.

§15-9B-4. Submission, testing, and retention of sexual assault forensic examination kits.

1 (a) The Sexual Assault Forensic Examination Commission created by §15-9B-1 of this
2 code shall establish a subgroup of persons with subject matter expertise to establish best-practice
3 protocols for the submission, testing, retention, and disposition of sexual assault forensic
4 examination kits collected by health care providers. The commission shall propose rules for
5 legislative approval, in accordance with §29A-3-1 *et seq.* of this code, detailing best-practice
6 protocols. Upon approval of the legislative rules, local sexual assault forensic examination boards
7 shall follow the rules.

8 (b) Rules promulgated pursuant to subsection (a) of this section shall include:

9 (1) Time frames for submission of sexual assault forensic examination kits in the
10 possession of law enforcement;

11 (2) Protocols for storage of DNA samples and sexual assault forensic examination kits;

12 and

13 (3) Requiring a hospital to have trained health care provider available or transfer
14 agreement as provided in a county plan, to complete a sexual assault forensic examination.

15 "Available" includes, but not limited, having access to a trained sexual assault forensic
16 examination expert via telehealth.

17 (c) The commission may promulgate emergency rules pursuant to the provisions of §29A-
18 3-15 of this code in order to implement this section: *Provided*, That no emergency rule may permit
19 the destruction of any DNA evidence.

20 (d) Upon collection, a sexual assault forensic examination kit shall be submitted for testing
21 by the health care provider to the West Virginia State Police Forensic Laboratory within 30 days
22 of collection or as soon thereafter as practicable. All packaging kits for transmittal and transmittal
23 protocols shall be designed to meet applicable standards for maintaining the efficacy of the
24 sample and chain of custody.

25 (e) No sexual assault forensic examination kit need be tested where the alleged victim has
26 not consented to the testing, requests that the kit not be tested, where he or she recants as to the
27 allegation of a sexual offense, or the allegation that a sexual offense occurred is determined to
28 be unfounded. If the alleged victim does not consent to law enforcement involvement, the kit shall
29 be designated a nonreported kit and transmitted to the Marshall University Forensic Science
30 Center.

31 (f) The commission shall, in cooperation with the West Virginia State Police, develop
32 protocols for storage of previously tested materials to be made available for secondary testing
33 upon a court order to do so.

34 (g) Biological evidence obtained through tests of a sexual assault forensic examination kit
35 shall not be destroyed:

36 (1) During the time period of incarceration of a person whose DNA was identified by the
37 use of the biological evidence, or while the person remains under continued supervision,
38 whichever is later in time; or

39 (2) For as long as the offense from which the biological evidence is obtained remains
40 unresolved.

41 (h) Notwithstanding any provision of this code, or any rule or policy promulgated
42 thereunder, upon completion of the processing and testing set forth in subsection (d) of this

43 section, the sexual assault forensic examination kit shall be transmitted to the appropriate
44 investigating local or state law-enforcement agency which shall retain all identified biological
45 material that is secured in connection with any sexual offense or attempted sexual offense for the
46 periods set forth in subsection (g) of this section.


47 (i) After processing and testing of a sexual assault forensic examination kit, the West
48 Virginia State Police Laboratory shall transmit the sexual assault forensic examination kit to the
49 appropriate investigating state or local law-enforcement agency through any reasonable means
50 sufficient to establish the proper chain of custody, including, but not limited to, use of the United
51 States Postal Service or hand delivery by appropriate personnel or a law-enforcement officer.
52 The appropriate investigating state or local law-enforcement agency shall preserve the sexual
53 assault forensic examination kit for the period of time prescribed in subsection (g) of this section
54 in a condition where any biological evidence is suitable for DNA testing. The lack of timely
55 submission, or the inadvertent loss or destruction of a sexual assault forensic examination kit,
56 standing alone, shall not constitute a bar to the prosecution of a sexual offense.

57 (j) Sexual assault forensic examination kits retained pursuant to this section shall be made
58 available for DNA testing pursuant to §15-2B-7 of this code or pursuant to an appropriate order
59 of a circuit court of competent jurisdiction for secondary testing.

60 (k) The appropriate investigating state or local law-enforcement agency responsible for
61 retaining the sexual assault forensic examination kit shall obtain approval from the circuit court of
62 competent jurisdiction for the county in which the crime occurred before disposal of any biological
63 evidence. Before the disposal of any sexual assault forensic examination kit, reasonable efforts
64 shall be made to provide written notice to the victim by the prosecuting attorney of the county in
65 which the crime occurred.

66 (l) Nothing in this section shall be construed as limiting a state or local law-enforcement
67 agency's discretion concerning the conditions under which biological evidence is retained,
68 preserved, or transferred among different entities if the evidence is retained in a condition that is
69 suitable for DNA testing.

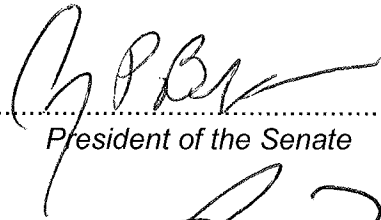
The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.


Clerk of the Senate


Clerk of the House of Delegates

Originated in the Senate.

In effect 90 days from passage.


President of the Senate

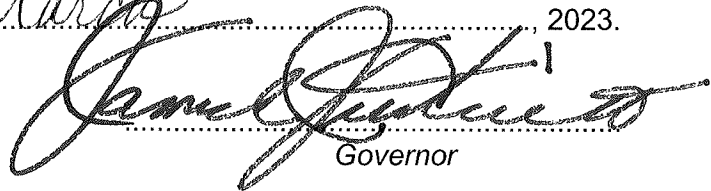

Speaker of the House of Delegates

OFFICE OF THE SECRETARY OF STATE

2023 MAR - 1 P 3:27

FILED

The within is *is approved* this the *1st*
Day of *March* 2023.


Governor

PRESENTED TO THE GOVERNOR

FEB 28 2023

Time 3:01 pm