

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 46
PROPOSED COMMITTEE SUBSTITUTE S46-PCS35137-BQ-9

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

(Public)

Sponsors:

Referred to:

February 13, 2019

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."
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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.



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 nine 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. 15A-266.5A, as enacted by Section 2 of this act. These
29 funds shall supplement and not supplant existing funds provided for DNA testing to the North
30 Carolina 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.