

2021 -- H 5460

=====
LC000858
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

—————
A N A C T

RELATING TO HEALTH AND SAFETY — SEXUAL ASSAULT EVIDENCE KITS

Introduced By: Representatives Edwards, Kazarian, Williams, Alzate, Felix, Kislak,
Ruggiero, Caldwell, McEntee, and Shanley

Date Introduced: February 10, 2021

Referred To: House Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 95

4 SEXUAL ASSAULT EVIDENCE KITS

5 **23-95-1. Short title.**

6 This chapter shall be known and may be cited as the "Sexual Assault Evidence Kits Act".

7 **23-95-2. Definitions.**

8 For purposes of this chapter:

9 (1) "Accredited laboratory" means a DNA laboratory that is formally recognized and meets
10 or exceeds a list of standards, including the Federal Bureau of Investigation (FBI) director's quality
11 assurance standards, to perform specific tests, established by a nonprofit professional association
12 of persons actively involved in forensic science that is nationally recognized within the forensic
13 community in accordance with the provisions of the federal DNA Identification Act, 42 USC §
14 14132, or other applicable law.

15 (2) "Anonymous kit" or "unreported kit" means a kit that is collected from a victim of
16 sexual assault through a medical forensic examination where the victim elects, at the time of the
17 examination, not to report the sexual assault offense to a law enforcement agency.

18 (3) "Combined DNA Index System (CODIS)" means the FBI's program of support for
19 criminal justice DNA databases as well as the software used to run the databases.

1 (4) "DNA analysis" means the isolation of autosomal deoxyribonucleic acid (DNA) to
2 develop DNA profiles that are eligible for entry into the Combined DNA Index System (CODIS),
3 DNA samples taken from evidence containing DNA from a known individual or of unknown origin,
4 the determination of the DNA test results, and entry of resulting DNA profiles into CODIS.

5 (5) "Law enforcement agency" means a local police department, the Rhode Island state
6 police, the office of the attorney general, or a federal, state, or local governmental body that
7 enforces criminal laws and maintains employees who have a statutory power of arrest.

8 (6) "Medical forensic examination" means an examination of a sexual assault patient by a
9 health care provider, ideally one who has specialized education and clinical experience in the
10 collection of forensic evidence and treatment of these patients. Such examination may include
11 gathering information from the patient for the medical forensic history, an examination,
12 coordinating treatment of injuries, documentation of biological and physical findings, collection of
13 evidence from the patient, information, treatment, and referrals for sexually transmitted infections,
14 pregnancy, suicidal ideation, alcohol and substance abuse, and other non-acute medical concerns,
15 and follow-up as needed to provide additional healing, treatment, or collection of evidence.

16 (7) "Newly collected kit" means a kit that has been collected after time frames and
17 requirements for testing kits were enacted.

18 (8) "Previously untested sexual assault evidence kits" means human biological specimen(s)
19 collected by a health care provider during a forensic medical examination from the victim of a
20 sexually-oriented criminal offense that has not been through DNA analysis and has been held
21 untested by medical facilities, law enforcement agencies, or accredited laboratories.

22 (9) "Sexual assault evidence kit" or "kit" means a collection of human biological
23 specimen(s) collected by a health care provider during a medical forensic examination from the
24 victim of a sex offense.

25 (10) "Status" means the location, date and time when the kit is transferred within the chain
26 of custody.

27 **23-95-3. Annual statewide inventory of sexual assault evidence kits.**

28 (a) Within one hundred eighty (180) days of enactment of this chapter, and annually
29 thereafter, all medical facilities, law enforcement agencies, crime laboratories, and any other
30 facilities that receive, maintain, store, or preserve sexual assault evidence kits (kits) shall submit a
31 report containing the following information to the department of health:

32 (1) The total number of all untested kits in possession of each medical facility, law
33 enforcement agency, crime laboratory, and any other facility that receives, maintains, stores, or
34 preserves kits.

1 (2) For each kit the facility shall provide:

2 (i) The category of the kit:

3 (A) Whether sexual assault was reported to law enforcement; or

4 (B) Whether the victim chose not to file a report with law enforcement.

5 (ii) The status of the kit:

6 (A) For kits of medical facilities: the date when the kit was reported to law enforcement,
7 and the date when the kit was picked up by law enforcement;

8 (B) For kits of a law enforcement agency: the date the kit was picked up from a medical
9 facility, the date when the kit was submitted to a crime laboratory, and for any kit not submitted to
10 a crime lab, the reason the kit was not submitted;

11 (C) For kits belonging to another jurisdiction: the date that the jurisdiction was notified and
12 the date the kit was picked up; and

13 (D) For kits in possession of crime laboratories: the date the kit was received from law
14 enforcement and from which agency the kit was received; the date when the kit was tested; the date
15 when the resulting information was entered into CODIS or other relevant state or local DNA
16 databases, and the reasoning, if applicable, that a kit was not tested or a DNA profile was not
17 created.

18 (3) The total number of kits in possession of the entity for more than thirty (30) days or
19 beyond the statutory time frame for kit submission and testing.

20 (4) The total number of kits destroyed and the reason for destruction.

21 (5) The department of health shall compile the data from the reports in a summary report.
22 The summary report shall include a list of all agencies or facilities that failed to participate in the
23 preparation of the report. The annual summary report shall be made publicly available on the
24 department of health's website, and shall be submitted to the governor, the speaker of the house of
25 representatives, the president of the senate, and the office of the attorney general.

26 (b) Within ninety (90) days of the enactment of this chapter, all previously untested kits in
27 medical facilities or other facilities that collect kits shall be submitted to the appropriate law
28 enforcement agency.

29 (c) Within one hundred eighty (180) days of the enactment of this chapter, each law
30 enforcement agency shall submit all previously untested kits, including those sexual assaults past
31 the statute of limitations, to the accredited public crime laboratory or laboratories.

32 (1) Anonymous or unreported kits are exempted from this section unless the victim files a
33 report and consents to the testing of their kit.

34 (2) Anonymous kits shall be safely stored by the law enforcement agency in a manner that

1 preserves evidence for a duration of twenty (20) years or the applicable statute of limitations,
2 whichever is greater.

3 (3) Victims who do not file a report with law enforcement at the time the kit was collected
4 shall not negate their right to report the crime and have the kit tested in the future.

5 (d) An accredited public crime laboratory shall test all previously untested sexual assault
6 kits within ninety (90) days of receipt from the local law enforcement agency.

7 (e) Testing shall be pursued to develop autosomal DNA profiles that are eligible for entry
8 into the Combined DNA Index System (CODIS) and local DNA databases.

9 (1) With the goal of generating a CODIS-eligible DNA profile, if a laboratory is unable to
10 obtain an autosomal CODIS-eligible DNA profile, the laboratory should evaluate the case to
11 determine if any other DNA-typing results could be used for investigative purposes.

12 (2) In cases where testing has resulted in a DNA profile, the laboratory shall enter the full
13 profile into the Combined DNA Index System Database (CODIS) and local DNA databases. The
14 average completion rate for this analysis and classification shall not exceed ninety (90) days.

15 (3) If an accredited public crime laboratory is unable to meet the deadline set forth in
16 subsection (e)(2) of this section, the kits shall be outsourced for testing to an accredited private
17 crime laboratory.

18 **23-95-4. Mandatory submission and testing requirements for newly collected sexual**
19 **assault evidence kits.**

20 (a) Medical facilities and all other facilities that conduct medical forensic examinations
21 shall notify the appropriate law enforcement agency immediately, and no later than twenty-four
22 (24) hours after the collection of a new sexual assault evidence kit.

23 (b) Local law enforcement agencies shall:

24 (1) Take possession of the kit from medical facilities within three (3) business days of
25 notification;

26 (2) Submit newly collected kits for testing to an accredited public crime laboratory within
27 seven (7) days of taking possession of the kit;

28 (i) Anonymous kits are exempted from this section unless the victim files a report and
29 consents to the testing of their kit. Anonymous kits shall be safely stored by a law enforcement
30 agency in a manner that preserves evidence for a duration of twenty (20) years or the applicable
31 statute of limitations, whichever is greater;

32 (ii) Victims who do not file a report with law enforcement at the time the kit was collected
33 shall not negate their right to report the crime and have their kit tested in the future.

34 (3) Notify the appropriate jurisdiction within seven (7) days of taking possession of a kit

1 outside of their jurisdiction. The appropriate jurisdiction shall take possession of the kit within
2 seven (7) days of notification.

3 (4) Kits associated with a reported crime that is uncharged or unsolved shall be preserved
4 by the law enforcement agency for fifty (50) years or the length of the applicable statute of
5 limitations, whichever is greater.

6 (c) An accredited public crime laboratory shall test all kits within thirty (30) days of receipt
7 from any local law enforcement agency.

8 (1) Testing shall be pursued to develop autosomal DNA profiles that are eligible for entry
9 into the Combined DNA Index System (CODIS) and local DNA databases, with the goal of
10 generating a CODIS-eligible DNA profile. If a laboratory is unable to obtain an autosomal CODIS-
11 eligible DNA profile, the laboratory should evaluate the case to determine if any other DNA-typing
12 results could be used for investigative purposes.

13 (2) In cases where testing has resulted in a DNA profile, the laboratory shall enter the full
14 profile into the Combined DNA Index System Database (CODIS) and local DNA databases. The
15 average completion rate for this analysis and classification shall not exceed ninety (90) days.

16 (3) If an accredited public crime laboratory is unable to meet the deadline specified in
17 subsection (c)(2) of this section, untested kits shall be outsourced to an accredited private crime
18 laboratory.

19 **23-95-5. Tracking system for sexual assault evidence kits.**

20 (a) Within ninety (90) days of the enactment of this chapter, the department of health shall
21 convene a multidisciplinary task force on the sexual assault evidence kit handling process. The task
22 force shall:

23 (1) Develop recommendations for establishing a statewide electronic kit tracking system;

24 (2) Identify and pursue state and federal funding to establish the tracking system, inclusive
25 of grants;

26 (3) Be comprised of members that include survivors, law enforcement professionals, crime
27 lab personnel, prosecutors, victim advocates, victim attorneys, and sexual assault nurse examiners
28 or sexual assault forensic examiners; and

29 (4) Monitor the tracking system's implementation for at least two (2) years and make
30 recommendations of necessary modifications.

31 (b) The department of health shall implement the recommendations of the task force to
32 adopt and maintain the statewide tracking system. The department of health may contract with state
33 or non-state entities including, but not limited to, private software and technology providers, for
34 the creation, operation, and maintenance of the system. The tracking system shall:

1 (1) Track the status of the kits from the collection site throughout the criminal justice
2 process, including, but not limited, to the initial collection at medical facilities, inventory and
3 storage by the law enforcement agencies or crime lab, analysis at crime laboratories and storage or
4 destruction after completion of analysis;

5 (2) Allow all agencies or facilities that receive, maintain, store, or preserve kits to update
6 the status and location of the kits; and

7 (3) Allow victims to access the system anonymously and receive updates regarding the
8 location and status of their kit.

9 (c) The department of health may phase-in initial participation according to region, volume
10 of kits, or other appropriate classifications.

11 (d) The department of health shall submit a report on the current status and plan for
12 launching the tracking system, including the plan for phased implementation, to the governor, the
13 speaker of the house of representatives, the president of the senate, the office of the attorney
14 general, and the task force no later than January 1, 2022.

15 (e) All entities in the chain of custody of kits shall fully participate in the system no later
16 than one year from the date of enactment of the tracking system.

17 (f) Participation is mandatory for law enforcement agencies, medical facilities, crime
18 laboratories, and any other facilities that receive, maintain, store, or preserve kits.

19 (g) All previously untested kits shall be entered into the system.

20 **23-95-6. Victims' right to notice.**

21 (a) All victims of sexual assault shall have the right to:

22 (1) Consult with a sexual assault victim advocate on a confidential and privileged basis.
23 Waiving the right to a victim advocate in one instance does not negate this right. The medical
24 facility, law enforcement officer, or prosecutor shall inform the victim of his or her rights prior to
25 commencement of a medical forensic examination or law enforcement interview, and shall not
26 continue unless such right is knowingly and voluntarily waived;

27 (2) Information, upon request, of the location, testing date, and testing results of a kit;
28 whether a DNA profile was obtained from the kit; whether there are matches to DNA profiles in
29 state or federal databases; and the estimated destruction date for the kit, all in a manner of
30 communication designated by the victim;

31 (3) Be informed when there is any change in the status of their case, including if the case
32 has been closed or reopened;

33 (4) Receive written notification, upon request, from the appropriate official with custody
34 of a victim's sexual assault evidence kit not later than sixty (60) days before the date of the intended

1 destruction or disposal:

2 (5) Be granted further preservation of the kit or its probative contents;

3 (6) Designate a person of the victim's choosing to act as a recipient of the information
4 provided under this section;

5 (7) Be informed about how to file a report with law enforcement and have their kit tested
6 in the future, if the victim shall decide not to file a report at the time the kit is first collected; and

7 (8) Be informed about the right to apply for victim compensation.

8 (b) The department of health shall ensure that statewide policies and procedures for law
9 enforcement shall be adopted concerning contact with victims and notification concerning kits. The
10 policies and procedures shall be trauma-informed, survivor-focused, and shall require:

11 (1) Each agency to designate at least one person, who is trained in trauma and victim
12 response, to receive all inquiries concerning kits and to serve as a liaison between the agency and
13 the victim;

14 (2) Victims of sexual assault be provided with the contact information for the designated
15 liaison at the time that a kit is collected; and

16 (3) In advance or at the beginning of the medical forensic examination and law enforcement
17 interview, medical professionals, victim advocates, law enforcement officers, or prosecutors shall
18 provide victims with a written pamphlet of information as designated by the department of health
19 identifying their rights under law, including the rights granted pursuant to this section. This
20 document shall also be made available in English and at least two (2) of the other most commonly
21 spoken languages in the state.

22 SECTION 2. This act shall take effect upon passage.

=====
LC000858
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY — SEXUAL ASSAULT EVIDENCE KITS

1 This act would require any entity that receives, maintains, stores or preserves sexual assault
2 evidence kits to submit a report to the department of health, annually, setting forth the total number
3 of untested kits in possession of such entity. This act would further establish a task force to manage
4 the tracking of all sexual assault evidence kits and provide victims of sexual assault offenses with
5 certain rights pertaining to the sexual assault evidence kit.

6 This act would take effect upon passage.

=====
LC000858
=====