

# **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]

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 with  
16 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 of  
22 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 be  
28 unfounded. If the alleged victim does not consent to law enforcement involvement, the kit shall be  
29 designated a nonreported kit and transmitted to the Marshall University Forensic Science Center.

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

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

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

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

40 (h) Notwithstanding any provision of this code, or any rule or policy promulgated  
41 thereunder, upon completion of the processing and testing set forth in subsection (d) of this  
42 section, the sexual assault forensic examination kit shall be transmitted to the appropriate  
43 investigating local or state law-enforcement agency which shall retain all identified biological  
44 material that is secured in connection with any sexual offense or attempted sexual offense for the  
45 periods set forth in subsection (g) of this section.

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

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

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

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