

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENGROSSED

House Bill 4476

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AND FAST

[Introduced January 22, 2020; Referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §15-9B-1, §15-9B-2, and §15-9B-4 of the Code of West Virginia,
2 1931, as amended, all relating to providing for the timely and efficient collection,
3 submission, testing, retention, and disposition of forensic evidence in sexual assault
4 cases; transferring some duties of the Division of Justice and Community to the Division
5 of Administrative Services; requiring sexual assault forensic examination kits collected by
6 health care providers to be directly submitted to the West Virginia State Police Forensic
7 Laboratory; establishing procedures; defining terms; establishing misdemeanor penalties;
8 and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.

§15-9B-1. Sexual Assault Forensic Examination Commission.

1 (a) The Sexual Assault Forensic Examination Commission is continued as a
2 subcommittee of the Governor’s Committee on Crime, Delinquency and Correction. The purpose
3 of the commission is to establish, manage, and monitor a statewide system to facilitate the timely
4 and efficient collection, submission, testing, retention, and disposition of forensic evidence in
5 sexual assault cases. As used in this article, the word “commission” means the Sexual Assault
6 Forensic Examination Commission.

7 (b) Membership on the commission shall consist of the following:

8 (1) A representative chosen from the membership of the West Virginia Prosecuting
9 Attorneys Association who shall be chosen by the president of that organization;

10 (2) A representative chosen from the membership of the West Virginia Association of
11 Counties who shall be chosen by the executive director of that organization;

12 (3) The Commissioner of the Bureau for Public Health, or his or her designee;

13 (4) A representative from the State Police Forensic Laboratory who shall be chosen by the
14 Superintendent of the West Virginia State Police;

15 (5) A representative from the membership of the West Virginia Child Advocacy Network;

16 (6) The President of the West Virginia Hospital Association, or his or her designee;

17 (7) A representative from the membership of the West Virginia Foundation for Rape and
18 Information Services who shall be chosen by the state coordinator of that organization;

19 (8) A representative of the West Virginia University Forensic and Investigative Sciences
20 Program who shall be chosen by the director of that program; and

21 (9) A representative of the Marshall University Forensic Science Center who shall be
22 chosen by the director of that organization.

23 (c) If any of the representative organizations listed in subsection (b) of this section cease
24 to exist, the director of the Division of ~~Justice and Community~~ Administrative Services, or his or
25 her designee, may select a person from a similar organization.

26 (d) The director of the Division of Administrative Services, or his or her designee, shall
27 appoint the following additional members of the commission:

28 (1) An emergency room physician licensed to practice and practicing medicine in this
29 state;

30 (2) A victim advocate from a rape crisis center employed in this state;

31 (3) A sexual assault nurse examiner who is engaged in an active practice within this state;

32 (4) A law-enforcement officer in this state with experience in sexual assault investigations;

33 (5) A health care provider with pediatric and child abuse expertise licensed in this state;

34 and

35 (6) A director of a child advocacy center licensed and operating in this state.

36 (e) The commission shall establish mandatory statewide protocols for conducting sexual
37 assault forensic examinations, including designating locations and providers to perform forensic
38 examinations, establishing minimum qualifications and procedures for performing forensic
39 examinations and establishing protocols to assure the proper collection of evidence.

§15-9B-2. Powers and duties of the commission.

1 (a) The commission shall facilitate the recruitment and retention of qualified health care
2 providers that are properly qualified to conduct forensic examinations. The commission shall work
3 with county and regional officials to identify areas of greatest need and develop and implement
4 recruitment and retention programs to help facilitate the effective collection of evidence.

5 (b) The commission shall authorize minimum training requirements for providers
6 conducting exams and establish a basic standard of care for victims of sexual assault. The
7 commission may adopt necessary and reasonable requirements relating to establishment of a
8 statewide training and forensic examination system, including, but not limited to, developing a
9 data collection system to monitor adherence to established standards, assisting exam providers
10 to receive training and support services, advocating the fair and reasonable reimbursement to
11 exam providers and facilitating transportation services for victims to get to and from designated
12 exam locations.

13 (c) The commission shall approve local plans for each area of the state on a county or
14 regional basis. If the commission deems necessary, it may add or remove a county or portion
15 thereof from a region to assure that all areas of the state are included in an appropriate local plan.
16 Upon the failure of any county or local region to propose a plan, the commission may implement
17 a plan for that county or region.

18 (d) Once a plan is approved by the commission, it can only be amended or otherwise
19 altered as provided by the rules authorized pursuant to subsection (e) of this section. Designated
20 facilities and organizations providing services shall give the commission 30 days' advance notice
21 of their intent to withdraw from the plan. If there is a change of circumstances that would require
22 a change in a county or regional plan, the members of the local board and the state commission
23 shall be notified.

24 (e) The commission may adopt and modify bylaws, policies, and procedures for the
25 conduct of its meetings and the operation of the committee. The commission may propose rules
26 for legislative approval, in accordance with §29A-3-1 *et seq.* of this code, as are necessary to
27 implement this article.

28 (f) The commission shall elect a chair and a vice chair and such other officers as it deems
29 necessary. Special meetings may be held upon the call of the chair, vice chair, or a majority of
30 the members of the commission. A majority of the members of the commission present in person,
31 by proxy or designation, or by electronic means constitutes a quorum.

32 (g) Any member appointed to the commission who is a written designated representative
33 has the full rights of a member, including the right to vote, serve on subcommittees, or perform
34 any other function.

35 (h) The commission may make recommendations to the Governor's Committee on Crime,
36 Delinquency and Correction for legislation related to the commission's duties and responsibilities
37 or for research or studies by the Division of ~~Justice and Community~~ Administrative Services,
38 Justice and Community Services Section on topics related to the commission's duties and
39 responsibilities.

40 (i) The commission shall by December 1, 2020, develop a strategic plan to: (1)
41 Establish the order of priority for testing kits; (2) test all of the previous kits that can be
42 tested; and (3) establishing a tracking system for use of victims for all kits tested after
43 December 1, 2020, that will allow them to know the status of their test kits. The
44 commission shall submit to the superintendent any additional needed statewide protocols
45 for testing future sexual assault evidence collection kits and recommend agency rules
46 and guidelines for the state police system as provided in this subsection. The commission
47 shall also submit its' report to the Legislature's Joint Committee on Government and
48 Finance.

§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, retention, and disposition of sexual assault forensic examination kits
4 collected by health care providers. The commission shall propose rules for legislative approval,
5 in accordance with §29A-3-1 *et seq.* of this code, detailing best-practice protocols. Upon approval
6 of the legislative rules, local sexual assault forensic examination boards shall follow the rules.

7 (b) Rules promulgated pursuant to §15-9B-4(a) of this code shall include:

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

10 (2) Protocols for storage of DNA samples and sexual assault forensic examination kits.

11 (c) The commission may promulgate emergency rules pursuant to the provisions of §29A-
12 3-15 of this code in order to implement this section: *Provided*, That no emergency rule may permit
13 the destruction of any DNA evidence.

14 (d) After any sexual assault forensic examination kit in a reported sexual offense is
15 collected by any health care provider, the sexual assault forensic examination kit shall be directly
16 submitted by the health care provider to the West Virginia State Police Forensic Laboratory for
17 testing within 30 days of collection or as soon thereafter as is reasonably practicable: *Provided*,
18 That sexual assault forensic examination kits required to be submitted to a federal agency shall
19 be submitted to the appropriate federal agency for processing. Submitted evidence shall be
20 properly packaged in appropriate evidence containers with all seals initialed, and all packages
21 shall have complete and legible evidence labels or tags attached to the outer container.
22 Submission shall be by any reasonable means sufficient to establish the proper chain of custody,
23 including, but not limited to, use of the United States Postal Service or hand delivery by
24 appropriate personnel or a law-enforcement officer. Lack of timely submission of a sexual assault

25 forensic examination kit, standing alone, shall not constitute a defense of any kind in the
26 prosecution of a sexual offense.

27 (e) Except as otherwise set forth in subsection (d) of this section, all sexual assault forensic
28 examination kits collected in this state shall be processed and tested for DNA in accordance with
29 law by the West Virginia State Police Forensic Laboratory and, the collection of the sexual assault
30 forensic examination kit will indicate that a sexual offense has allegedly occurred: *Provided*, That
31 a sexual assault forensic examination kit shall not be required to be processed and tested when
32 a victim requests that the sexual assault forensic examination kit is collected as a nonreported kit,
33 a victim recants to the appropriate state or local law-enforcement agency the allegation that a
34 crime occurred and documentation is provided to the West Virginia State Police Forensic
35 Laboratory of the recantation, or in any case where the alleged crime has been reasonably
36 investigated by the appropriate state or local law-enforcement agency and sufficient
37 documentation is provided to the West Virginia State Police Forensic Laboratory demonstrating
38 that the alleged crime is unfounded.

39 (f) The West Virginia State Police may propose rules for legislative approval, in
40 accordance with §29A-3-1 *et seq.* of this code, to implement the provisions of this section and
41 create a tracking process for sexual assault forensic examination kits in possession of every law-
42 enforcement agency and health care provider responsible for the collection or retention of a
43 sexual assault forensic examination kit pursuant to the provisions of this article.

44 (g) Notwithstanding any provision of this code or any rule or policy promulgated
45 thereunder, upon completion of the processing and testing set forth in subsection (e) of this
46 section, the sexual assault forensic examination kit shall be transmitted to the appropriate
47 investigating local or state law-enforcement agency which shall retain all identified biological
48 material that is secured in connection with any sexual offense or attempted sexual offense for no
49 less than:

50 (1) The period of time that a person who was convicted of a felony sexual offense or
51 homicide remains incarcerated for that offense or until the completion of the person's supervised
52 release; or

53 (2) In a cold case, indefinitely or until a person is convicted of the crime and remains
54 incarcerated or under supervised release for that offense.

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

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

68 (j) The appropriate investigating state or local law-enforcement agency responsible for
69 retaining the sexual assault forensic examination kit shall obtain approval from the circuit court of
70 competent jurisdiction for the county in which the crime occurred before disposal of any biological
71 evidence. Before the disposal of any sexual assault forensic examination kit, reasonable efforts
72 shall be made to provide written notice to the victim by the prosecuting attorney of the county in
73 which the crime occurred.

74 (k) Nothing in this section shall be construed as limiting a state or local law-enforcement
75 agency's discretion concerning the conditions under which biological evidence is retained,

76 preserved, or transferred among different entities if the evidence is retained in a condition that is
77 suitable for DNA testing.

78 (l) For the purposes of this section:

79 “Biological evidence” includes a sexual assault forensic examination kit, semen, blood,
80 saliva, hair, skin tissue, or other identified biological material.

81 “Cold case” means a homicide or a felony sexual offense that remains unsolved for one
82 year or more after being reported to a law-enforcement agency and that has no viable and
83 unexplored investigatory leads.

84 “DNA” means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides
85 an individual’s personal genetic blueprint. DNA encodes genetic information that is the basis of
86 human heredity and forensic identification.

87 “Nonreported kit” means a sexual assault forensic examination kit collected from a victim
88 who has consented to the collection of the kit but has not consented to participate in the criminal
89 justice process.

90 “Sexual assault forensic examination kit” means a set of materials, including, but not
91 limited to, swabs and tools for collecting blood samples, clothing, or other materials used to gather
92 forensic evidence from a victim of reported sexual assault and the evidence obtained with such
93 materials.

94 “Sexual offense” means any offense or attempted offense in the jurisdiction of the state in
95 which a sexual assault forensic examination kit is collected including, but not limited to, the
96 following sections:

97 (A) §61-8-12 of this code;

98 (B) §61-8A-2 of this code;

99 (C) §61-8A-4 of this code;

100 (D) §61-8A-5 of this code;

101 (E) Any offenses listed in §61-8B-1 et seq. of this code;

102 (F) Any offenses listed in §61-8C-1 et seq. of this code;

103 (G) Any offenses listed in §61-8D-1 et seq. of this code.

104 “Unfounded” means evidence exists that proves no crime occurred or an alleged crime
105 where the alleged victim has recanted.

106 (m) Any person who willfully neglects or refuses to do or perform any act on his or her
107 part to be done or performed in connection with the operation of this section is guilty of a
108 misdemeanor and, upon conviction, shall be fined not less than \$50 nor more than \$200 or be
109 confined in jail for a period of not more than 60 days, or both fined and confined.

NOTE: The purpose of this bill is to provide for the timely and efficient collection, submission, testing, retention, and disposition of forensic evidence in sexual assault cases. The bill transfers some duties of the Division of Justice and Community to the Division of Administrative Services. The bill requires sexual assault forensic examination kits collected by health care providers to be directly submitted to the West Virginia State Police Forensic Laboratory. The bill establishes procedures, defines terms, grants rule-making authority, and creates misdemeanor penalties.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.