

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **ENROLLED**

## **House Bill 4476**

BY DELEGATES SHOTT, CRISS, STEELE, HOWELL, D.

KELLY, MILLER, N. BROWN, MAYNARD, LOVEJOY, MANDT

AND FAST

[Passed February 18, 2020; in effect ninety days from  
passage.]



1 AN ACT to amend and reenact §15-9B-1 of the Code of West Virginia, 1931, as amended; to  
2 amend said code by adding thereto 2 new sections, designated §15-9B-1a and §15-9B-5;  
3 and to amend and reenact §15-9B-2 and §15-9B-4 of said code, all relating to providing  
4 for the collection, submission, testing, retention, and disposition of forensic evidence in  
5 sexual assault cases; transferring some duties of the Division of Justice and Community  
6 Services to the Division of Administrative Services; defining terms; requiring sexual  
7 assault forensic examination kits collected by health care providers to be directly  
8 submitted to the West Virginia State Police Forensic Laboratory; requiring certain kits to  
9 be transported to Marshall University Forensic Science Center; establishing protocols for  
10 storage, retention, transmission and disposal of kits; notice to victim regarding disposal;  
11 establishing misdemeanor penalties; 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, tracking, and disposition of forensic  
5 evidence in sexual assault cases. As used in this article, the word "commission" means the Sexual  
6 Assault 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 Administrative Services, or his or her designee, may select  
25 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-1a. Definitions.**

1 As used in this article:

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

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

7 (3) "Nonreported kit" means a kit collected from an alleged victim who has consented to  
8 the collection of the kit, but has not consented to participation in the criminal justice process.

9 (4) "Sexual assault forensic examination kit" or "kit" means a set of materials, including,  
10 but not limited to, swabs and tools for collecting blood samples, clothing, or other materials used  
11 to gather forensic evidence from a victim of a reported sexual offense and the evidence obtained  
12 with the materials.

13 (5) "Sexual offense" means any offense or attempted offense in the jurisdiction of the state  
14 in which a sexual assault forensic examination kit is collected, including, but not limited to, the  
15 following sections:

16 (A) §61-8-12 of this code;

17 (B) §61-8A-2 of this code;

18 (C) §61-8A-4 of this code;

19 (D) §61-8A-5 of this code;

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

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

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

23 (6) “Unfounded” means evidence developed after reasonable investigation and supported  
24 by proper documentation proving no crime occurred or where the alleged victim has recanted.

**§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 or a county or  
14 regional basis. If the commission determines it necessary, it may add or remove a county or  
15 portion of a county from a region to assure that all areas of the state are included in an appropriate  
16 local plan. Upon the failure of any county or local region to propose a plan, the commission may  
17 implement 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, that are necessary to  
27 implement this article.

28 (f) The commission shall elect a chair and a vice chair, and any other officers as it  
29 considers necessary. Special meetings may be held upon the call of the chair, vice chair, or a  
30 majority of the members of the commission. A majority of the members of the commission present  
31 in person, 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 Administrative Services, Justice and Community  
38 Services Section on topics related to the commission's duties and responsibilities.

39 (i) On or before December 1, 2020, the Commission shall develop a written plan to:

40 (1) Prioritize the testing of kits;

41 (2) Ensure all kits are tested; and;

42 (3) Establish a system of tracking kits received which shall be available to victims;

43 (j) The Commission may suggest additional protocols to the superintendent which it  
44 determines might improve the efficacy of testing;

45 (k) Any reports generated by the Commission shall be submitted to the Joint Committee  
46 on Government and 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, 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; and

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

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

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

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



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

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

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

34 (2) For as long as the offense from which the biological evidence is obtained  
35 remains unresolved;

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

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

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

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

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

**§15-9B-5. Offenses; penalty.**

1 Any person who willfully neglects or refuses to do or perform any duty imposed by this  
2 article is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$50 nor more  
3 than \$200, or be confined in jail for a period of not more than 60 days, or both fined and confined.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2020.

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*Governor*