

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 288

By Senators Karnes, Azinger, Barrett, Boley, Deeds,
Grady, Hunt, Martin, Maynard, Phillips, Queen,
Roberts, Rucker, Smith, Stover, Stuart, Swope,
Takubo, Tarr, Taylor, Woodrum, Trump, Clements,
Plymale, and Hamilton

[Introduced January 18, 2023; referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §15-9B-1a and §15-9B-4 of the Code of West Virginia, 1931, as
2 amended, all relating to the Sexual Assault Examination Network; defining "abortion",
3 "chemical abortion", and "licensed medical professional"; requiring the Sexual Assault
4 Forensic Examination Commission to promulgate rules establishing protocols for storage
5 of DNA samples by any licensed medical professional performing a surgical abortion as a
6 result of rape or incest; notifying persons who are rape or incest victims who receive
7 surgical or chemical abortions of the collection; and providing for requirements for
8 preserving the chain of evidence in criminal prosecutions, including evidence from rape
9 kits.

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 "Abortion" means the same as that term is defined in §16-2F-2 of this code.

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

5 "Chemical abortion" means the same as that term is defined in §16-2F-2 of this code.

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

9 "Licensed medical professional" means the same as that term is defined in §16-2F-2 of this
10 code.

11 (3) "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 (4) "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 (5) "Sexual offense" means any offense or attempted offense in the jurisdiction of the state
18 in 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 (6) "Unfounded" means evidence developed after reasonable investigation and supported
28 by 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; and

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

12 (3) Protocols for storage of DNA samples by any licensed medical professional performing
13 a surgical abortion as a result of rape or incest;

14 (4) Protocols for notifying any person, receiving a surgical abortion who is a rape or incest
15 victim, of the collection of evidence;

16 (5) Protocols for notifying any rape or incest victim receiving chemical abortion, non-
17 surgical abortion, or medication designed to induce abortion of the possibility to gather DNA
18 evidence from the results of the abortion; and

19 (6) Protocols for collection of DNA evidence for abortions that preserve the chain of
20 evidence requirements of criminal prosecutions, including evidence from rape kits.

21 (c) The commission may promulgate emergency rules pursuant to the provisions of §29A-
22 3-15 of this code in order to implement this section: *Provided*, That no emergency rule may permit
23 the destruction of any DNA evidence.

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

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

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

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

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

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

44 (h) 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 (d) 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 the
49 periods set forth in subsection (g) of this section.

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

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

63 (k) The appropriate investigating state or local law-enforcement agency responsible for
64 retaining the sexual assault forensic examination kit shall obtain approval from the circuit court of
65 competent jurisdiction for the county in which the crime occurred before disposal of any biological

66 evidence. Before the disposal of any sexual assault forensic examination kit, reasonable efforts
67 shall be made to provide written notice to the victim by the prosecuting attorney of the county in
68 which the crime occurred.

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

NOTE: The purpose of this bill is to establish protocols for collecting and preserving DNA evidence from rape and incest victims who receive surgical or chemical abortions; and notifying those persons that this evidence is being collected.

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