

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 272 Session of 2015

INTRODUCED BY NEUMAN, CALTAGIRONE, PASHINSKI, COHEN, BIZZARRO, BOYLE, BISHOP, SCHLOSSBERG, McNEILL, O'BRIEN, CONKLIN, DEASY, SNYDER, MURT, SCHREIBER, READSHAW, D. COSTA, THOMAS, BROWNLEE, DAVIDSON, FRANKEL, HARHAI, CARROLL, MAHONEY, GILLEN, McCARTER, BARBIN, MATZIE, KORTZ AND DAVIS, FEBRUARY 2, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 14, 2015

AN ACT

1 Amending the act of November 29, 2006 (P.L.1471, No.165),  
2 entitled "An act providing for a sexual assault evidence  
3 collection program and for powers and duties of the  
4 Department of Health and the Pennsylvania State Police; and  
5 establishing civil immunity," further providing for the title  
6 of the act, for definitions and for sexual assault evidence  
7 collection program; and providing for rights of sexual  
8 assault victims.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. The title of the act of November 29, 2006  
12 (P.L.1471, No.165), known as the Sexual Assault Testing and  
13 Evidence Collection Act, is amended to read:

14 AN ACT

15 Providing for a sexual assault evidence collection program and  
16 for powers and duties of the Department of Health and the  
17 Pennsylvania State Police; [and] establishing civil immunity;  
18 and providing for rights of sexual assault victims.

1 Section 2. Section 2 of the act is amended by adding  
2 definitions to read:

3 Section 2. Definitions.

4 The following words and phrases when used in this act shall  
5 have the meanings given to them in this section unless the  
6 context clearly indicates otherwise:

7 "Awaiting testing." With respect to sexual assault evidence,  
8 evidence that meets all of the following:

9 (1) Has been collected and is in the possession of a  
10 local law enforcement agency.

11 (2) Has not received DNA and other appropriate forensic  
12 analyses.

13 (3) Is related to a criminal case or investigation in  
14 which final disposition has not been reached.

15 (4) Should undergo DNA or other appropriate forensic  
16 analysis as determined by a local law enforcement agency.

17 "Backlogged evidence." Sexual assault evidence that is  
18 awaiting testing for 12 months or more.

19 \* \* \*

20 "CODIS." The Combined DNA Index System established and  
21 maintained by the Federal Bureau of Investigation.

22 \* \* \*

23 "Department." The Department of Health of the Commonwealth.

24 "Final disposition." With respect to a criminal case or  
25 investigation to which sexual assault evidence relates, any of  
26 the following:

27 (1) The conviction or acquittal of all suspected  
28 perpetrators of the crime involved.

29 (2) A determination by the local law enforcement agency  
30 in possession of the sexual assault evidence that the case is

1 unfounded.

2 (3) A declaration by the victim of the crime involved  
3 that the act constituting the basis of the crime was not  
4 committed.

5 "Local law enforcement agency." A police department of a  
6 city, borough, incorporated town or township, a regional police  
7 department, the Pennsylvania State Police or campus police.

8 \* \* \*

9 "SEXUAL ASSAULT EVIDENCE." RAPE KIT EVIDENCE COLLECTED BY A <--  
10 HOSPITAL OR HEALTH CARE FACILITY UNDER THE MINIMUM STANDARDS  
11 PUBLISHED PURSUANT TO 28 PA. CODE § 117.52(A)(1) (RELATING TO  
12 MINIMUM REQUIREMENTS FOR SEXUAL ASSAULT EMERGENCY SERVICES).

13 \* \* \*

14 Section 3. Section 3 of the act is amended to read:

15 Section 3. Sexual assault evidence collection program.

16 (a) Establishment.--There is hereby established a Statewide  
17 sexual assault evidence collection program to promote the health  
18 and safety of victims of sexual assault and to facilitate the  
19 prosecution of persons accused of sexual assault. This program  
20 shall be administered by the [Department of Health] department.

21 Under this program the [Department of Health] department shall:

22 (1) Consult with PCAR and the Pennsylvania State Police  
23 to develop minimum standard requirements for all rape kits  
24 used in hospitals and health care facilities in this  
25 Commonwealth.

26 (2) Test and approve commercially available rape kits  
27 for use in this Commonwealth.

28 (3) Review the minimum standard requirements for rape  
29 kits and prior-approved rape kits every three years to assure  
30 that rape kits meet state-of-the-art minimum standards.

1           (4) Consult with PCAR, the Pennsylvania State Police,  
2 the International Association of Forensic Nurses, the  
3 Hospital and Healthsystem Association of Pennsylvania and any  
4 local SART to establish a program to train hospital, child  
5 advocacy center and health care facility personnel in the  
6 correct use and application of rape kits in order to maximize  
7 the health and safety of the victim and the potential to  
8 collect useful admissible evidence to prosecute persons  
9 accused of sexual assault.

10           (5) Approve, with concurrence from the Pennsylvania  
11 State Police and in consultation with PCAR, certain  
12 laboratories to receive sexual assault evidence for testing  
13 and analysis under subsection (c). The department shall  
14 establish guidelines on the criteria that a laboratory must  
15 meet to be approved under this paragraph within six months of  
16 the effective date of this paragraph. Laboratories which have  
17 been approved by the Federal Bureau of Investigation to  
18 access CODIS or an equivalent federally administered national  
19 DNA database shall be automatically approved to receive  
20 sexual assault evidence for testing and analysis under  
21 subsection (c).

22           (b) Duties of Pennsylvania State Police.--

23           (1) When requested by a local law enforcement agency,  
24 district attorneys or the Office of Attorney General, the  
25 Pennsylvania State Police shall ensure that the analysis and  
26 laboratory testing of collected evidence, including samples  
27 that may contain traces of a date rape drug, are  
28 accomplished. The cost of the testing or analysis shall not  
29 be the responsibility of the Pennsylvania State Police.

30           (2) The Pennsylvania State Police shall include, as part

1 of existing training programs for local law enforcement  
2 agencies, training to ensure that the chain of custody of all  
3 rape kits is established to minimize any risk of tampering  
4 with evidence included in the rape kit and to ensure that all  
5 useful and proper evidence in addition to the rape kit is  
6 collected at the hospital or health care facility.

7 (c) Submission and analysis.--The following shall apply to  
8 all sexual assault evidence obtained by a health care facility,  
9 at the request or consent of the victim, on or after the  
10 effective date of this subsection:

11 (1) As soon as practical, the health care facility shall  
12 notify the local law enforcement agency of the jurisdiction  
13 where the reported sexual assault occurred. The local law  
14 enforcement agency shall take possession of the sexual  
15 assault evidence within 72 hours of receiving notice. For  
16 those cases in which the victim has not yet consented to  
17 testing of the evidence, the evidence shall be preserved and  
18 stored for a period of no less than two years, unless consent  
19 is provided before that period. The Pennsylvania State  
20 Police, in consultation with the Pennsylvania Chiefs of  
21 Police Association and the Pennsylvania District Attorneys  
22 Association, shall establish policies for local law  
23 enforcement agencies relating to the storage and preservation  
24 of the evidence.

25 (2) If a victim wishes to consent to the testing of the  
26 sexual assault evidence, the victim or a victim advocate  
27 acting at the victim's direction shall provide written notice  
28 to the local law enforcement agency and the district attorney  
29 of the jurisdiction where the reported sexual assault  
30 occurred.

1       (3) Within 15 days of receiving written notice of  
2 consent to the testing of the sexual assault evidence, the  
3 local law enforcement agency shall submit the evidence  
4 awaiting testing to a laboratory approved by the department  
5 for testing or analysis. The district attorney, in  
6 consultation with the local law enforcement agency, shall  
7 establish policies and procedures to ensure that timely  
8 submission of the evidence has occurred. Except for cases in  
9 which the local law enforcement agency and the laboratory are  
10 the same entity, each submission of evidence shall be  
11 accompanied by the following signed certification:

12               This evidence is being submitted by (name of local  
13 law enforcement agency) in connection with a reported  
14 sexual assault and must be completed within six  
15 months of receipt.

16       (4) A laboratory shall complete the testing or analysis  
17 of all sexual assault evidence submitted pursuant to this  
18 section within six months from the date of receipt of the  
19 evidence, if possible. Backlogged evidence shall be reported  
20 as such by the laboratory to the department and to the local  
21 law enforcement agency that submitted the evidence.

22       (5) The failure of a health care facility or local law  
23 enforcement agency to submit the sexual assault evidence in  
24 accordance with paragraph (1) or (3) shall not alter the  
25 authority of a local law enforcement agency to submit the  
26 evidence or the authority of a laboratory approved by the  
27 department to accept and analyze the evidence.

28 (d) Inventory.--

29       (1) Within six months of the effective date of this  
30 subsection, each local law enforcement agency shall provide

1 written notice to the department, in a form and manner  
2 prescribed by the department, stating the number of sexual  
3 assault cases under its jurisdiction before the effective  
4 date of this subsection for which evidence has not been  
5 submitted to a laboratory for analysis. A local law  
6 enforcement agency shall make arrangements with the  
7 department to ensure that all evidence awaiting testing that  
8 was collected prior to the effective date of this subsection  
9 is submitted to an approved laboratory for testing and  
10 analysis within one year of the submission of notice to the  
11 department. A laboratory shall complete the testing or  
12 analysis of the evidence as soon as possible, but no later  
13 than three years from the date of submission of the evidence  
14 to the laboratory.

15 (2) Within six months of the effective date of this  
16 subsection, each testing laboratory shall provide written  
17 notice to the department, in a form and manner prescribed by  
18 the department, stating the number of sexual assault cases  
19 under its jurisdiction before the effective date of this  
20 subsection for which evidence has not been analyzed.

21 (e) Backlogged evidence.--

22 (1) Each laboratory and local law enforcement agency  
23 must annually report backlogged evidence data in their  
24 possession to the department no later than January 31.

25 (2) The department shall obtain backlogged evidence data  
26 from a laboratory or local law enforcement agency if the  
27 laboratory or local law enforcement agency fails to report  
28 its backlogged evidence as required by paragraph (1).

29 (3) Provided backlogged evidence data exists, the  
30 department shall compile all of the data into a report. The

1 report shall be posted on the department's publicly  
2 accessible Internet website by April 30 of each year. The  
3 report shall also be issued to the General Assembly by April  
4 30 of each year.

5 Section 4. The act is amended by adding a section to read:

6 Section 5. Rights of sexual assault victims.

7 (a) General rule.--In addition to the rights provided under  
8 the act of November 24, 1998 (P.L.882, No.111), known as the  
9 Crime Victims Act, a sexual assault victim, guardian of a sexual  
10 assault victim or close relative of a deceased sexual assault  
11 victim shall have all of the following rights, if requested by  
12 the victim, guardian or relative:

13 (1) The right to a disclosure of information regarding  
14 the submission of any evidence for forensic testing that was  
15 collected from the victim during the investigation of the  
16 offense, unless disclosing the information would interfere  
17 with the investigation or prosecution of the offense, in  
18 which case the victim, guardian or relative shall be informed  
19 of the estimated date on which the information is expected to  
20 be disclosed, if known.

21 (2) The right to a disclosure of information regarding  
22 the status of any analysis being performed on any evidence  
23 that was collected during the investigation of the offense.

24 (3) The right to be notified:

25 (i) at the time a request is submitted to a crime  
26 laboratory to test and analyze any evidence that was  
27 collected during the investigation of the offense;

28 (ii) at the time of the submission of a request to  
29 compare any biological evidence collected during the  
30 investigation of the offense with DNA profiles maintained

1 in CODIS, or any other federally administered national  
2 DNA database, or a state DNA database; and

3 (iii) of whether the comparison provided under  
4 subparagraph (ii) resulted in a match, unless disclosing  
5 the results would interfere with the investigation or  
6 prosecution of the offense, in which case the victim,  
7 guardian or relative shall be informed of the estimated  
8 date on which the results are expected to be disclosed,  
9 if known.

10 (b) Notification.--

11 (1) A victim, guardian or relative who requests to be  
12 notified under subsection (a) (3) must provide a current  
13 address and telephone number to the attorney representing the  
14 Commonwealth and to the local law enforcement agency that is  
15 investigating the offense. The victim, guardian or relative  
16 must inform the attorney representing the Commonwealth and  
17 the local law enforcement agency of any change in the address  
18 or telephone number.

19 (2) A victim, guardian or relative may designate a  
20 person, including an entity that provides services to victims  
21 of sexual assault, to receive any notice requested under  
22 subsection (a) (3).

23 (c) Definition.--As used in this section, the term "close  
24 relative of a deceased sexual assault victim" means an  
25 individual who:

26 (1) was the spouse of a deceased sexual assault victim  
27 at the time of the victim's death; or

28 (2) is a parent or adult brother, sister or child of a  
29 deceased sexual assault victim.

30 Section 5. This act shall take effect as follows:

1           (1) The following provisions shall take effect  
2 immediately:  
3           (i) The addition of section 3(a)(5) of the act.  
4           (ii) This section.  
5           (2) The remainder of this act shall take effect in 60  
6 days.