

SEXUAL ASSAULT TESTING AND EVIDENCE COLLECTION ACT

Act of Nov. 29, 2006, P.L. 1471, No. 165

Cl. 35

AN ACT

Providing for a sexual assault evidence collection program and for powers and duties of the Department of Health and the Pennsylvania State Police; establishing civil immunity; and providing for rights of sexual assault victims.
(Title amended July 10, 2015, P.L.142, No.27)

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

Section 1. Short title.

This act shall be known and may be cited as the Sexual Assault Testing and Evidence Collection Act.

Section 2. Definitions.

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

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

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

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

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

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

(Def. added July 10, 2015, P.L.142, No.27)

"Backlogged evidence." Sexual assault evidence that is awaiting testing for 12 months or more. (Def. added July 10, 2015, P.L.142, No.27)

"Child advocacy center." A local public agency in this Commonwealth, or a not-for-profit entity incorporated in this Commonwealth that is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) or any successor provision, which operates within this Commonwealth for the primary purpose of providing a child-focused, facility-based program dedicated to coordinating a formalized multidisciplinary response to suspected child abuse. At a minimum, either onsite or through a partnership with another entity or entities, a child advocacy center shall assist county agencies, investigative teams and law enforcement by providing services, including forensic interviews, medical evaluations, therapeutic interventions, victim support and advocacy, team case reviews and a system for case tracking.

"CODIS." The Combined DNA Index System established and maintained by the Federal Bureau of Investigation. (Def. added July 10, 2015, P.L.142, No.27)

"Date rape drug." Any sedating substance that can be used to incapacitate a victim, making that person more susceptible to sexual assault, including, but not limited to, Rohypnol, ketamine, GHB, MDMA (ecstasy) and their derivatives.

"Department." The Department of Health of the Commonwealth. (Def. added July 10, 2015, P.L.142, No.27)

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

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

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

(3) A declaration by the victim of the crime involved that the act constituting the basis of the crime was not committed. (Def. added July 10, 2015, P.L.142, No.27)

"Local law enforcement agency." A police department of a city, borough, incorporated town or township, a regional police department, the Pennsylvania State Police or campus police. (Def. added July 10, 2015, P.L.142, No.27)

"PCAR." The Pennsylvania Coalition Against Rape.

"Rape kit." A sexual assault evidence collection kit.

"SART." The Sexual Assault Response Team.

"Sexual assault." Any of the offenses specified in 18 Pa.C.S. Ch. 31 Subch. B (relating to definition of offenses).

"Sexual assault evidence." Rape kit evidence collected by a hospital or health care facility under the minimum standards published pursuant to 28 Pa. Code § 117.52(a)(1) (relating to minimum requirements for sexual assault emergency services). (Def. added July 10, 2015, P.L.142, No.27)

"Victim of sexual assault" or "victim." A person who represents to a health care professional, hospital or other health care facility that the person has experienced a sexual assault.

Section 3. Sexual assault evidence collection program.

(a) Establishment.--There is hereby established a Statewide sexual assault evidence collection program to promote the health and safety of victims of sexual assault and to facilitate the prosecution of persons accused of sexual assault. This program shall be administered by the department. Under this program the department shall:

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

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

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

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

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

(6) Establish a designated telephone number for the use of health care facilities who have notified local law enforcement or the Pennsylvania State Police to take possession of sexual assault evidence that has not been completed within 72 hours. The following apply:

(i) The telephone line shall be staffed by a live person during regular business hours.

(ii) The telephone line shall allow the health care facility to leave a voicemail.

(iii) After receiving a report by a health care facility under this paragraph, the department shall contact local law enforcement or the Pennsylvania State Police to take possession of the sexual assault evidence.

((6) amended June 28, 2019, P.L.223, No.29)

((a) amended Oct. 24, 2018, P.L.1192, No.164)

(b) Duties of Pennsylvania State Police.--

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

(2) The Pennsylvania State Police shall include, as part of existing training programs for local law enforcement agencies, training to ensure that the chain of custody of all rape kits is established to minimize any risk of tampering with evidence included in the rape kit and to ensure that all useful and proper evidence in addition to the rape kit is collected at the hospital or health care facility.

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

(1) Within 12 hours of collection of sexual assault evidence, the health care facility shall notify the local law enforcement agency of the jurisdiction where the reported sexual assault occurred or the Pennsylvania State Police if the jurisdiction is unknown. The local law enforcement agency or the Pennsylvania State Police shall take possession of the sexual assault evidence within 72 hours of receiving notice. If local law enforcement or the Pennsylvania State Police has not taken possession of the sexual assault evidence within 72 hours of notification, the health care facility shall notify the department through the designated telephone number. For those cases in which the victim has not yet consented to testing of the evidence, the evidence shall be preserved and stored for a period of no less than the duration of the maximum applicable criminal statute of limitations, unless consent is provided before that period. The Pennsylvania State Police, in consultation with the Pennsylvania Chiefs of Police Association and the Pennsylvania District Attorneys Association, shall establish policies for local law enforcement agencies relating to the storage and preservation of the evidence, including, but not limited to, the storage and preservation of evidence with unknown jurisdiction and the provision of anonymous submissions. ((1) amended June 28, 2019, P.L.223, No.29)

(2) If a victim wishes to consent to the testing of the sexual assault evidence, the victim or a victim advocate acting at the victim's direction shall provide written notice

to the local law enforcement agency and the district attorney of the jurisdiction where the reported sexual assault occurred.

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

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

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

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

((c) amended Oct. 24, 2018, P.L.1192, No.164)

(c.1) Anonymous submissions.--The following shall apply to sexual assault evidence obtained by a health care facility at the request or with the consent of the victim who does not wish to make a report to law enforcement:

(1) Within 12 hours of collection of the sexual assault evidence, the health care facility shall notify the local law enforcement agency of the jurisdiction where the reported sexual assault occurred. If the victim does not wish to state or does not know where the sexual assault occurred, the health care facility shall notify the Pennsylvania State Police. The local law enforcement agency or Pennsylvania State Police shall take possession of the sexual assault evidence within 72 hours of receiving notice.

(2) The Pennsylvania State Police shall develop a form for the health care facility to attest that the victim gave consent and wishes to remain anonymous. The Pennsylvania State Police shall also develop a procedure to track the rape kit, which permits the victim to make a report to law enforcement and preserves the evidence for the duration of the maximum applicable criminal statute of limitations.

(3) Within 15 days of receiving notice on the required form of consent to the testing of the sexual assault evidence, the local law enforcement agency or Pennsylvania State Police shall submit the evidence awaiting testing to a laboratory approved by the department for testing or analysis.

(4) A laboratory shall complete the testing or analysis of sexual assault evidence submitted under this section within six months from the date of receipt of the evidence.

(5) The failure of a health care facility, local law enforcement agency or the Pennsylvania State Police to submit the sexual assault evidence in accordance with paragraph (1) or (3) shall not alter the authority of a local law enforcement agency, the Pennsylvania State Police or the authority of a laboratory approved by the department to accept and analyze the evidence.

((c.1) added June 28, 2019, P.L.223, No.29)

(d) Inventory.--

(1) Within six months of the effective date of this subsection, each local law enforcement agency shall provide written notice to the department, in a form and manner prescribed by the department, stating the number of sexual assault cases under its jurisdiction before the effective date of this subsection for which evidence has not been submitted to a laboratory for analysis. A local law enforcement agency shall make arrangements with the department to ensure that all evidence awaiting testing that was collected prior to the effective date of this subsection is submitted to an approved laboratory for testing and analysis within one year of the submission of notice to the department. A laboratory shall complete the testing or analysis of the evidence as soon as possible, but no later than three years from the date of submission of the evidence to the laboratory.

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

(e) Backlogged evidence.--

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

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

(3) Provided backlogged evidence data exists, the department shall compile all of the data into a report. The report shall be posted on the department's publicly accessible Internet website by April 30 of each year. The report shall also be issued to the General Assembly by April 30 of each year.

(3 amended July 10, 2015, P.L.142, No.27)

Section 4. Civil immunity.

A health care professional, including a physician, nurse or health care provider, and a health care institution, including a hospital, clinic, child advocacy center or health care facility, that provides evidence or information to a law enforcement officer pursuant to this act at the request or consent of the victim is immune from any civil or professional liability that might arise from the action, with the exception of willful or wanton misconduct.

Section 5. Rights of sexual assault victims.

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

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

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

(3) The right to be notified:

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

(ii) at the time of the submission of a request to compare any biological evidence collected during the investigation of the offense with DNA profiles maintained in CODIS, or any other federally administered national DNA database, or a state DNA database; and

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

(4) The right to not be prevented from, or charged for, receiving a medical forensic examination. ((4) added June 28, 2019, P.L.223, No.29)

(5) The right to:

(i) subject to paragraph (6) and section 3(c)(1), have a sexual assault evidence collection kit or its probative contents relating to the victim preserved, without charge, for the duration of the maximum applicable criminal statute of limitations; and

(ii) be informed in writing of policies governing the collection and preservation of a sexual assault evidence collection kit.

((5) added June 28, 2019, P.L.223, No.29)

(6) The right to, upon written request, receive written notification from the appropriate official with custody of a sexual assault evidence collection kit or its probative contents relating to the victim not later than 60 days before the date of the intended destruction or disposal of the sexual assault evidence collection kit or its probative contents. ((6) added June 28, 2019, P.L.223, No.29)

(7) The right to consult with a sexual assault counselor. ((7) added June 28, 2019, P.L.223, No.29)

(8) The right to receive information concerning availability of protective orders and policies related to the enforcement of protective orders. ((8) added June 28, 2019, P.L.223, No.29)

(9) The right to receive information about the availability of, and eligibility for, victim compensation and restitution. ((9) added June 28, 2019, P.L.223, No.29)

(10) The right to be informed of the rights under this subsection. ((10) added June 28, 2019, P.L.223, No.29)

(b) Notification.--

(1) A victim, guardian or relative who requests to be notified under subsection (a)(3) or (6) must provide a current address and telephone number to the attorney

representing the Commonwealth and to the local law enforcement agency that is investigating the offense. The victim, guardian or relative must inform the attorney representing the Commonwealth and the local law enforcement agency of any change in the address or telephone number.

(2) A victim, guardian or relative may designate a person, including an entity that provides services to victims of sexual assault, to receive any notice requested under subsection (a)(3) or (6).

(3) The appropriate official with custody of the sexual assault evidence collection kit under subsection (a)(6) shall collaborate with a sexual assault counselor to employ best practices when notifying a victim of information pertinent to the victim.

(4) The Attorney General shall, in consultation with the office of victim advocate, the Pennsylvania State Police, the Pennsylvania Chiefs of Police Association, the Pennsylvania District Attorneys Association and the Pennsylvania Coalition Against Rape, develop a standard protocol for notifying sexual assault victims of information relating to evidence gathered regarding the victim. The Office of Victim Advocate shall disseminate the standard protocol developed under this paragraph to law enforcement agencies, rape crisis centers, sexual assault counselors and health care facilities that the Office of Victim Advocate determines are likely to encounter sexual assault victims. The Attorney General, the Pennsylvania State Police, the Pennsylvania Chiefs of Police Association, the Pennsylvania District Attorneys Association, the Pennsylvania Coalition Against Rape and the Office of Victim Advocate shall make the standard protocol available on a publicly accessible Internet website.

((b) amended June 28, 2019, P.L.223, No.29)

(b.1) Anonymous reporters.--

(1) A victim who has chosen to make an anonymous report may still elect to receive notification under this section.

(2) The form for consent for anonymous testing shall include a provision for submission of contact information for a victim requesting notification.

(3) The contact information provided for the purposes of notification shall not, without permission from the victim, be used for any other purpose, including contacting the victim for investigative purposes.

((b.1) added June 28, 2019, P.L.223, No.29)

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Close relative of a deceased sexual assault victim." An individual who:

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

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

"Sexual assault counselor." As defined in 42 Pa.C.S. § 5945.1 (relating to confidential communications with sexual assault counselors).

((c) amended June 28, 2019, P.L.223, No.29)

(5 added July 10, 2015, P.L.142, No.27)

Section 6. Report by Pennsylvania State Police.

In consultation with the department, PCAR and, as necessary with local law enforcement, the Pennsylvania State Police shall

compile the following data and submit a report to the department by December 31, 2018, and annually thereafter:

(1) The volume of sexual assault evidence for which testing is completed.

(2) The volume of backlogged sexual assault evidence awaiting testing.

(3) (Deleted by amendment).

(4) The average turnaround time to complete testing and reasons for any delays in submission or testing of sexual assault evidence.

(5) A review of current practices, including interagency collaboration with law enforcement agencies and rape crisis centers, in rape kit evidence collection every two years.

(6 amended June 28, 2019, P.L.223, No.29)

Section 20. Effective date.

This act shall take effect in 60 days.