

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 AND MATZIE, FEBRUARY 2, 2015

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 31, 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:

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.

19 Section 2. Section 2 of the act is amended by adding

1 definitions to read:

2 Section 2. Definitions.

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

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

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

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

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

14 (4) SHOULD UNDERGO DNA OR OTHER APPROPRIATE FORENSIC <--
15 ANALYSIS AS DETERMINED BY A LOCAL LAW ENFORCEMENT AGENCY.

16 "Backlogged evidence." Sexual assault evidence that is
17 awaiting testing for ~~six~~ 12 months or more. <--

18 * * *

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

21 * * *

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

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

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

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

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

4 "Local law enforcement agency." A police department of a
5 city, borough, incorporated town or township, a regional police
6 department, THE PENNSYLVANIA STATE POLICE or campus police. <--

7 * * *

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

9 Section 3. Sexual assault evidence collection program.

10 (a) Establishment.--There is hereby established a Statewide
11 sexual assault evidence collection program to promote the health
12 and safety of victims of sexual assault and to facilitate the
13 prosecution of persons accused of sexual assault. This program
14 shall be administered by the [Department of Health] department.

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

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

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

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

25 (4) Consult with PCAR, the Pennsylvania State Police,
26 the International Association of Forensic Nurses, the
27 Hospital and Healthsystem Association of Pennsylvania and any
28 local SART to establish a program to train hospital, child
29 advocacy center and health care facility personnel in the
30 correct use and application of rape kits in order to maximize

1 the health and safety of the victim and the potential to
2 collect useful admissible evidence to prosecute persons
3 accused of sexual assault.

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

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

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

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

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

5 ~~(1) The health care facility shall notify the local law <--~~
6 ~~enforcement agency of the jurisdiction where the reported~~
7 ~~sexual assault occurred when the victim has consented to~~
8 ~~release of the evidence. The local law enforcement agency~~
9 ~~shall take possession of the evidence within 72 hours of~~
10 ~~receiving notice. For those cases in which the victim has not~~
11 ~~yet consented to the release, the department, in consultation~~
12 ~~with the Pennsylvania State Police, shall promulgate~~
13 ~~regulations relating to the storage and preservation of the~~
14 ~~evidence.~~

15 (1) AS SOON AS PRACTICAL, THE HEALTH CARE FACILITY SHALL <--
16 NOTIFY THE LOCAL LAW ENFORCEMENT AGENCY OF THE JURISDICTION
17 WHERE THE REPORTED SEXUAL ASSAULT OCCURRED. THE LOCAL LAW
18 ENFORCEMENT AGENCY SHALL TAKE POSSESSION OF THE SEXUAL
19 ASSAULT EVIDENCE WITHIN 72 HOURS OF RECEIVING NOTICE. FOR
20 THOSE CASES IN WHICH THE VICTIM HAS NOT YET CONSENTED TO
21 TESTING OF THE EVIDENCE, THE EVIDENCE SHALL BE PRESERVED AND
22 STORED FOR A PERIOD OF NO LESS THAN TWO YEARS, UNLESS CONSENT
23 IS PROVIDED BEFORE THAT PERIOD. THE PENNSYLVANIA STATE
24 POLICE, IN CONSULTATION WITH THE PENNSYLVANIA CHIEFS OF
25 POLICE ASSOCIATION AND THE PENNSYLVANIA DISTRICT ATTORNEYS
26 ASSOCIATION, SHALL ESTABLISH POLICIES FOR LOCAL LAW
27 ENFORCEMENT AGENCIES RELATING TO THE STORAGE AND PRESERVATION
28 OF THE EVIDENCE.

29 (2) IF A VICTIM WISHES TO CONSENT TO THE TESTING OF THE
30 SEXUAL ASSAULT EVIDENCE, THE VICTIM OR A VICTIM ADVOCATE

1 ACTING AT THE VICTIM'S DIRECTION SHALL PROVIDE WRITTEN NOTICE
2 TO THE LOCAL LAW ENFORCEMENT AGENCY AND THE DISTRICT ATTORNEY
3 OF THE JURISDICTION WHERE THE REPORTED SEXUAL ASSAULT
4 OCCURRED.

5 ~~(2)~~ (3) Within 15 days of receiving WRITTEN NOTICE OF <--
6 CONSENT TO THE TESTING OF the sexual assault evidence, the
7 local law enforcement agency shall submit the evidence
8 awaiting testing to a laboratory approved by the department
9 for testing or analysis. THE DISTRICT ATTORNEY, IN <--
10 CONSULTATION WITH THE LOCAL LAW ENFORCEMENT AGENCY, SHALL
11 ESTABLISH POLICIES AND PROCEDURES TO ENSURE THAT TIMELY
12 SUBMISSION OF THE EVIDENCE HAS OCCURRED. Except for cases in
13 which the local law enforcement agency and the laboratory are
14 the same entity, each submission of evidence shall be
15 accompanied by the following signed certification:

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

20 ~~(3)~~ (4) A laboratory shall complete the testing or <--
21 analysis of all sexual assault evidence submitted pursuant to
22 this section within six months from the date of receipt of
23 the evidence, if possible. Backlogged evidence shall be
24 reported as such by the laboratory to the department and to
25 the local law enforcement agency that submitted the evidence.

26 ~~(4)~~ (5) The failure of a health care facility or local <--
27 law enforcement agency to submit the sexual assault evidence
28 in accordance with paragraph (1) or ~~(2)~~ (3) shall not alter <--
29 the authority of a local law enforcement agency to submit the
30 evidence or the authority of a laboratory approved by the

1 department to accept and analyze the evidence.

2 (d) Inventory.--

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

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

25 (e) Backlogged evidence.--

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

29 (2) The department shall obtain backlogged evidence data
30 from a laboratory or local law enforcement agency if the

1 laboratory or local law enforcement agency fails to report
2 its backlogged evidence as required by paragraph (1).

3 (3) Provided backlogged evidence data exists, the
4 department shall compile all of the data into a report. The
5 report shall be posted on the department's publicly
6 accessible Internet website by April 30 of each year. The
7 report shall also be issued to the General Assembly by April
8 30 of each year.

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

10 Section 5. Rights of sexual assault victims.

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

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

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

28 (3) The right to be notified:

29 (i) at the time a request is submitted to a crime
30 laboratory to test and analyze any evidence that was

1 collected during the investigation of the offense;

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

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

14 (b) Notification.--

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

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

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

30 (1) was the spouse of a deceased sexual assault victim

1 at the time of the victim's death; or

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

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

5 (1) The following provisions shall take effect
6 immediately:

7 (i) The addition of section 3(a)(5) of the act.

8 (ii) This section.

9 (2) The remainder of this act shall take effect in 60
10 days.