

HOUSE BILL No. 5445

April 17, 2014, Introduced by Reps. Walsh, Heise, Slavens, Tlaib, Durhal, Talabi, Santana, Olumba, Barnett, Nathan, Rutledge, Banks, Knezek, Zemke, Kivela, Townsend, Cavanagh, Yanez, Lamonte, Greimel, Stallworth, Hobbs, Lane, Schor, Singh, O'Brien, Geiss, Lyons, Schmidt, Haveman, Roberts, Switalski, Lund, LaFontaine and Oakes and referred to the Committee on Criminal Justice.

A bill to create the sexual assault kit evidence submission act; to provide for the collection of sexual assault kit evidence; to prescribe the powers and duties of certain state and local government departments and agencies; to establish certain procedures regarding the collection, handling, and disposition of sexual assault kit evidence; and to prohibit the exclusion of sexual assault kit evidence under certain circumstances.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "sexual assault kit evidence submission act".

3 Sec. 2. As used in this act:

4 (a) "Department" means the department of state police,
5 including its forensic science division.

6 (b) "Health care facility" includes a hospital, clinic, or

1 urgent care center that is regulated under the public health code,
2 1978 PA 368, MCL 333.1101 to 333.25211, and any other facility that
3 is authorized to provide sexual assault medical forensic exams
4 under that act.

5 (c) "Law enforcement agency" means the local, county, or state
6 law enforcement agency with the primary responsibility for
7 investigating an alleged sexual assault offense case and includes
8 the employees of that agency.

9 (d) "Sexual assault kit evidence" means evidence collected
10 from the administration of a sexual assault evidence kit under
11 section 21527 of the public health code, 1978 PA 368, MCL
12 333.21527.

13 (e) "Sexual assault evidence kit" means that term as defined
14 in section 21527 of the public health code, 1978 PA 368, MCL
15 333.21527.

16 (f) "Sexual assault offense" means a violation or attempted
17 violation of sections 520b to 520g of the Michigan penal code, 1931
18 PA 328, MCL 750.520b to 750.520g.

19 (g) "Victim" means, for the purposes of making communications
20 and receiving notices under this act, an individual who was
21 subjected to a sexual assault offense.

22 Sec. 3. (1) Sexual assault kit evidence shall not be released
23 to a law enforcement agency by a health care facility without the
24 written consent of the sexual assault victim. In the case of a
25 minor or of a person with a legally appointed guardian, the person
26 who is authorized by law or court order to consent to the
27 administration of a sexual assault evidence kit is also authorized

1 to consent to the release of the sexual assault kit evidence to a
2 law enforcement agency under this section.

3 (2) A health care facility that has obtained written consent
4 to release the sexual assault kit evidence shall notify the head of
5 the investigating law enforcement agency if known, or the head of
6 the law enforcement agency having jurisdiction in that portion of
7 the local unit of government in which the medical facility is
8 located of that fact.

9 (3) A health care facility that has not obtained written
10 consent to release any sexual assault kit evidence shall inform the
11 individual from whom sexual assault kit evidence was obtained of
12 its sexual assault kit evidence storage policy. The information
13 provided under this subsection shall include a statement of the
14 period for which that evidence will be stored before it is
15 destroyed and how the individual can have the evidence released to
16 the investigating law enforcement agency at a later date. Any
17 sexual assault kit evidence that is not released to a law
18 enforcement agency under this section shall be stored for a minimum
19 of 1 year before it is destroyed.

20 Sec. 4. (1) A law enforcement agency that receives notice
21 under section 3 that sexual assault kit evidence has been released
22 to that law enforcement agency shall take possession of the sexual
23 assault kit evidence from the health care facility within 14 days
24 after receiving that notice.

25 (2) If a law enforcement agency described in subsection (1)
26 determines that the alleged sexual assault occurred within the
27 jurisdiction of another law enforcement agency and that it does not

1 otherwise have jurisdiction over that assault, that law enforcement
2 agency shall notify the other law enforcement agency of that fact
3 within 14 days after receiving the kit from the health care
4 facility that collected the sexual assault kit evidence.

5 (3) A law enforcement agency that receives notice under
6 subsection (2) shall take possession of the sexual assault kit
7 evidence from the other law enforcement agency within 14 days after
8 receiving that notice.

9 (4) The investigating law enforcement agency that takes
10 possession of any sexual assault kit evidence shall assign a
11 criminal complaint number to that evidence in the manner required
12 by that agency and shall submit that evidence to the department or
13 to a laboratory approved and designated by the department for
14 analysis within 14 days after that law enforcement agency takes
15 possession of that evidence under this section. Sexual assault kit
16 evidence that was received by a law enforcement agency within 30
17 days before the effective date of this act shall also be submitted
18 to the department as provided in this section.

19 (5) Each submission of sexual assault kit evidence for
20 analysis under this act shall be accompanied by the criminal
21 complaint number required under subsection (4).

22 (6) All sexual assault kit evidence submitted to the
23 department on or after the effective date of this act shall be
24 analyzed within 3 months after all of the necessary evidence is
25 received by the department according to standards established by
26 the department or by a laboratory designated by the department
27 provided that sufficient staffing and resources are available to do

1 so.

2 (7) The DNA profiles of all sexual assault kit evidence
3 analyzed under this section on or after the effective date of this
4 act that are eligible for entry into state and national DNA
5 databases shall be uploaded only into those databases specified by
6 the department.

7 (8) The failure of a law enforcement agency to take possession
8 of sexual assault kit evidence as provided in this act or to submit
9 that evidence to the department within the time prescribed under
10 this act does not alter the authority of the law enforcement agency
11 to take possession of that evidence or to submit that evidence to
12 the department under this act and does not alter the authority of
13 the department or its designated laboratory to accept and analyze
14 the evidence or to upload the DNA profile obtained from that
15 evidence into state and national DNA databases under this act.

16 (9) The failure to comply with the requirements of this act
17 does not constitute grounds in any criminal proceeding for
18 challenging the validity of a database match or of any database
19 information, and any evidence of that DNA record shall not be
20 excluded by a court on those grounds.

21 (10) A person accused or convicted of committing a crime
22 against the victim has no standing to object to any failure to
23 comply with the requirements of this act, and the failure to comply
24 with the requirements of this act is not grounds for setting aside
25 the conviction or sentence.

26 Sec. 5. If a law enforcement agency intends to destroy or
27 otherwise dispose of any sexual assault kit evidence in a sexual

1 assault offense case before the expiration for the limitation
2 period applicable under section 24 of chapter VII of the code of
3 criminal procedure, 1927 PA 175, MCL 767.24, the law enforcement
4 agency with the primary responsibility for investigating the case
5 shall notify the victim of that intention in writing at least 60
6 days before the evidence is destroyed or otherwise disposed of.