

No. 2015-27

AN ACT

HB 272

Amending the act of November 29, 2006 (P.L.1471, No.165), entitled "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; and establishing civil immunity," further providing for the title of the act, for definitions and for sexual assault evidence collection program; and providing for rights of sexual assault victims.

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

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

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; **[and]** establishing civil immunity; **and providing for rights of sexual assault victims.**

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

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

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

\* \* \*

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

**"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.*

*"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.*

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*"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).*

\* \* \*

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

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 of Health] department**. Under this program the **[Department of Health] 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).*

(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) *As soon as practical, the health care facility shall notify the local law enforcement agency of the jurisdiction where the reported sexual assault occurred. The local law enforcement agency shall take possession of the sexual assault evidence within 72 hours of receiving notice. 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 two years, 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.*

(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 timely submission of the evidence has occurred. 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, if possible. 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.*

*(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.*

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

**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.*

*(b) Notification.—*

*(1) A victim, guardian or relative who requests to be notified under subsection (a)(3) 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).*

*(c) Definition.—As used in this section, the term "close relative of a deceased sexual assault victim" means 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 or adult brother, sister or child of a deceased sexual assault victim.*

Section 5. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

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

(ii) This section.

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