

SUBSTITUTE FOR
HOUSE BILL NO. 5445

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) "Accredited laboratory" means a DNA laboratory that has
5 received formal recognition that it meets or exceeds a list of
6 standards, including the FBI director's quality assurance

1 standards, to perform specific tests, established by a nonprofit
2 professional association of persons actively involved in forensic
3 science that is nationally recognized within the forensic community
4 in accordance with the provisions of the federal DNA identification
5 act, 42 USC 14132, or subsequent laws.

6 (b) "Analyzed" means evaluating items for the presence of a
7 body fluid, cellular material, or DNA followed by the testing of
8 suitable items at forensic DNA regions for comparison purposes.

9 (c) "Department" means the department of state police,
10 including its forensic science division.

11 (d) "Health care facility" includes a hospital, clinic, or
12 urgent care center that is regulated under the public health code,
13 1978 PA 368, MCL 333.1101 to 333.25211, and any other facility that
14 is authorized to provide sexual assault medical forensic exams
15 under that act.

16 (e) "Law enforcement agency" means the local, county, or state
17 law enforcement agency with the primary responsibility for
18 investigating an alleged sexual assault offense case and includes
19 the employees of that agency.

20 (f) "Sexual assault kit evidence" means evidence collected
21 from the administration of a sexual assault evidence kit under
22 section 21527 of the public health code, 1978 PA 368, MCL
23 333.21527.

24 (g) "Sexual assault evidence kit" means that term as defined
25 in section 21527 of the public health code, 1978 PA 368, MCL
26 333.21527.

27 (h) "Sexual assault offense" means a violation or attempted

1 violation of sections 520b to 520g of the Michigan penal code, 1931
2 PA 328, MCL 750.520b to 750.520g.

3 (i) "Victim" means, for the purposes of making communications
4 and receiving notices under this act, an individual who was
5 subjected to a sexual assault offense.

6 Sec. 3. (1) A health care facility that has obtained written
7 consent to release sexual assault kit evidence shall notify the
8 investigating law enforcement agency, if known, or the law
9 enforcement agency having jurisdiction in that portion of the local
10 unit of government in which the medical facility is located of that
11 fact within 24 hours after obtaining that consent.

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

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

1 (2) If a law enforcement agency described in subsection (1)
2 determines that the alleged sexual assault occurred within the
3 jurisdiction of another law enforcement agency and that it does not
4 otherwise have jurisdiction over that assault, that law enforcement
5 agency shall notify the other law enforcement agency of that fact
6 within 14 days after receiving the kit from the health care
7 facility that collected the sexual assault kit evidence.

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

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

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

25 (6) All sexual assault kit evidence submitted to the
26 department or an accredited laboratory on or after the effective
27 date of this act shall be analyzed within 90 days after all of the

1 necessary evidence is received by the department or other
2 accredited laboratory, provided that sufficient staffing and
3 resources are available to do so.

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

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

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

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

1 the conviction or sentence.

2 Sec. 5. If a law enforcement agency intends to destroy or
3 otherwise dispose of any sexual assault kit evidence in a sexual
4 assault offense case before the expiration for the limitation
5 period applicable under section 24 of chapter VII of the code of
6 criminal procedure, 1927 PA 175, MCL 767.24, and its destruction
7 does not otherwise conflict with the requirements of section 16 of
8 chapter X of the code of criminal procedure, 1927 PA 175, MCL
9 770.16, the law enforcement agency with the primary responsibility
10 for investigating the case shall notify the victim of that
11 intention in writing at least 60 days before the evidence is
12 destroyed or otherwise disposed of.