

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 116

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO SEXUAL ASSAULT EVIDENCE KITS; PROVIDING LEGISLATIVE INTENT; AND
2 AMENDING SECTION 67-2919, IDAHO CODE, TO REVISE PROVISIONS REGARDING
3 THE TESTING OF SEXUAL ASSAULT EVIDENCE KITS, TO DEFINE A TERM, AND TO
4 MAKE TECHNICAL CORRECTIONS.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature that
8 the changes made in the requirements for the testing of sexual assault evi-
9 dence kits contained in this act shall apply only to the testing of sexual as-
10 sult evidence kits collected on and after the effective date of this act and
11 shall not be retroactive to sexual assault evidence kits that were collected
12 prior to the effective date of this act.

13 SECTION 2. That Section 67-2919, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 67-2919. TESTING AND RETENTION OF SEXUAL ASSAULT EVIDENCE KITS. (1)
16 ~~Unless an adult victim of a reported sexual assault expressly indicates oth-~~
17 ~~erwise and e~~Except as provided in subsection (8) of this section, evidence
18 obtained in a sexual assault evidence kit shall be tested by the Idaho state
19 police forensic services laboratory according to sampling protocols and
20 procedures established by the laboratory.

21 (2) (a) An entity that performs a medical examination of a victim of a
22 reported sexual assault using a sexual assault evidence kit shall do so
23 without regard to the ability or inability of a victim of a reported sex-
24 ual assault to pay for such an examination.

25 (b) An entity qualified and reasonably able to perform a medical exam-
26 ination of a victim of a reported sexual assault using a sexual assault
27 evidence kit shall not deny a medical examination to a victim of a re-
28 ported sexual assault.

29 (3) An entity that has performed a medical examination of a victim of
30 a reported sexual assault using a sexual assault evidence kit shall notify
31 the local law enforcement agency of the jurisdiction where the reported sex-
32 ual assault occurred that sexual assault evidence has been collected and is
33 ready for law enforcement to take custody of such evidence according to ~~their~~
34 its established protocol. The medical entity collecting the kit shall docu-
35 ment in the state kit tracking system any required fields.

36 (4) A local law enforcement agency that receives notice from an entity
37 that has performed a medical examination of a victim of a reported sexual as-
38 sult as described in subsection (3) of this section shall facilitate the
39 collection of the sexual assault evidence kit and any other collected evi-
40 dence from the entity that has performed a medical examination of a victim of
41 a reported sexual assault. After obtaining the sexual assault evidence kit

1 and any other collected evidence from the entity that has performed a medi-
2 cal examination of a victim of a reported sexual assault, the local law en-
3 forcement agency shall submit such kit, in adherence to the submission poli-
4 cies of the Idaho state police forensic services laboratory, to the Idaho
5 state police forensic services laboratory for testing as soon as reasonably
6 practical, but not later than thirty (30) days after obtaining the kit. If
7 kit submission to the Idaho state police forensic services laboratory is not
8 done within the thirty (30) day time limit or testing is not done by the Idaho
9 state police forensic services laboratory within the ninety (90) day addi-
10 tional time limit established in this subsection, it shall not affect the
11 ability to prosecute or defeat the jurisdiction of the court. Any law en-
12 forcement agency with sexual assault evidence kits or other sexual assault
13 case evidence belonging to another jurisdiction must notify that jurisdic-
14 tion within seven (7) days of obtaining the kits or evidence, and the receiv-
15 ing jurisdiction must pick up the sexual assault evidence kits or other sex-
16 ual assault case evidence within seven (7) days. The law enforcement agency
17 shall make a good faith effort to collect and submit the required reference
18 samples associated with a submitted sexual assault evidence kit.

19 (5) For all sexual assault evidence kits received pursuant to subsec-
20 tion (4) of this section, the Idaho state police forensic services labora-
21 tory shall test such kits and submit eligible results to the Idaho DNA data-
22 base within ninety (90) days. The laboratory shall report any kits not pro-
23 cessed within ninety (90) days to the county prosecutor with jurisdiction in
24 the case and to the Idaho legislature.

25 (6) Following analysis by the Idaho state police forensic services lab-
26 oratory, sexual assault evidence kits shall be returned to and retained by
27 the investigating agency in accordance with agency evidence standards and
28 for the following durations:

29 (a) For death penalty cases, until the sentence in the case has been
30 carried out and no unapprehended persons associated with the offense
31 exist;

32 (b) For felony cases, including anonymous sexual assault kits col-
33 lected under the violence against women act, fifty-five (55) years from
34 the collection of the kit during the medical examination or until the
35 sentence in the case is completed, whichever occurs first; and

36 (c) For cases before July 1, 2019, where there is no evidence to support
37 a crime being committed, ~~or~~ when it is no longer being investigated as a
38 crime or when an adult victim expressly indicates that no further foren-
39 sic examination or testing occur, ten (10) years from collection of the
40 kit during the medical examination; and

41 (d) For cases on and after July 1, 2019, where a crime is alleged and
42 the allegation has been determined to be unfounded, ten (10) years from
43 collection of the kit during the medical examination.

44 (7) Provided that an investigating agency has current contact infor-
45 mation, the investigating agency shall, upon written request from a victim
46 of sexual assault, a parent or guardian if the victim is a minor, or a rela-
47 tive if the victim is deceased, provide written notification of the destruc-
48 tion or disposal of a sexual assault evidence kit and any other sexual as-
49 sault case evidence no later than sixty (60) days before the date of the de-
50 struction or disposal. A victim of sexual assault, a parent or guardian if

1 the victim is a minor, or a relative if the victim is deceased, may petition
2 a court to preserve a sexual assault evidence kit and its contents for longer
3 than the time prescribed in this subsection.

4 (8) All sexual assault evidence kits collected in this state where a
5 crime is alleged and the allegation has not been determined to be unfounded
6 shall be processed by the Idaho state police forensic services laboratory
7 except when there is no evidence to support a crime being committed, when it
8 is no longer being investigated as a crime or when an adult victim expressly
9 indicates that no further forensic examination or testing occur pursuant to
10 subsection (1) of this section for kits where the victim requests the kit be
11 collected as an anonymous kit, such as under the provisions of the federal
12 violence against women act. Any sexual assault evidence kit, with the ex-
13 ception of an anonymous sexual assault evidence kit, that is not examined
14 and tested shall be independently reviewed by the county prosecutor. In the
15 event such review concludes that the kit should have been tested, testing
16 shall occur as provided in subsections (4) and (5) of this section.

17 (9) The Idaho state police shall promulgate rules to create a tracking
18 process for sexual assault evidence kits in possession of the Idaho state po-
19 lice forensic services laboratory and every law enforcement agency through-
20 out the state. Such rules shall provide for the information to be submit-
21 ted to the Idaho state police by law enforcement agencies to assist in such
22 tracking.

23 (10) Idaho state police forensic services shall approve and provide, at
24 no cost to the victim, appropriate sexual assault evidence kits to request-
25 ing entities and law enforcement agencies. All such kits shall contain a
26 form for victims to inform them of their right of notification pursuant to
27 subsections (12) and (13) of this section and of their right to decline to
28 have a kit collected ~~or tested~~ pursuant to subsection (1) of this section.

29 (11) Within one hundred eighty (180) days of the effective date of this
30 act, the Idaho state police forensic services laboratory shall provide a
31 ~~one-time~~ onetime report to the legislature of all untested sexual assault
32 evidence kits in Idaho. To assist with this ~~one-time~~ onetime report, all law
33 enforcement agencies in Idaho shall perform a ~~one-time~~ onetime audit of any
34 untested sexual assault evidence kits in their possession and submit to the
35 Idaho state police forensic services director the following:

- 36 (a) The number of untested kits in the law enforcement agency's posses-
37 sion;
38 (b) The date each kit was collected and the reason it was not submitted
39 to Idaho state police forensic services for testing; and
40 (c) The number of any anonymous or unreported kits in the law enforce-
41 ment agency's possession.

42 Law enforcement agencies shall follow the same protocol to perform the audit
43 of untested sexual assault evidence kits as they would with any new kit sub-
44 mitted to the agency. The audit performed by a law enforcement agency shall
45 be reviewed by a law enforcement representative and the county prosecutor
46 before the final report is provided to the legislature.

47 (12) A law enforcement agency that submits a sexual assault evidence kit
48 pursuant to subsection (4) of this section shall, upon written request, no-
49 tify a victim of sexual assault, a parent or guardian if the victim is a minor

1 at the time of notification, or a relative if the victim is deceased, of the
2 following:

3 (a) When the sexual assault evidence kit is submitted to the Idaho state
4 police forensic services laboratory;

5 (b) When any evidence sample DNA profile is entered into the Idaho DNA
6 database;

7 (c) When a DNA match occurs; provided however, that such notification
8 shall state only that a match has occurred and shall not contain any ge-
9 netic or other identifying information; and

10 (d) When there is any change in the status of ~~their~~ the case or reopening
11 of the case.

12 As used in this subsection, "notify" shall include updates to a website used
13 by the Idaho state police forensic services laboratory for sexual assault
14 evidence kits.

15 (13) On or before January 20, 2017, and by January 20 of each year there-
16 after, Idaho state police forensic services shall submit a report to the
17 Idaho legislature regarding its examination of sexual assault evidence kits
18 throughout the state in the previous year. The report shall include, but not
19 be limited to, the number of kits purchased and distributed by Idaho state
20 police forensic services, the number of kits collected by each law enforce-
21 ment agency, the number of kits tested by the Idaho state police forensic
22 services laboratory, the number of kits not submitted to the Idaho state
23 police forensic services laboratory pursuant to subsection ~~(1) or~~ (8) of
24 this section, the number of DNA database hits from sexual assault ~~cases,~~
25 evidence kits, the number of unresolved DNA database hits from sexual as-
26 sault evidence kits for each law enforcement agency, the number of sexual
27 assault evidence kits submitted without required reference samples for each
28 law enforcement agency, and a list of any law enforcement agencies that did
29 not adhere to the tracking process promulgated pursuant to subsection (9) of
30 this section, and for the report submitted in 2017, a list of any law enforce-
31 ment agencies that did not participate in the audit required in subsection
32 (11) of this section. This report shall be available on the website of the
33 Idaho state police and readily available to the public. No victim or alleged
34 perpetrator names shall be included in the report. Information shall be
35 provided in aggregate and shall not include case-specific information.

36 (14) As used in this section:

37 (a) "Sexual assault evidence kit" means a set of materials, such as
38 swabs and tools for collecting blood samples, used to gather forensic
39 evidence from a victim of reported sexual assault and the evidence ob-
40 tained with such materials.

41 (b) "Unfounded" means evidence exists that proves no crime occurred.

42 (c) "Written request" and "written notification" shall include elec-
43 tronic mail.