

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 146

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO SEXUAL ASSAULT EVIDENCE; AMENDING SECTION 67-2919, IDAHO CODE,
2 TO PROVIDE THAT A VICTIM OF SEXUAL ASSAULT SHALL NOT BE DENIED A CERTAIN
3 MEDICAL EXAMINATION, TO PROVIDE THAT INABILITY TO PAY FOR AN EXAMINA-
4 TION SHALL NOT BE AN OBSTACLE, TO REVISE TERMINOLOGY, TO REVISE PROVI-
5 SIONS REGARDING RETENTION OF SEXUAL ASSAULT EVIDENCE KITS, TO PROVIDE
6 THAT CERTAIN PERSONS SHALL RECEIVE WRITTEN NOTIFICATION IN CERTAIN IN-
7 STANCES, TO PROVIDE THAT LAW ENFORCEMENT SHALL NOTIFY CERTAIN PERSONS
8 REGARDING A CHANGE IN THE STATUS OF A CASE, TO REMOVE PROVISIONS REGARD-
9 ING NOTIFICATION BY THE PROSECUTOR OF CERTAIN INFORMATION, TO DEFINE A
10 TERM AND TO MAKE TECHNICAL CORRECTIONS.
11

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

13 SECTION 1. 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 except as provided in subsection (68) 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 health care facility entity that has performed a medical exami-
30 nation of a victim of a reported sexual assault using a sexual assault evi-
31 dence kit shall notify the local law enforcement agency of the jurisdiction
32 where the reported sexual assault occurred that sexual assault evidence has
33 been collected and is ready for law enforcement to take custody of such evi-
34 dence according to their established protocol.

35 (34) A local law enforcement agency that receives notice from an health
36 care facility entity that has performed a medical examination of a victim
37 of a reported sexual assault as described in subsection (23) of this sec-
38 tion shall facilitate the collection of the sexual assault evidence kit and
39 any other collected evidence from the health care facility entity that has
40 performed a medical examination of a victim of a reported sexual assault.
41 After obtaining the sexual assault evidence kit and any other collected
42 evidence from the health care facility entity that has performed a medical

1 examination of a victim of a reported sexual assault, the local law enforce-
2 ment agency shall submit such kit, in adherence to the submission policies
3 of the Idaho state police forensic services laboratory, to the Idaho state
4 police forensic services laboratory for testing as soon as reasonably prac-
5 tical, but not later than thirty (30) days after obtaining the kit. If kit
6 submission to the Idaho state police forensic services laboratory is not
7 done within the thirty (30) day time limit or testing is not done by the
8 Idaho state police forensic services within the ninety (90) day additional
9 time limit established in this subsection, it shall not affect the ability
10 to prosecute or defeat the jurisdiction of the court. Any law enforcement
11 agency with sexual assault evidence kits or other sexual assault case ev-
12 idence belonging to another jurisdiction must notify that jurisdiction
13 within seven (7) days of obtaining the kits or evidence, and the receiving
14 jurisdiction must pick up the sexual assault evidence kits or other sexual
15 assault case evidence within seven (7) days.

16 (45) For all sexual assault evidence kits received pursuant to subsec-
17 tion (34) of this section, the Idaho state police forensic services labora-
18 tory shall test such kits and submit eligible results to the Idaho DNA data-
19 base within ninety (90) days. The laboratory shall report any kits not pro-
20 cessed within ninety (90) days to the county prosecutor with jurisdiction in
21 the case and to the Idaho legislature.

22 (56) Following analysis by the Idaho state police forensic services
23 laboratory, sexual assault evidence kits shall be returned to and retained
24 by the investigating agency in accordance with agency evidence standards and
25 for the following a reported sexual assault or for the period of time that
26 any person remains incarcerated in connection with the offense, whichever is
27 greater durations:

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

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

35 (c) For cases where there is no evidence to support a crime being com-
36 mitted, when it is no longer being investigated as a crime or when an
37 adult victim expressly indicates that no further forensic examination
38 or testing occur, ten (10) years from collection of the kit during the
39 medical examination.

40 (7) Provided that an investigating agency has current contact infor-
41 mation, the investigating agency shall, upon written request from a victim
42 of sexual assault, a parent or guardian if the victim is a minor, or a rela-
43 tive if the victim is deceased, provide written notification of the destruc-
44 tion or disposal of a sexual assault evidence kit and any other sexual as-
45 sault case evidence no later than sixty (60) days before the date of the de-
46 struction or disposal. A victim of sexual assault, a parent or guardian if
47 the victim is a minor, or a relative if the victim is deceased, may petition
48 a court to preserve a sexual assault evidence kit and its contents for longer
49 than the time prescribed in this subsection.

1 (68) All sexual assault evidence kits collected in this state shall be
 2 processed by the Idaho state police forensic services laboratory except when
 3 there is no evidence to support a crime being committed, when it is no longer
 4 being investigated as a crime or when an adult victim expressly indicates
 5 that no further forensic examination or testing occur pursuant to subsec-
 6 tion (1) of this section. Any sexual assault evidence kit that is not exam-
 7 ined and tested shall be independently reviewed by the county prosecutor. In
 8 the event such review concludes that the kit should have been tested, testing
 9 shall occur as provided in subsections (34) and (45) of this section.

10 (79) The Idaho state police shall promulgate rules to create a tracking
 11 process for sexual assault evidence kits in possession of the Idaho state po-
 12 lice forensic services laboratory and every law enforcement agency through-
 13 out the state. Such rules shall provide for the information to be submit-
 14 ted to the Idaho state police by law enforcement agencies to assist in such
 15 tracking.

16 (810) Idaho state police forensic services shall approve and provide,
 17 at no cost to the victim, appropriate sexual assault evidence kits to re-
 18 questing ~~health care facilities~~ entities and law enforcement agencies. All
 19 such kits shall contain a form for victims to inform them of their right of
 20 notification pursuant to subsections (102) and (113) of this section and of
 21 their right to decline to have a kit collected or tested pursuant to subsec-
 22 tion (1) of this section.

23 (911) Within one hundred eighty (180) days of the effective date of this
 24 act, the Idaho state police forensic services laboratory shall provide a
 25 one-time report to the legislature of all untested sexual assault evidence
 26 kits in Idaho. To assist with this one-time report, all law enforcement
 27 agencies in Idaho shall perform a one-time audit of any untested sexual as-
 28 sault evidence kits in their possession and submit to the Idaho state police
 29 forensic services director the following:

- 30 (a) The number of untested kits in the law enforcement agency's posses-
 31 sion;
- 32 (b) The date each kit was collected and the reason it was not submitted
 33 to Idaho state police forensic services for testing; and
- 34 (c) The number of any anonymous or unreported kits in the law enforce-
 35 ment agency's possession.

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

41 (102) A law enforcement agency that submits a sexual assault evidence
 42 kit pursuant to subsection (34) of this section shall, upon written request,
 43 notify a victim of sexual assault, a parent or guardian if the victim is a
 44 minor at the time of notification, or a relative if the victim is deceased, of
 45 the following:

- 46 (a) When the sexual assault evidence kit is submitted to the Idaho state
 47 police forensic services laboratory;
- 48 (b) When any evidence sample DNA profile is entered into the Idaho DNA
 49 database; and

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

4 (d) When there is any change in the status of their case or reopening of
 5 the case.

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

9 ~~(11) The county prosecutor, or their designee, shall upon written re-~~
 10 ~~quest notify a victim of sexual assault, a parent or guardian if the victim is~~
 11 ~~a minor at the time of notification, or a relative if the victim is deceased,~~
 12 ~~of the following:~~

13 ~~(a) When there is any planned destruction of a sexual assault evidence~~
 14 ~~kit or any other sexual assault case evidence ; and~~

15 ~~(b) When there is any change in the status of their case or reopening of~~
 16 ~~the case.~~

17 (123) On or before January 20, 2017, and by January 20 of each year
 18 thereafter, Idaho state police forensic services shall submit a report to
 19 the Idaho legislature regarding its examination of sexual assault evidence
 20 kits throughout the state in the previous year. The report shall include,
 21 but not be limited to, the number of kits purchased and distributed by Idaho
 22 state police forensic services, the number of kits collected by each law
 23 enforcement agency, the number of kits tested by the Idaho state police
 24 forensic services laboratory, the number of kits not submitted to the Idaho
 25 state police forensic services laboratory pursuant to subsection (1) or ~~(68)~~
 26 of this section, the number of DNA database hits from sexual assault cases,
 27 a list of any law enforcement agencies that did not adhere to the tracking
 28 process promulgated pursuant to subsection ~~(79)~~ of this section, and for the
 29 report submitted in 2017, a list of any law enforcement agencies that did not
 30 participate in the audit required in subsection ~~(911)~~ of this section. This
 31 report shall be available on the website of the Idaho state police and read-
 32 ily available to the public. No victim or alleged perpetrator names shall be
 33 included in the report. Information shall be provided in aggregate and shall
 34 not include case-specific information.

35 ~~(134) As used in this section:~~

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

40 ~~(b) "Written request" and "written notification" shall include elec-~~
 41 ~~tronic mail.~~