

HOUSE BILL NO. 4489

April 27, 2023, Introduced by Reps. Breen, Brixie, Miller, Arbit, Rogers, Tsernoglou, Hill, Paiz, Liberati, Farhat, Rheingans, Martus, Wilson, McFall, Scott, Hope, Andrews, Price, Young, Haadsma, Hood, Dievendorf, Steckloff, Hoskins, Byrnes, Brabec, Stone and Whitsett and referred to the Committee on Criminal Justice.

A bill to amend 2014 PA 227, entitled
"Sexual assault kit evidence submission act,"
by amending sections 3, 4, and 5 (MCL 752.933, 752.934, and
752.935) and by adding section 4a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) A health care facility that has obtained written
2 consent to release sexual assault kit evidence shall notify the
3 investigating law enforcement agency, if known, or the law
4 enforcement agency having jurisdiction in that portion of the local
5 unit of government in which the medical facility is located of that

1 fact within 24 hours after obtaining that consent.

2 (2) A health care facility that has not obtained written
3 consent to release any sexual assault kit evidence shall inform the
4 individual from whom sexual assault kit evidence was obtained of
5 its sexual assault kit evidence storage policy. The information
6 provided under this subsection shall include a statement of the
7 period for which that evidence will be stored before it is
8 destroyed and how the individual can have the evidence released to
9 the investigating law enforcement agency at a later date. Any
10 sexual assault kit evidence that is not released to a law
11 enforcement agency under this section ~~shall~~**must** be stored for a
12 minimum of ~~1 year~~**20 years** before it is destroyed.

13 **(3) A health care facility that obtains consent to release**
14 **sexual assault kit evidence under subsection (1) shall inform the**
15 **victim that the sexual assault kit evidence will be analyzed in not**
16 **more than 30 days unless the victim requests, in writing, that the**
17 **accredited laboratory defers the analysis of the sexual assault kit**
18 **evidence as provided under section 4a.**

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

24 (2) If a law enforcement agency described in subsection (1)
25 determines that the alleged sexual assault occurred within the
26 jurisdiction of another law enforcement agency and that it does not
27 otherwise have jurisdiction over that assault, that law enforcement
28 agency shall notify the other law enforcement agency of that fact
29 within 14 days after receiving the kit from the health care

1 facility that collected the sexual assault kit evidence.

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

6 (4) The investigating law enforcement agency that takes
7 possession of any sexual assault kit evidence shall assign a
8 criminal complaint number to that evidence in the manner required
9 by that agency and shall submit that evidence to the department or
10 another accredited laboratory for analysis within 14 days after
11 that law enforcement agency ~~takes possession of that evidence under~~
12 ~~this section. Sexual assault kit evidence that was received by a~~
13 ~~law enforcement agency within 30 days before the effective date of~~
14 ~~this act shall also be submitted to the department or other~~
15 ~~accredited laboratory as provided in this section.~~ **receives notice**
16 **under section 3 or subsection (3), as applicable.**

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

20 (6) ~~All~~ **Subject to section 4a, all** sexual assault kit evidence
21 submitted to the department or an accredited laboratory on or after
22 ~~the effective date of this act shall~~ **March 31, 2015 must** be
23 analyzed within ~~90~~ **30** days after all of the necessary evidence is
24 received by the department or other accredited laboratory. ~~τ~~
25 ~~provided that sufficient staffing and resources are available to do~~
26 ~~so.~~

27 (7) ~~The~~ **Subject to section 4a, the** DNA profiles of all sexual
28 assault kit evidence analyzed under this section on or after ~~the~~
29 ~~effective date of this act shall~~ **March 31, 2015 must** be uploaded

1 ~~only into these~~**the** databases at the state and national levels
2 specified by the department, **including, but not limited to, the**
3 **federal combined DNA index system (CODIS), not more than 14 days**
4 **after the evidence is analyzed.**

5 (8) The failure of a law enforcement agency to take possession
6 of sexual assault kit evidence as provided in this act or to submit
7 that evidence to the department or other accredited laboratory
8 within the time prescribed under this act does not alter the
9 authority of the law enforcement agency to take possession of that
10 evidence or to submit that evidence to the department or other
11 accredited laboratory under this act and does not alter the
12 authority of the department or other accredited laboratory to
13 accept and analyze the evidence or to upload the DNA profile
14 obtained from that evidence into state and national DNA databases
15 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 (11) **A law enforcement agency that submits sexual assault kit**
27 **evidence under this act shall, immediately following the**
28 **submission, notify the victim of the name, address, and telephone**
29 **number of the department or other accredited laboratory that**

1 received the sexual assault kit evidence.

2 Sec. 4a. (1) If the department or other accredited laboratory
3 has not begun analyzing sexual assault kit evidence, the victim for
4 which the sexual assault kit evidence was collected under this act
5 may request, in writing to the department or other accredited
6 laboratory, to defer the analysis of sexual assault kit evidence.

7 (2) Subject to subsection (3), the department or other
8 accredited laboratory that receives a request to defer an analysis
9 under subsection (1) shall not analyze the sexual assault kit
10 evidence and shall retain the sexual assault kit evidence as
11 provided in section 5.

12 (3) If a victim requests to defer an analysis under subsection
13 (1), that victim may, before the expiration of the retention period
14 described in section 5(2), request the department or other
15 accredited laboratory to analyze the sexual assault kit evidence.

16 Sec. 5. (1) ~~If~~ Subject to subsection (2), if a law enforcement
17 agency intends to destroy or otherwise dispose of any sexual
18 assault kit evidence in a sexual assault offense case before the
19 expiration for the limitation period applicable under section 24 of
20 chapter VII of the code of criminal procedure, 1927 PA 175, MCL
21 767.24, and its destruction does not otherwise conflict with the
22 requirements of section 16 of chapter X of the code of criminal
23 procedure, 1927 PA 175, MCL 770.16, the law enforcement agency with
24 the primary responsibility for investigating the case shall notify
25 the victim of that intention in writing at least 60 days before the
26 evidence is destroyed or otherwise disposed of.

27 (2) If the department or other accredited laboratory receives
28 a request from a victim to defer an analysis under section 4a, the
29 department or other accredited laboratory shall not destroy or

1 otherwise dispose of the sexual assault kit evidence before either
2 of the following occurs:

3 (a) The expiration for the limitation period applicable under
4 section 24 of chapter VII of the code of criminal procedure, 1927
5 PA 175, MCL 767.24.

6 (b) If the victim was a minor at the time of the sexual
7 assault offense, the date the victim reaches 40 years of age.