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SENATE BILL NO. 658

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 7, 2022)

(Patron Prior to Substitute—Senator McClellan)

A BILL to amend and reenact §§ 19.2-11.8 and 19.2-11.11 of the Code of Virginia, relating to physical evidence recovery kits; victim's right to notification; storage.

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-11.8 and 19.2-11.11 of the Code of Virginia are amended and reenacted as follows:****§ 19.2-11.8. Submission of physical evidence recovery kits to the Department.**

A. A law-enforcement agency that receives a physical evidence recovery kit shall submit the physical evidence recovery kit to the Department for analysis within 60 days of receipt, except under the following circumstances: (i) it is an anonymous physical evidence recovery kit that shall be forwarded to the Division for storage; (ii) the physical evidence recovery kit was collected by the Office of the Chief Medical Examiner as part of a routine death investigation, and the medical examiner and the law-enforcement agency agree that analysis is not warranted; (iii) the physical evidence recovery kit is connected to an offense that occurred outside of the Commonwealth; (iv) the physical evidence recovery kit was determined by the law-enforcement agency not to be connected to a criminal offense; or (v) another law-enforcement agency has taken over responsibility for the investigation related to the physical evidence recovery kit. *When a state or local law-enforcement agency located within the Commonwealth has taken over responsibility for the investigation related to the physical evidence recovery kit as provided in clause (v), unless one of the exceptions in clause (i) through (iv) also applies, the physical evidence recovery kit shall be transferred to such law-enforcement agency and such law-enforcement agency shall submit the physical recovery kit to the Department within 60 days of receipt from the original receiving law-enforcement agency.*

B. Upon completion of analysis, the Department shall return the physical evidence recovery kit to the submitting law-enforcement agency. Upon receipt of the physical evidence recovery kit from the Department, the law-enforcement agency shall store the physical evidence recovery kit for a period of 10 years or until 10 years after the victim reaches the age of majority if the victim was a minor at the time of collection, whichever is longer. The law-enforcement agency shall store the physical evidence recovery kit for a period of 10 years following the receipt of a written objection to the destruction of the kit from the victim. After the mandatory retention period or any additional 10-year storage period has lapsed, the law-enforcement agency shall, unless the victim has made a written request not to be contacted for this purpose, make a reasonable effort to notify the victim of the intended destruction of the physical evidence recovery kit no less than 60 days prior to the intended date of such destruction. In the absence of a response from the victim, or with the consent of the victim, the law-enforcement agency may destroy the physical evidence recovery kit or, in its discretion, may elect to retain the physical evidence recovery kit for a longer period of time.

C. *For physical evidence recovery kits that meet the exceptions in clause (ii) or (iv) of subsection A or that meet the exception in clause (iii) and (v) of subsection A that are not transferred to the law-enforcement agency outside of the Commonwealth in which the offense occurred or to the law-enforcement agency that has taken over responsibility for the investigation related to the physical evidence recovery kit, the law-enforcement agency that received the physical evidence recovery kit shall store such kit for a period of 10 years or until 10 years after the victim reaches the age of majority if the victim was a minor at the time of collection, whichever is longer. After the mandatory retention period, the law-enforcement agency may destroy the physical evidence recovery kit or, in its discretion, may elect to retain the physical evidence recovery kit for a longer period of time.*

D. The DNA profiles developed from physical evidence recovery kits submitted to the Department for analysis pursuant to this section shall be uploaded into any local, state, or national DNA data bank only if eligible as determined by Department procedures and in accordance with state and federal law.

§ 19.2-11.11. Victim's right to notification of scientific analysis information.

A. In addition to the rights provided under Chapter 1.1 (§ 19.2-11.01 et seq.), a victim of sexual assault, a parent or guardian of a victim of a sexual assault who was a minor at the time of the offense, or the next of kin of a deceased victim of sexual assault shall have the right to request and receive information from the law-enforcement agency regarding (i) the submission of any physical evidence recovery kit for forensic analysis that was collected from the victim during the investigation of the offense; (ii) the status of any analysis being performed on any evidence that was collected during the investigation of the offense; (iii) the results of any analysis; and (iv) the time frame for how long the kit will be held in storage and the victim's rights regarding such storage, unless disclosing this information

60 would interfere with the investigation or prosecution of the offense, in which case the victim, parent,
61 guardian, or next of kin shall be informed of the estimated date on which the information may be
62 disclosed, if known. *The law-enforcement agency shall inform the victim, parent, guardian, or next of*
63 *kin of the unique identification number assigned to the physical evidence recovery kit utilized by the*
64 *health care provider and the personal identification number required to view the status of the physical*
65 *evidence recovery kit and shall provide information regarding the Physical Evidence Recovery Kit*
66 *Tracking System, unless disclosing this information would interfere with the investigation or prosecution*
67 *of the offense, in which case the victim, parent, guardian, or next of kin shall be informed of the*
68 *estimated date on which the information may be disclosed, if known.*

69 B. In the case of a physical evidence recovery kit that was received by a law-enforcement agency
70 prior to July 1, 2016, and that has subsequently been submitted for analysis, the victim, a parent or
71 guardian of a minor victim, or the next of kin of a deceased victim shall be notified by the
72 law-enforcement agency of the completion of the analysis and shall, upon request, receive information
73 from the law-enforcement agency regarding the results of any analysis, unless disclosing this information
74 would interfere with the investigation or prosecution of the offense, in which case the victim, parent,
75 guardian, or next of kin shall be informed of the estimated date on which the information may be
76 disclosed, if known. A good faith attempt to locate the victim, a parent or guardian of a minor victim,
77 or the next of kin of a deceased victim shall be made if a current address for the victim, a parent or
78 guardian of a minor victim, or the next of kin of a deceased victim is unavailable.

79 C. The victim, parent, guardian, or next of kin who requests to be notified under subsection A shall
80 provide a current address and telephone number to the attorney for the Commonwealth and to the
81 law-enforcement agency that is investigating the offense and keep such information updated.

82 The victim, parent, guardian, or next of kin who requests to be notified under subsection B may
83 provide a current address and telephone number to the attorney for the Commonwealth and to the
84 law-enforcement agency that is investigating the offense and keep such information updated.

85 D. Nothing contained in this section shall require a law-enforcement agency to disclose any
86 information regarding the results of any analysis to a parent or guardian of a minor victim or to the next
87 of kin of a deceased victim if such parent, guardian, or next of kin is the alleged perpetrator of the
88 offense.