



2022 South Dakota Legislature

House Bill 1068

Introduced by: **Representative Reed**

1 **An Act to clarify the processing of sexual assault kits performed on individuals ages**
 2 **sixteen and seventeen.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 23-5C-2 be AMENDED:**

5 **23-5C-2.** A health care facility examining or treating a victim of rape or sexual
 6 assault shall give the victim, or a victim or witness assistant, the option of reporting the
 7 rape or sexual assault to an appropriate law enforcement agency. A health care facility
 8 may not require the victim to report the rape or sexual assault in order to receive an
 9 examination or treatment for the rape or sexual assault.

10 A minor age sixteen or older may consent to a sexual assault kit. This consent is
 11 not subject to disaffirmance because of minority or disaffirmance of a parent or guardian,
 12 and consent of a parent or guardian is not required under this section. A minor's refusal
 13 to consent has no impact on any applicable mandatory reporting obligation in law.

14 A health care facility that examines or treats a victim of rape or sexual assault with
 15 a sexual assault kit shall release the sexual assault kit to the investigating law enforcement
 16 agency, if known, or the law enforcement agency of the jurisdiction where the examination
 17 or treatment occurs in accordance with § 23-5C-3. The health care facility shall inform the
 18 victim that the sexual assault kit will be preserved by law enforcement for a period of at
 19 least seven years from the date of the examination or treatment or until the victim reaches
 20 the age of twenty-five, whichever is later, before it is destroyed. Any examination or
 21 treatment under this section shall include the preservation of confidentiality of any test,
 22 procedure, or sample that may serve as evidence in the prosecution for the rape or sexual
 23 assault.

24 **Section 2. That § 23-5C-3 be AMENDED:**

1 **23-5C-3.** A health care facility shall assign a code number to a sexual assault kit,
2 and provide the code number to the victim as well as information identifying the law
3 enforcement agency where the kit will be stored. The health care facility shall maintain
4 the code record for at least seven years from the date the health care facility examined
5 or treated the victim or until the victim reaches the age of twenty-five, whichever is later.
6 The health care facility may not affix to the sexual assault kit any information of the
7 victim's identity other than the code number under this section. The law enforcement
8 agency to which the health care facility releases the sexual assault kit under § 23-5C-2
9 shall retrieve the sexual assault kit, containing no identifying information of the victim
10 other than the code number affixed by the health care facility, within seventy-two hours
11 following the date on which the sexual assault kit is assigned a code number under this
12 section. The health care facility shall coordinate the transfer of the sexual assault kit to
13 the law enforcement agency in a manner designed to protect the victim's confidentiality
14 and preserve the evidentiary integrity of the sexual assault kit. A law enforcement agency
15 in possession of a sexual assault kit shall preserve the kit for at least seven years from
16 the date of examination or treatment or until the victim reaches the age of twenty-five,
17 whichever is later, before it is destroyed. If a victim, or a victim or witness assistant,
18 exercises the option of reporting the rape or sexual assault to a law enforcement agency,
19 the code number under this section shall be provided by the victim to the law enforcement
20 agency where the kit is being stored and used to identify the appropriate sexual assault
21 kit.

22 The confidentiality requirements under this section do not impact any applicable
23 mandatory reporting obligation in law associated with abused or neglected minors.