

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

238B0225

HOUSE JUDICIARY ENGROSSED NO. **HB 1180** 2/13/2019

Introduced by: Representatives Reed, Anderson, Borglum, and Chase and Senators Soholt, Schoenbeck, and Smith (VJ)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the collection and
2 storage of sexual assault kit evidence.

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

4 Section 1. That § 23-5C-2 be amended to read:

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

10 A health care facility administering that examines or treats a victim of rape or sexual assault
11 with a sexual assault kit that has obtained written consent to shall release the sexual assault kit
12 evidence shall notify the to the investigating law enforcement agency, if known, or the law
13 enforcement agency with local of the jurisdiction, within twenty-four hours after obtaining the
14 consent where the examination or treatment occurs in accordance with § 23-5C-3. The health



1 care facility shall inform the victim that the sexual assault kit will be preserved by law
2 enforcement for a period of at least one year from the date of the examination or treatment
3 before it is destroyed. Any examination or treatment under this section shall include the
4 preservation of confidentiality of any test, procedure, or sample that may serve as evidence in
5 the prosecution for the rape or sexual assault.

6 Section 2. That § 23-5C-3 be amended to read:

7 23-5C-3. ~~Any~~ A health care facility ~~that has not obtained consent to release any sexual~~
8 ~~assault kit evidence shall inform the person from which the evidence was collected of its sexual~~
9 ~~assault kit evidence storage policy. Any information provided under this section shall include~~
10 ~~the period of time for which that evidence shall be stored before it is destroyed, and how the~~
11 ~~person may have the evidence released to the investigating law enforcement agency at a later~~
12 ~~point. Any evidence not released to a law enforcement agency shall be stored for a minimum~~
13 ~~of one year before it is destroyed shall assign a code number to a sexual assault kit, and provide~~
14 the code number to the victim as well as information identifying the law enforcement agency
15 where the kit will be stored. The health care facility shall maintain the code record for at least
16 one year from the date the health care facility examined or treated the victim. The health care
17 facility may not affix to the sexual assault kit any information of the victim's identity other than
18 the code number under this section. The law enforcement agency to which the health care
19 facility releases the sexual assault kit under § 23-5C-3 shall retrieve the sexual assault kit,
20 containing no identifying information of the victim other than the code number affixed by the
21 health care facility, within seventy-two hours following the date on which the sexual assault kit
22 is assigned a code number under this section. The health care facility shall coordinate the
23 transfer of the sexual assault kit to the law enforcement agency in a manner designed to protect
24 the victim's confidentiality and preserve the evidentiary integrity of the sexual assault kit. If a

1 victim, or a victim or witness assistant, exercises the option of reporting the rape or sexual
2 assault to a law enforcement agency, the code number under this section shall be provided by
3 the victim to the law enforcement agency where the kit is being stored and used to identify the
4 appropriate sexual assault kit.

5 Section 3. That § 23-5C-4 be amended to read:

6 23-5C-4. ~~A~~ For any rape or sexual assault that is reported by a victim under § 23-5C-2, the
7 law enforcement agency that receives notice that a sexual assault kit evidence has been released
8 shall take possession of the evidence from the health care facility within fourteen days of
9 receiving the notice. The agency that takes possession of the evidence in accordance with §§ 23-
10 5C-2 and 23-5C-3 shall follow standard protocol to submit the evidence to the Division of
11 Criminal Investigation or another accredited laboratory for analysis within no more than
12 fourteen days of receiving the evidence following the agency's receipt of the sexual assault kit.
13 Any sexual assault kit that is submitted to the Division of Criminal Investigation or another
14 accredited laboratory shall be analyzed within ninety days.

15 Any DNA record for a sexual assault kit analyzed under this section shall be uploaded into
16 a database specified by the Division of Criminal Investigation. Any failure to comply with this
17 chapter does not constitute grounds for challenging the validity of a DNA database match or of
18 any database information in a criminal proceeding. A DNA record may not be excluded as
19 evidence by a court solely on the grounds of failure to comply with this chapter.

20 Section 4. That § 23-5C-5 be repealed.

21 ~~—23-5C-5. Any sexual assault kit evidence that is submitted to the Division of Criminal~~
22 ~~Investigation or another accredited laboratory shall be analyzed within ninety days after all~~
23 ~~necessary evidence is received by the division or the laboratory.~~

24 Section 5. That § 23-5C-6 be repealed.

1 ~~— 23-5C-6. The DNA records for any sexual assault kit evidence analyzed under this chapter~~
2 ~~shall be uploaded only into those databases at the state and national levels specified by the~~
3 ~~Division of Criminal Investigation.~~

4 Section 6. That § 23-5C-7 be repealed.

5 ~~— 23-5C-7. Any failure to comply with the requirements of this chapter does not constitute~~
6 ~~grounds in any criminal proceeding for challenging the validity of a DNA database match or of~~
7 ~~any database information. No evidence of that DNA record may be excluded by a court on those~~
8 ~~grounds.~~