

AN ACT concerning sexual assault evidence.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Sexual Assault Evidence Submission Act.

Section 5. Definitions. In this Act:

"Department" means the Department of State Police or Illinois State Police.

"Law enforcement agencies" means local, county, State or federal law enforcement agencies involved in the investigation of sexual assault cases in Illinois.

"Sexual assault evidence" means evidence collected in connection with a sexual assault investigation, including, but not limited to, evidence collected using the State Police Evidence Collection Kits.

Section 10. Submission of evidence. Law enforcement agencies that receive sexual assault evidence in connection with the investigation of a criminal case on or after the effective date of this Act must submit evidence from the case within 10 business days of receipt to a Department of State Police forensic laboratory or a laboratory approved and designated by the Director of State Police. Sexual assault

evidence received by a law enforcement agency within 30 days prior to the effective date of this Act shall be submitted pursuant to this Section.

Section 15. Analysis of evidence. All sexual assault evidence submitted pursuant to Section 10 of this Act on or after the effective date of this Act shall be analyzed within 6 months after receipt of all necessary evidence and standards by the State Police Laboratory or other designated laboratory if sufficient staffing and resources are available.

Section 20. Inventory of evidence. By October 15, 2010, each Illinois law enforcement agency shall provide written notice to the Department of State Police, in a form and manner prescribed by the Department, stating the number of sexual assault cases in the custody of the law enforcement agency that have not been previously submitted to a laboratory for analysis. Within 180 days after the effective date of this Act, appropriate arrangements shall be made between the law enforcement agency and the Department of State Police, or a laboratory approved and designated by the Director of State Police, to ensure that all cases that were collected prior to the effective date of this Act and are, or were at the time of collection, the subject of a criminal investigation, are submitted to the Department of State Police, or a laboratory approved and designated by the Director of State Police. By

February 15, 2011, the Department of State Police shall submit to the Governor, the Attorney General, and both houses of the General Assembly a plan for analyzing cases submitted pursuant to this Section. The plan shall include but not be limited to a timeline for completion of analysis and a summary of the inventory received, as well as requests for funding and resources necessary to meet the established timeline. Should the Department determine it is necessary to outsource the forensic testing of the cases submitted in accordance with this Section, all such cases will be exempt from the provisions of subsection (n) of Section 5-4-3 of the Unified Code of Corrections.

Section 25. Failure of a law enforcement agency to submit the sexual assault evidence. The failure of a law enforcement agency to submit the sexual assault evidence collected on or after the effective date of this Act within 10 business days after receipt shall in no way alter the authority of the law enforcement agency to submit the evidence or the authority of the Department of State Police forensic laboratory or designated laboratory to accept and analyze the evidence or specimen or to maintain or upload the results of genetic marker grouping analysis information into a local, State, or national database in accordance with established protocol.

Section 30. Required certification. Each submission of

sexual assault evidence submitted for analysis pursuant to this Act shall be accompanied by the following signed certification:

"This evidence is being submitted by (name of investigating law enforcement agency) in connection with a prior or current criminal investigation."

Section 35. Expungement. If the Department receives written confirmation from the investigating law enforcement agency or State's Attorney's office that a DNA record that has been uploaded pursuant to this Act into a local, State or national DNA database was not connected to a criminal investigation, the DNA record shall be expunged from the DNA database and the Department shall, by rule, prescribe procedures to ensure that written confirmation is sent to the submitting law enforcement agency verifying the expungement.

Section 40. Failure to expunge. The failure to expunge a DNA record or strictly comply with the provisions of Section 35 of this Act shall not be grounds for challenging the validity of a database match or database information, and evidence based upon or derived from the DNA record may not be excluded by a court.

Section 45. Rules. The Department of State Police shall promulgate rules that prescribe the procedures for the operation of this Act, including expunging a DNA record.

Section 90. The Sexual Assault Survivors Emergency Treatment Act is amended by changing Section 6.4 as follows:

(410 ILCS 70/6.4) (from Ch. 111 1/2, par. 87-6.4)

Sec. 6.4. Sexual assault evidence collection program.

(a) There is created a statewide sexual assault evidence collection program to facilitate the prosecution of persons accused of sexual assault. This program shall be administered by the Illinois State Police. The program shall consist of the following: (1) distribution of sexual assault evidence collection kits which have been approved by the Illinois State Police to hospitals that request them, or arranging for such distribution by the manufacturer of the kits, (2) collection of the kits from hospitals after the kits have been used to collect evidence, (3) analysis of the collected evidence and conducting of laboratory tests, (4) maintaining the chain of custody and safekeeping of the evidence for use in a legal proceeding, and (5) the comparison of the collected evidence with the genetic marker grouping analysis information maintained by the Department of State Police under Section 5-4-3 of the Unified Code of Corrections and with the information contained in the Federal Bureau of Investigation's National DNA database; provided the amount and quality of genetic marker grouping results obtained from the evidence in the sexual assault case meets the requirements of both the

Department of State Police and the Federal Bureau of Investigation's Combined DNA Index System (CODIS) policies. The standardized evidence collection kit for the State of Illinois shall be the Illinois State Police Sexual Assault Evidence Kit. A sexual assault evidence collection kit may not be released by a hospital without the written consent of the sexual assault survivor. In the case of a survivor who is a minor 13 years of age or older, evidence and information concerning the sexual assault may be released at the written request of the minor. If the survivor is a minor who is under 13 years of age, evidence and information concerning the alleged sexual assault may be released at the written request of the parent, guardian, investigating law enforcement officer, or Department of Children and Family Services. If the survivor is an adult who has a guardian of the person, a health care surrogate, or an agent acting under a health care power of attorney, then consent of the guardian, surrogate, or agent is not required to release evidence and information concerning the sexual assault. If the adult is unable to provide consent for the release of evidence and information and a guardian, surrogate, or agent under a health care power of attorney is unavailable or unwilling to release the information, then an investigating law enforcement officer may authorize the release. Any health care professional, including any physician, advanced practice nurse, physician assistant, or nurse, sexual assault nurse examiner, and any health care

institution, including any hospital, who provides evidence or information to a law enforcement officer pursuant to a written request as specified in this Section is immune from any civil or professional liability that might arise from those actions, with the exception of willful or wanton misconduct. The immunity provision applies only if all of the requirements of this Section are met.

(a-5) (Blank). ~~All sexual assault evidence collected using the State Police Evidence Collection Kits before January 1, 2005 (the effective date of Public Act 93-781) that have not been previously analyzed and tested by the Department of State Police shall be analyzed and tested within 2 years after receipt of all necessary evidence and standards into the State Police Laboratory if sufficient staffing and resources are available. All sexual assault evidence collected using the State Police Evidence Collection Kits on or after January 1, 2005 (the effective date of Public Act 93-781) shall be analyzed and tested by the Department of State Police within one year after receipt of all necessary evidence and standards into the State Police Laboratory if sufficient staffing and resources are available.~~

(b) The Illinois State Police shall administer a program to train hospitals and hospital personnel participating in the sexual assault evidence collection program, in the correct use and application of the sexual assault evidence collection kits. A sexual assault nurse examiner may conduct examinations using

the sexual assault evidence collection kits, without the presence or participation of a physician. The Department shall cooperate with the Illinois State Police in this program as it pertains to medical aspects of the evidence collection.

(c) In this Section, "sexual assault nurse examiner" means a registered nurse who has completed a sexual assault nurse examiner (SANE) training program that meets the Forensic Sexual Assault Nurse Examiner Education Guidelines established by the International Association of Forensic Nurses.

(Source: P.A. 95-331, eff. 8-21-07; 95-432, eff. 1-1-08; 96-318, eff. 1-1-10.)

Section 99. Effective date. This Act takes effect September 1, 2010.