IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 116

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

1	AN ACT
2	RELATING TO SEXUAL ASSAULT EVIDENCE KITS; PROVIDING LEGISLATIVE INTENT; AND
3	AMENDING SECTION 67-2919, IDAHO CODE, TO REVISE PROVISIONS REGARDING
4	THE TESTING OF SEXUAL ASSAULT EVIDENCE KITS, TO DEFINE A TERM, AND TO
5	MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature that the changes made in the requirements for the testing of sexual assault evidence kits contained in this act shall apply only to the testing of sexual assault evidence kits collected on and after the effective date of this act and shall not be retroactive to sexual assault evidence kits that were collected prior to the effective date of this act.

SECTION 2. That Section 67-2919, Idaho Code, be, and the same is hereby amended to read as follows:

- 67-2919. TESTING AND RETENTION OF SEXUAL ASSAULT EVIDENCE KITS. (1) Unless an adult victim of a reported sexual assault expressly indicates otherwise and eExcept as provided in subsection (8) of this section, evidence obtained in a sexual assault evidence kit shall be tested by the Idaho state police forensic services laboratory according to sampling protocols and procedures established by the laboratory.
 - (2) (a) An entity that performs a medical examination of a victim of a reported sexual assault using a sexual assault evidence kit shall do so without regard to the ability or inability of a victim of a reported sexual assault to pay for such an examination.
 - (b) An entity qualified and reasonably able to perform a medical examination of a victim of a reported sexual assault using a sexual assault evidence kit shall not deny a medical examination to a victim of a reported sexual assault.
- (3) An entity that has performed a medical examination of a victim of a reported sexual assault using a sexual assault evidence kit shall notify the local law enforcement agency of the jurisdiction where the reported sexual assault occurred that sexual assault evidence has been collected and is ready for law enforcement to take custody of such evidence according to their its established protocol. The medical entity collecting the kit shall document in the state kit tracking system any required fields.
- (4) A local law enforcement agency that receives notice from an entity that has performed a medical examination of a victim of a reported sexual assault as described in subsection (3) of this section shall facilitate the collection of the sexual assault evidence kit and any other collected evidence from the entity that has performed a medical examination of a victim of a reported sexual assault. After obtaining the sexual assault evidence kit

and any other collected evidence from the entity that has performed a medical examination of a victim of a reported sexual assault, the local law enforcement agency shall submit such kit, in adherence to the submission policies of the Idaho state police forensic services laboratory, to the Idaho state police forensic services laboratory for testing as soon as reasonably practical, but not later than thirty (30) days after obtaining the kit. If kit submission to the Idaho state police forensic services laboratory is not done within the thirty (30) day time limit or testing is not done by the Idaho state police forensic services laboratory within the ninety (90) day additional time limit established in this subsection, it shall not affect the ability to prosecute or defeat the jurisdiction of the court. Any law enforcement agency with sexual assault evidence kits or other sexual assault case evidence belonging to another jurisdiction must notify that jurisdiction within seven (7) days of obtaining the kits or evidence, and the receiving jurisdiction must pick up the sexual assault evidence kits or other sexual assault case evidence within seven (7) days. The law enforcement agency shall make a good faith effort to collect and submit the required reference samples associated with a submitted sexual assault evidence kit.

- (5) For all sexual assault evidence kits received pursuant to subsection (4) of this section, the Idaho state police forensic services laboratory shall test such kits and submit eligible results to the Idaho DNA database within ninety (90) days. The laboratory shall report any kits not processed within ninety (90) days to the county prosecutor with jurisdiction in the case and to the Idaho legislature.
- (6) Following analysis by the Idaho state police forensic services laboratory, sexual assault evidence kits shall be returned to and retained by the investigating agency in accordance with agency evidence standards and for the following durations:
 - (a) For death penalty cases, until the sentence in the case has been carried out and no unapprehended persons associated with the offense exist;
 - (b) For felony cases, including anonymous sexual assault kits collected under the violence against women act, fifty-five (55) years from the collection of the kit during the medical examination or until the sentence in the case is completed, whichever occurs first; and
 - (c) For cases <u>before July 1, 2019</u>, where there is no evidence to support a crime being committed, or when it is no longer being investigated as a crime or when an adult victim expressly indicates that no further forensic examination or testing occur, ten (10) years from collection of the kit during the medical examination; and
 - $\underline{\text{(d)}}$ For cases on and after July 1, 2019, where a crime is alleged and the allegation has been determined to be unfounded, ten (10) years from collection of the kit during the medical examination.
- (7) Provided that an investigating agency has current contact information, the investigating agency shall, upon written request from a victim of sexual assault, a parent or guardian if the victim is a minor, or a relative if the victim is deceased, provide written notification of the destruction or disposal of a sexual assault evidence kit and any other sexual assault case evidence no later than sixty (60) days before the date of the destruction or disposal. A victim of sexual assault, a parent or guardian if

the victim is a minor, or a relative if the victim is deceased, may petition a court to preserve a sexual assault evidence kit and its contents for longer than the time prescribed in this subsection.

- (8) All sexual assault evidence kits collected in this state where a crime is alleged and the allegation has not been determined to be unfounded shall be processed by the Idaho state police forensic services laboratory except when there is no evidence to support a crime being committed, when it is no longer being investigated as a crime or when an adult victim expressly indicates that no further forensic examination or testing occur pursuant to subsection (1) of this section for kits where the victim requests the kit be collected as an anonymous kit, such as under the provisions of the federal violence against women act. Any sexual assault evidence kit, with the exception of an anonymous sexual assault evidence kit, that is not examined and tested shall be independently reviewed by the county prosecutor. In the event such review concludes that the kit should have been tested, testing shall occur as provided in subsections (4) and (5) of this section.
- (9) The Idaho state police shall promulgate rules to create a tracking process for sexual assault evidence kits in possession of the Idaho state police forensic services laboratory and every law enforcement agency throughout the state. Such rules shall provide for the information to be submitted to the Idaho state police by law enforcement agencies to assist in such tracking.
- (10) Idaho state police forensic services shall approve and provide, at no cost to the victim, appropriate sexual assault evidence kits to requesting entities and law enforcement agencies. All such kits shall contain a form for victims to inform them of their right of notification pursuant to subsections (12) and (13) of this section and of their right to decline to have a kit collected or tested pursuant to subsection (1) of this section.
- (11) Within one hundred eighty (180) days of the effective date of this act, the Idaho state police forensic services laboratory shall provide a one-time onetime report to the legislature of all untested sexual assault evidence kits in Idaho. To assist with this one-time onetime report, all law enforcement agencies in Idaho shall perform a one-time onetime audit of any untested sexual assault evidence kits in their possession and submit to the Idaho state police forensic services director the following:
 - (a) The number of untested kits in the law enforcement agency's possession;
 - (b) The date each kit was collected and the reason it was not submitted to Idaho state police forensic services for testing; and
 - (c) The number of any anonymous or unreported kits in the law enforcement agency's possession.

Law enforcement agencies shall follow the same protocol to perform the audit of untested sexual assault evidence kits as they would with any new kit submitted to the agency. The audit performed by a law enforcement agency shall be reviewed by a law enforcement representative and the county prosecutor before the final report is provided to the legislature.

(12) A law enforcement agency that submits a sexual assault evidence kit pursuant to subsection (4) of this section shall, upon written request, notify a victim of sexual assault, a parent or quardian if the victim is a minor

at the time of notification, or a relative if the victim is deceased, of the following:

- (a) When the sexual assault evidence kit is submitted to the Idaho state police forensic services laboratory;
- (b) When any evidence sample DNA profile is entered into the Idaho DNA database;
- (c) When a DNA match occurs; provided however, that such notification shall state only that a match has occurred and shall not contain any genetic or other identifying information; and
- (d) When there is any change in the status of $\frac{1}{2}$ the case or reopening of the case.

As used in this subsection, "notify" shall include updates to a website used by the Idaho state police forensic services laboratory for sexual assault evidence kits.

- (13) On or before January 20, 2017, and by January 20 of each year thereafter, Idaho state police forensic services shall submit a report to the Idaho legislature regarding its examination of sexual assault evidence kits throughout the state in the previous year. The report shall include, but not be limited to, the number of kits purchased and distributed by Idaho state police forensic services, the number of kits collected by each law enforcement agency, the number of kits tested by the Idaho state police forensic services laboratory, the number of kits not submitted to the Idaho state police forensic services laboratory pursuant to subsection (1) or (8) of this section, the number of DNA database hits from sexual assault cases, evidence kits, the number of unresolved DNA database hits from sexual assault evidence kits for each law enforcement agency, the number of sexual assault evidence kits submitted without required reference samples for each law enforcement agency, and a list of any law enforcement agencies that did not adhere to the tracking process promulgated pursuant to subsection (9) of this section, and for the report submitted in 2017, a list of any law enforcement agencies that did not participate in the audit required in subsection (11) of this section. This report shall be available on the website of the Idaho state police and readily available to the public. No victim or alleged perpetrator names shall be included in the report. Information shall be provided in aggregate and shall not include case-specific information.
 - (14) As used in this section:

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- (a) "Sexual assault evidence kit" means a set of materials, such as swabs and tools for collecting blood samples, used to gather forensic evidence from a victim of reported sexual assault and the evidence obtained with such materials.
- (b) "Unfounded" means evidence exists that proves no crime occurred.
- $\underline{\text{(c)}}$ "Written request" and "written notification" shall include electronic mail.