

## CHAPTER 2024-169

### Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 764

An act relating to retention of sexual offense evidence; amending s. 943.326, F.S.; requiring that specified sexual offense evidence be retained by specified entities for a minimum number of years after the collection date; requiring specified entities to transfer such sexual offense evidence to the Department of Law Enforcement within a specified time period; requiring the department to retain such sexual offense evidence; requiring that such evidence be stored anonymously, in a secure, environmentally safe manner, and with a documented chain of custody; providing requirements for the transferring, storing, and destruction of such sexual offense evidence; providing an effective date.

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

Section 1. Section 943.326, Florida Statutes, is amended to read:

943.326 DNA evidence collected in sexual offense forensic physical examinations and investigations.—

(1) A sexual offense evidence kit, or other DNA evidence if a kit is not collected, must be submitted to a member of the statewide criminal analysis laboratory system under s. 943.32 for forensic testing within 30 days after:

(a) Receipt of the evidence by a law enforcement agency if a report of the sexual offense is made to the law enforcement agency; or

(b) A request to have the evidence tested is made to the medical provider or the law enforcement agency by:

1. The alleged victim;

2. The alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor; or

3. The alleged victim's personal representative, if the alleged victim is deceased.

(2) An alleged victim or, if applicable, the person representing the alleged victim under subparagraph (1)(b)2. or 3. must be informed of the purpose of submitting evidence for testing and the right to request testing under subsection (1) by:

(a) A medical provider conducting a forensic physical examination for purposes of a sexual offense evidence kit; or

(b) A law enforcement agency that collects other DNA evidence associated with the sexual offense if a kit is not collected under paragraph (a).

(3)(a) Except as provided in paragraph (b), a collected sexual offense evidence kit, or other DNA evidence if a kit is not collected, that is collected from an alleged victim who reports a sexual offense to a law enforcement agency or who makes a request, or on whose behalf a request is made, for testing in compliance with paragraph (1)(b) must be retained in a secure, environmentally safe manner until the prosecuting agency has approved its destruction.

(b)1. A sexual offense evidence kit that is collected from a person who does not report a sexual offense to a law enforcement agency during the forensic physical examination and who does not make a request, or have a request made on his or her behalf, in compliance with paragraph (1)(b) must be retained for a minimum of 50 years after the collection date. Within 30 days after collecting such a kit, the medical facility or certified rape crisis center that collected the kit must transfer the kit to the department, which must maintain the kit in compliance with this subparagraph. A sexual offense evidence kit that is transferred and retained pursuant to this subparagraph must be stored anonymously, in a secure, environmentally safe manner, and with a documented chain of custody.

2. If, at any time following the initial retention of a sexual offense evidence kit pursuant to subparagraph 1., an alleged victim makes a report to a law enforcement agency or makes a request, or has a request made on his or her behalf, for testing in compliance with paragraph (1)(b), the kit must be retained as described in paragraph (a) if the applicable time limitation under s. 775.15 has not expired and prosecution of a criminal case may still be commenced. In circumstances in which a criminal case may not be commenced because the applicable time limitation under s. 775.15 has expired, the kit must be maintained in a secure, environmentally safe manner until the department has approved its destruction.

(4) The department and each laboratory within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, shall adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence that is obtained in connection with an alleged sexual offense. The timely submission and testing of sexual offense evidence kits is a core public safety issue. Testing of sexual offense evidence kits must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

(a) The guidelines and procedures must include the requirements of this section, standards for how evidence is to be packaged for submission, what evidence must be submitted to a member of the statewide criminal analysis laboratory system, and timeframes for when the evidence must be submitted, analyzed, and compared to DNA databases.

(b) The testing requirements of this section are satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the sexual offense evidence kit in an attempt to identify the foreign DNA attributable to a suspect. If a sexual offense evidence kit is not collected, the laboratory may receive and examine other items directly related to the crime scene, such as clothing or bedding or personal items left behind by the suspect. If probative information is obtained from the testing of the sexual offense evidence kit, the examination of other evidence should be based on the potential evidentiary value to the case and determined through cooperation among the investigating agency, the laboratory, and the prosecutor.

(c) The department shall, subject to appropriation by the Legislature, no later than July 1, 2023, create and maintain a statewide database to track the location, processing status, and storage of each sexual offense evidence kit collected after the implementation of the database that is accessible to law enforcement agencies and alleged victims and other persons listed in paragraph (1)(b). The database shall track the status of the kits from the collection site throughout the criminal justice process, including the initial collection at medical facilities, inventory and storage by law enforcement agencies or crime laboratories, analysis at crime laboratories, and storage or destruction after completion of analysis.

(d) The department shall adopt rules establishing the requirements for each entity that participates in the database. Law enforcement agencies, medical facilities, crime laboratories, and any other facilities that collect, receive, maintain, store, or preserve sexual offense evidence kits shall participate in the database, as required by the department.

(e) The department shall ensure that each alleged victim and other person listed in paragraph (1)(b) is notified of the existence of the database and provided with instructions on how to access it and informed that he or she is entitled to access to information regarding the alleged victim’s sexual offense evidence kit, including tracking information, testing status, and any DNA matches to a person deemed by investigators to be a suspect or person of interest. However, notification of a DNA match shall state only that a DNA match has occurred and may not contain any genetic or other identifying information. Such a notification may be delayed for up to 180 days if such notification would, in the opinion of investigators, negatively affect the investigation.

(5) A violation of this section does not create:

(a) A cause of action or a right to challenge the admission of evidence.

(b) A cause of action for damages or any other relief.

Section 2. This act shall take effect October 1, 2024.

Approved by the Governor May 10, 2024.

Filed in Office Secretary of State May 10, 2024.