SUBSTITUTE FOR HOUSE BILL NO. 5445

A bill to create the sexual assault kit evidence submission act; to provide for the collection of sexual assault kit evidence; to prescribe the powers and duties of certain state and local government departments and agencies; to establish certain procedures regarding the collection, handling, and disposition of sexual assault kit evidence; and to prohibit the exclusion of sexual assault kit evidence under certain circumstances.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. This act shall be known and may be cited as the
- 2 "sexual assault kit evidence submission act".
- 3 Sec. 2. As used in this act:
- 4 (a) "Accredited laboratory" means a DNA laboratory that has
- 5 received formal recognition that it meets or exceeds a list of
- 6 standards, including the FBI director's quality assurance

- 1 standards, to perform specific tests, established by a nonprofit
- 2 professional association of persons actively involved in forensic
- 3 science that is nationally recognized within the forensic community
- 4 in accordance with the provisions of the federal DNA identification
- 5 act, 42 USC 14132, or subsequent laws.
- 6 (b) "Analyzed" means evaluating items for the presence of a
- 7 body fluid, cellular material, or DNA followed by the testing of
- 8 suitable items at forensic DNA regions for comparison purposes.
- 9 (c) "Department" means the department of state police,
- 10 including its forensic science division.
- 11 (d) "Health care facility" includes a hospital, clinic, or
- 12 urgent care center that is regulated under the public health code,
- 13 1978 PA 368, MCL 333.1101 to 333.25211, and any other facility that
- 14 is authorized to provide sexual assault medical forensic exams
- 15 under that act.
- 16 (e) "Law enforcement agency" means the local, county, or state
- 17 law enforcement agency with the primary responsibility for
- 18 investigating an alleged sexual assault offense case and includes
- 19 the employees of that agency.
- 20 (f) "Sexual assault kit evidence" means evidence collected
- 21 from the administration of a sexual assault evidence kit under
- 22 section 21527 of the public health code, 1978 PA 368, MCL
- **23** 333.21527.
- (g) "Sexual assault evidence kit" means that term as defined
- 25 in section 21527 of the public health code, 1978 PA 368, MCL
- **26** 333.21527.
- 27 (h) "Sexual assault offense" means a violation or attempted

- 1 violation of sections 520b to 520g of the Michigan penal code, 1931
- 2 PA 328, MCL 750.520b to 750.520g.
- 3 (i) "Victim" means, for the purposes of making communications
- 4 and receiving notices under this act, an individual who was
- 5 subjected to a sexual assault offense.
- 6 Sec. 3. (1) A health care facility that has obtained written
- 7 consent to release sexual assault kit evidence shall notify the
- 8 investigating law enforcement agency, if known, or the law
- 9 enforcement agency having jurisdiction in that portion of the local
- 10 unit of government in which the medical facility is located of that
- 11 fact within 24 hours after obtaining that consent.
- 12 (2) A health care facility that has not obtained written
- 13 consent to release any sexual assault kit evidence shall inform the
- 14 individual from whom sexual assault kit evidence was obtained of
- 15 its sexual assault kit evidence storage policy. The information
- 16 provided under this subsection shall include a statement of the
- 17 period for which that evidence will be stored before it is
- 18 destroyed and how the individual can have the evidence released to
- 19 the investigating law enforcement agency at a later date. Any
- 20 sexual assault kit evidence that is not released to a law
- 21 enforcement agency under this section shall be stored for a minimum
- 22 of 1 year before it is destroyed.
- 23 Sec. 4. (1) A law enforcement agency that receives notice
- 24 under section 3 that sexual assault kit evidence has been released
- 25 to that law enforcement agency shall take possession of the sexual
- 26 assault kit evidence from the health care facility within 14 days
- 27 after receiving that notice.

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- 1 (2) If a law enforcement agency described in subsection (1)
- 2 determines that the alleged sexual assault occurred within the
- 3 jurisdiction of another law enforcement agency and that it does not
- 4 otherwise have jurisdiction over that assault, that law enforcement
- 5 agency shall notify the other law enforcement agency of that fact
- 6 within 14 days after receiving the kit from the health care
- 7 facility that collected the sexual assault kit evidence.
- 8 (3) A law enforcement agency that receives notice under
- 9 subsection (2) shall take possession of the sexual assault kit
- 10 evidence from the other law enforcement agency within 14 days after
- 11 receiving that notice.
- 12 (4) The investigating law enforcement agency that takes
- 13 possession of any sexual assault kit evidence shall assign a
- 14 criminal complaint number to that evidence in the manner required
- 15 by that agency and shall submit that evidence to the department or
- 16 another accredited laboratory for analysis within 14 days after
- 17 that law enforcement agency takes possession of that evidence under
- 18 this section. Sexual assault kit evidence that was received by a
- 19 law enforcement agency within 30 days before the effective date of
- 20 this act shall also be submitted to the department or other
- 21 accredited laboratory as provided in this section.
- 22 (5) Each submission of sexual assault kit evidence for
- 23 analysis under this act shall be accompanied by the criminal
- 24 complaint number required under subsection (4).
- 25 (6) All sexual assault kit evidence submitted to the
- 26 department or an accredited laboratory on or after the effective
- 27 date of this act shall be analyzed within 90 days after all of the

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- 1 necessary evidence is received by the department or other
- 2 accredited laboratory, provided that sufficient staffing and
- 3 resources are available to do so.
- 4 (7) The DNA profiles of all sexual assault kit evidence
- 5 analyzed under this section on or after the effective date of this
- 6 act shall be uploaded only into those databases at the state and
- 7 national levels specified by the department.
- 8 (8) The failure of a law enforcement agency to take possession
- 9 of sexual assault kit evidence as provided in this act or to submit
- 10 that evidence to the department or other accredited laboratory
- 11 within the time prescribed under this act does not alter the
- 12 authority of the law enforcement agency to take possession of that
- 13 evidence or to submit that evidence to the department or other
- 14 accredited laboratory under this act and does not alter the
- 15 authority of the department or other accredited laboratory to
- 16 accept and analyze the evidence or to upload the DNA profile
- 17 obtained from that evidence into state and national DNA databases
- 18 under this act.
- 19 (9) The failure to comply with the requirements of this act
- 20 does not constitute grounds in any criminal proceeding for
- 21 challenging the validity of a database match or of any database
- 22 information, and any evidence of that DNA record shall not be
- 23 excluded by a court on those grounds.
- 24 (10) A person accused or convicted of committing a crime
- 25 against the victim has no standing to object to any failure to
- 26 comply with the requirements of this act, and the failure to comply
- 27 with the requirements of this act is not grounds for setting aside

- 1 the conviction or sentence.
- 2 Sec. 5. If a law enforcement agency intends to destroy or
- 3 otherwise dispose of any sexual assault kit evidence in a sexual
- 4 assault offense case before the expiration for the limitation
- 5 period applicable under section 24 of chapter VII of the code of
- 6 criminal procedure, 1927 PA 175, MCL 767.24, and its destruction
- 7 does not otherwise conflict with the requirements of section 16 of
- 8 chapter X of the code of criminal procedure, 1927 PA 175, MCL
- 9 770.16, the law enforcement agency with the primary responsibility
- 10 for investigating the case shall notify the victim of that
- 11 intention in writing at least 60 days before the evidence is
- 12 destroyed or otherwise disposed of.