

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 607 Retention of Sexual Offense Evidence

SPONSOR(S): Judiciary Committee and Criminal Justice Subcommittee, Plakon and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 764

FINAL HOUSE FLOOR ACTION: 112 Y's

1 N's

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

CS/CS/HB 607 passed the House on March 5, 2024, as CS/CS/CS/SB 764.

A sexual assault kit (SAK), sometimes referred to as a "rape kit," is a medical kit used to collect evidence from a sexual assault victim's body and clothing during a forensic physical examination. SAKs collected from reporting victims are submitted by law enforcement agencies (LEA) to crime laboratories for DNA analysis and resulting DNA profiles are uploaded to local, state, and federal DNA databases to determine whether a match identifying the perpetrator can be made.

Under s. 943.326, F.S., a SAK collected from a reporting victim and received by a LEA must be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is: received by a LEA and a report of the sexual offense has been made to the LEA; or within 30 days after the alleged victim or his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or is deceased, requests the evidence to be tested. A Florida Department of Law Enforcement (FDLE) or regional county laboratory may only process SAK evidence if there is an accompanying law enforcement report. SAKs from non-reporting victims, those who choose not to report an offense to law enforcement, are not tested unless the victim later reports the offense or requests such testing. SAK testing must be completed no later than 120 days after the SAK is submitted to the statewide criminal analysis laboratory system. A SAK must be retained in a secure, environmentally safe manner until the agency prosecuting the associated offense approves the kit's destruction. An alleged victim, or his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or deceased, must be informed of the purpose of submitting evidence for testing and of the right to request testing.

While s. 943.326, F.S., provides specific guidance controlling the retention period and destruction of SAKs collected from reporting victims, there is no clear guidance on retention or destruction procedures for SAKs collected from non-reporting victims.

The bill amends s. 943.326, F.S., to require a SAK collected from a non-reporting victim to be retained for a minimum of 50 years. The bill requires medical facilities and certified rape crisis centers that collect such a kit to transfer the kit to FDLE within 30 days after collection. The bill requires FDLE to store a SAK collected from a non-reporting victim anonymously, in a secure, environmentally safe manner, and with a documented chain of custody. Under the bill, if a non-reporting victim later makes a report to law enforcement or requests, or has a request made on his or her behalf by an authorized representative, to have his or her SAK tested, the kit must then be retained until the prosecuting agency or FDLE authorizes its destruction. Additionally, the bill requires DNA evidence not contained in a SAK and collected from a reporting victim to be retained until the prosecuting agency authorizes its destruction.

The bill may have an indeterminate negative fiscal impact on FDLE based on the costs associated with storing the kits in a manner consistent with the requirements of the bill.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Forensic Physical Exams and Sexual Assault Kits

In Florida, a victim of certain sexual offenses may have a forensic physical examination conducted by a healthcare provider without cost to the victim, or the victim's parent or guardian if the victim is a minor, regardless of whether the victim participates in the criminal justice system or cooperates with law enforcement.¹ A sexual assault kit (SAK), sometimes referred to as a "rape kit," is a medical kit used to collect evidence from a sexual assault victim's body and clothing during a forensic physical examination. A SAK typically contains standardized items including swabs, tubes, glass slides, containers, and plastic bags used to collect and preserve bodily fluids, hair, and fibers that may contain the perpetrator's DNA or other forensic evidence.² SAKs collected from reporting victims are submitted by law enforcement agencies to crime laboratories for DNA analysis and resulting DNA profiles are uploaded to local, state, and federal DNA databases to determine whether a match identifying the perpetrator can be made.

Department of Legal Affairs SAK Protocols

According to protocols developed by the Florida Department of Legal Affairs (DLA), healthcare providers conducting a forensic physical examination should complete a Sexual Assault Kit Form for Healthcare Providers (SAK form).³ The SAK form includes an exam consent form, applicable to both reporting and non-reporting victims, that requires the victim to indicate that he or she consents to a forensic physical examination for the preservation of evidence of a sexual offense. If a victim chooses to make a report to law enforcement, a separate form authorizing the release of collected evidence and report to law enforcement must be signed by the victim. All consent forms must be retained by the rape crisis center⁴ or medical facility conducting the examination.⁵

A non-reporting victim is one who does not authorize reporting an offense to law enforcement. The medical provider still carries out the complete forensic and medical examination and the SAK evidence is preserved and maintained in a manner that protects the victim's identity. If the victim later chooses to file a report with law enforcement, he or she must sign a release authorizing the medical provider to make his or her identity known and the forensic examination record available to the law enforcement agency.⁶

Section 39.201(1) and (5), F.S., however, requires any person that knows, or has reasonable cause to suspect, that a child has been sexually abused to make a report to the central abuse hotline. Within 48 hours after the central abuse hotline receives such a report the Department of Children and Families

¹ S. 960.28, F.S. (The Crime Victims' Services Office of the Department of Legal Affairs pays for medical expenses connected with an initial forensic physical examination of a victim of sexual battery or a lewd or lascivious offense).

² The White House, Office of the Press Secretary, *Fact Sheet: Investments to Reduce The National Rape Kit Backlog And Combat Violence Against Women*, (Mar. 16, 2015) <https://obamawhitehouse.archives.gov/the-press-office/2015/03/16/fact-sheet-investments-reduce-national-rape-kit-backlog-and-combat-viole> (last visited Mar. 5, 2024).

³ Florida Department of Legal Affairs (DLA), Division of Victim Services and Criminal Justice Programs, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, (Apr. 2015), pp. 12-13, [https://myfloridalegal.com/webfiles.nsf/WF/JFAO-77TKCT/\\$file/ACSP.pdf](https://myfloridalegal.com/webfiles.nsf/WF/JFAO-77TKCT/$file/ACSP.pdf) (last visited Mar. 5, 2024).

⁴ A "rape crisis center" is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families. S. 90.5035(1)(a), F.S.

⁵ DLA, *supra* at note 3.

⁶ Florida Department of Law Enforcement (FDLE), *Sexual Assault Kit Submissions Frequently Asked Questions*, p. 1, https://www.fdle.state.fl.us/Forensics/Documents/Sexual-Assault-Kit-FAQs-for-LEA_Final.aspx (last visited Mar. 5, 2024).

must conduct an assessment and send a written report to the appropriate county sheriff's office. As such, a child can never be classified as a non-reporting victim.

DLA protocols provide instructions for sealing the SAK once a victim's exam is complete and require the SAK to stay with the examiner or to be secured in a locked area with limited access and proper chain of custody procedures until it is transferred to the proper law enforcement agency. Additionally, DLA protocols require the examiner to check the local area guidelines for storage procedures for non-reporting kits. However, DLA recommends a law enforcement agency to be utilized for long-term evidence storage.⁷

SAK Submission and Testing

Under s. 943.326, F.S.:

- A SAK from a reporting victim, received by an agency must be submitted to the statewide criminal analysis laboratory system⁸ for forensic testing within 30 days after the evidence is:
 - Received by a law enforcement agency and a report of the sexual offense has been made to the law enforcement agency; or
 - Within 30 days after the alleged victim or his or her parent, guardian, or legal representative, if the alleged victim is a minor, or the victim's personal representative if the alleged victim is deceased, requests the evidence to be tested.
- A Florida Department of Law Enforcement (FDLE) or regional county laboratory may only process evidence from a SAK if there is an accompanying law enforcement report. SAKs collected from non-reporting victims⁹ are not tested unless an alleged victim later reports the offense or requests such testing.
- SAK testing must be completed no later than 120 days after the SAK is submitted to the statewide criminal analysis laboratory system.¹⁰
- A SAK must be retained in a secure, environmentally safe manner until the agency prosecuting the associated offense approves the kit's destruction.
- An alleged victim, or his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or deceased, must be informed by either a medical provider conducting a forensic physical examination for the purpose of collecting a SAK, or by a law enforcement agency that collects other DNA evidence associated with the sexual offense if no SAK is collected, of the purpose of submitting evidence for testing and of the right to request testing.¹¹

While s. 943.326, F.S., currently provides specific guidance controlling the retention period and destruction of SAKs collected from reporting victims, there is no clear guidance on retention or destruction procedures for SAKs collected from non-reporting victims. Accordingly, under current practice, a kit collected from a non-reporting victim is destroyed at an undefined interval or, in some cases, retained indefinitely, as it never reaches the purview of any prosecuting agency.

Florida Track-Kit

Florida Track-Kit, established by FDLE pursuant to s. 943.326, F.S., is a statewide database that allows law enforcement, an alleged victim, and an alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor, or an alleged victim's personal representative if the alleged victim is deceased, to track the location, processing status, and storage of each SAK collected. The database

⁷ DLA, *supra* at note 3, pp. 20-21.

⁸ Generally, law enforcement agencies in Florida submit SAKs for DNA testing to the statewide criminal analysis laboratory system, which consists of six laboratories operated by FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five regional county laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties. S. 943.32, F.S.

⁹ According to FDLE protocols, testing a non-reporting victim's SAK would violate the confidentiality and privacy of the victim's health records under the Health Insurance Portability and Accountability Act. FDLE, *supra* at note 6.

¹⁰ The statutory timeline is satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the SAK in an attempt to identify the foreign DNA attributable to a suspect. S. 943.326(4)(b), F.S.

¹¹ S. 943.326, F.S.

tracks a SAK's status throughout the criminal justice process, including the kit's initial collection at a medical facility, storage, analysis, and eventual destruction. Law enforcement agencies, medical facilities, crime laboratories, and any other facility that collects, receives, maintains, stores, or preserves SAKs are required to participate in the database.

FDLE is required to notify every alleged victim, and his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or deceased, that the database exists and to provide such individuals with instructions on how to use the database. Additionally, an alleged victim or his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or deceased, must be notified if the victim's SAK testing results in a DNA match, but such notification must not release any genetic or other identifying information about the match. The required notification may only be delayed up to 180 days after the date the match is made, if law enforcement determines notification would negatively affect an investigation.¹²

Time Limitations for Prosecution

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated.¹³ The SOL in effect at the time a crime is committed controls.¹⁴ In general, time is calculated from the day after a person commits an offense, and the filing of a charging document such as an indictment or information initiates the prosecution for the purpose of satisfying the time limitations.¹⁵ Regardless of whether a charging document is filed, the time limitation does not run during any time an offender is continuously absent from the state or otherwise undiscoverable because he or she lacks a reasonably ascertainable home address or place of employment; however, an extension under this scenario may not exceed the normal time limitation by more than three years.¹⁶

Capital felonies,¹⁷ life felonies,¹⁸ and felonies resulting in a death are not subject to time constraints, and the state may bring charges at any time.¹⁹ The standard time limitations for other crimes are:²⁰

- Four years for a first-degree felony.
- Three years for a second or third-degree felony.
- Two years for a first-degree misdemeanor.
- One year for a second-degree misdemeanor.

Exceptions to Standard SOL for Sexual Battery Offenses

Exceptions to the standard SOL apply to certain crimes and circumstances. In particular, Florida extends or removes time limitations or changes the date on which calculation of the SOL begins²¹ for specified sexual battery offenses.²²

Under s. 775.15, F.S., the following SOL apply to sexual battery prosecutions:

- No SOL, and prosecution may be commenced at any time, for a specified:
 - Sexual battery involving a victim under 16;²³

¹² S. 943.326(4)(c-e), F.S.

¹³ S. 775.15, F.S.

¹⁴ *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

¹⁵ S. 775.15(3-4), F.S.

¹⁶ S. 775.15(5), F.S.

¹⁷ S. 775.082, F.S.

¹⁸ *Id.*

¹⁹ S. 775.15(1), F.S.

²⁰ S. 775.15(2), F.S.

²¹ See s. 775.15, F.S.

²² An extension of a particular crime's SOL does not violate the ex post facto clause of the Florida Constitution if the extension takes effect before prosecution of an offense is barred by the old SOL and the new SOL clearly indicates it applies to cases pending upon its effective date. Art. I, s.10, Fla. Const.; *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

²³ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2010. S. 775.15(13)(c), F.S.

- Sexual battery involving a victim under 18;²⁴
- First-degree felony sexual battery involving a victim under 18;²⁵ and
- First or second-degree felony sexual battery involving a victim 16 or older but less than 18 years of age,²⁶ if the offense is reported within 72 hours of commission.²⁷
- If not reported within 72 hours of commission, prosecution of a specified first or second-degree felony sexual battery involving a victim 16 or older must be commenced within eight years.²⁸
- However, if a victim is under 18 at the time any of the above sexual battery offenses are committed, the applicable SOL does not begin to run until he or she turns 18 or the violation is reported to law enforcement or a governmental agency, whichever occurs earlier.²⁹

Effect of the Bill

The bill amends s. 943.326, F.S., to require a SAK collected from a non-reporting victim to be retained for a minimum of 50 years. The bill requires medical facilities and certified rape crisis centers that collect such a kit to transfer the kit to FDLE within 30 days after collection. The bill requires FDLE to store a SAK collected from a non-reporting victim:

- Anonymously;
- In a secure, environmentally safe manner; and
- With a documented chain of custody.

Under the bill, if a non-reporting victim later makes a report to law enforcement or requests, or has a request made on his or her behalf by an authorized representative, to have his or her SAK tested, his or her kit must then be retained until the prosecuting agency authorizes its destruction if the applicable time limitation under s. 775.15, F.S., has not expired and prosecution of a criminal case may still be commenced. However, in circumstances in which a criminal case may no longer be commenced because the applicable statute of limitation has expired, the bill requires the SAK to be maintained in a secure, environmentally safe manner until FDLE has approved its destruction.

Additionally, the bill requires DNA evidence not contained in a SAK and collected from a reporting victim to be retained until the prosecuting agency authorizes its destruction.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on FDLE based on the costs associated with storing SAKs collected from non-reporting victims for a minimum of 50 years in a manner consistent with the requirements of the bill.

²⁴ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2020. S. 775.15(20), F.S.

²⁵ Prosecution must not have been barred by s. 775.15(2), F.S., on or before October 1, 2003. S. 775.15(13)(b), F.S.

²⁶ If a victim is less than 18 years of age, prosecution of the offense must not have been barred by s. 775.15(2), F.S., on or before December 31, 1984. S. 775.15(13)(a), F.S.

²⁷ S. 775.15(13)(a) and (14)(a), F.S.

²⁸ Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2015. S. 775.15(14)(b), F.S.

²⁹ S. 775.15(13)(a), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.