

Rep. Bennett
LD 549

An Act to Establish a Statewide Sexual Assault Forensic Examination Kit Tracking System and Update Certain Requirements Regarding Sexual Assault Forensic Examination Kits

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the creation of a statewide sexual assault forensic examination kit tracking system and an inventory of all sexual assault forensic examination kits in the possession of law enforcement agencies has already begun pursuant to a federal grant, which will end in June 2025, leaving the tracking system and inventory only partially complete; and

Whereas, this legislation requires the establishment of a tracking system, allowing the already started work to continue without interruption; and

Whereas, the immediate passage of this legislation is critical to strengthen the State's enforcement of sexual assault laws and response to sexual assault; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24 MRSA §2986, sub-§3, as amended by PL 2019, c. 94, §1, is further amended to read:

3. Completed kit. If the alleged victim has not reported the alleged offense to a law enforcement agency when the examination is complete, the hospital or health care practitioner shall then notify the nearest law enforcement agency, which shall transport and store the completed forensic examination kit for 8 20 years. The completed kit may be identified only by the tracking number. If during that storage period an alleged victim decides to report the alleged offense to a law enforcement agency, the alleged victim may contact the hospital or health care practitioner to determine the tracking number. The hospital or health care practitioner shall provide the alleged victim with the tracking number on the forensic examination kit and shall inform the alleged victim which law enforcement agency is storing the kit.

An alleged victim who has not reported the alleged offense to a law enforcement agency may request that a completed forensic examination kit be transported to the Maine State Police Crime Laboratory and be processed by signing a consent form indicating that the alleged victim wants the kit to be tested, and the results of the analysis must be kept anonymous.

If the alleged victim reports the alleged offense to a law enforcement agency by the time the examination is complete, the investigating agency shall retain custody of the forensic examination kit.

If an examination is performed under subsection 5 and the alleged victim does not, within 60 days, regain a state of consciousness adequate to decide whether or not to report the alleged offense, the State may file a motion in the District Court relating to storing or processing the forensic examination kit. Upon finding good cause and after considering factors, including, but not limited to, the possible benefits to public safety in processing the kit and the likelihood of the alleged victim's regaining a state of consciousness adequate to decide whether or not to report the alleged offense in a reasonable time, the District Court may order either that the kit be stored for additional time or that the kit be transported to the Maine State Police Crime Laboratory for processing, or such other disposition that the court determines just. In the interests of justice

or upon motion by the State, the District Court may conduct hearings required under this paragraph confidentially and in camera and may impound pleadings and other records related to them.

A law enforcement agency shall store a completed forensic examination kit involving alleged sexual assault for 20 years regardless of whether the alleged offense is reported to a law enforcement agency.

Beginning January 1, 2027, all completed forensic examination kits that are not anonymous and that do identify an alleged victim must be transported to the Maine State Police Crime Laboratory and be processed.

Beginning January 1, 2027, and every 5 years thereafter, a law enforcement agency shall transport to the Maine State Police Crime Laboratory completed forensic examination kits that are being stored by that law enforcement agency and that identify an alleged victim. After completing the inventory of past kits and entering those into the kit tracking system, each department must begin transporting these held kits for testing. Departments shall begin with the most recent kits and work backwards until all identified victim kits have been delivered to the lab. Beginning with the kits most recently stored by the law enforcement agency, the Maine State Police Crime Laboratory shall process those kits on a rolling basis. The Department of Public Safety shall adopt rules to implement testing requirements under this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 25 MRSA §2915-A is enacted to read:

§2915-A. Sexual assault forensic examination kit tracking system

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Crime laboratory" means the Maine State Police Crime Laboratory located in Augusta or another laboratory that provides forensic services to law enforcement agencies for the purpose of analyzing forensic examination kits.

B. "Department" means the Department of Public Safety.

C. "Forensic examination kit" or "kit" means a uniform standardized forensic examination kit developed by the department pursuant to section 2915, subsection 1 for evidence collection by a licensed health care provider in alleged cases of sexual assault.

D. "Law enforcement agency" means the State Police, a county law enforcement agency or a municipal law enforcement agency.

E. "Licensed health care provider" means:

(1) A hospital licensed under Title 22, chapter 405; or

(2) A health care practitioner who is licensed by this State to provide or otherwise lawfully providing health care or a partnership or corporation made up of such health care practitioners.

F. "Sexual assault" means a crime enumerated in Title 17-A, chapter 11.

G. "Tracking system" means the forensic examination kit tracking system established by the department pursuant to subsection 2.

2. Forensic examination kit tracking system. The department shall continue to develop, establish, operate and maintain a tracking system for all completed forensic examination kits, regardless of whether the alleged offense relating to the kit was reported to a law enforcement agency, that is continuously accessible to approved users, and must make that system available statewide to hospitals and law enforcement agencies.

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A. The department shall establish, operate and maintain the tracking system through the use of department personnel and resources and may contract with public or private entities, including, but not limited to, software and technology providers, to accomplish the department's duties related to the tracking system.

B. Approved users shall adhere to the following procedures when entering information for each kit into the tracking system, which must, at a minimum, collect the following information.

(1) A crime laboratory shall enter into the tracking system each new and unused kit and record each kit's intended destination before the kit leaves the possession of the crime laboratory.

(2) A licensed health care provider shall enter into the tracking system the date it receives each kit from a crime laboratory.

(3) A licensed health care provider shall identify when a kit was used for evidence collection and enter into the tracking system the date when the kit was used.

(4) A licensed health care provider shall identify when a completed kit is transferred to a law enforcement agency and to which law enforcement agency it is transferred and enter into the tracking system the date when the kit was transferred.

(5) A licensed health care provider shall identify when a kit is discarded based on damage to the kit or its use in training and enter into the tracking system the date on which the kit was discarded.

(6) A law enforcement agency shall enter into the tracking system the date it receives a completed kit and the location where the completed kit is being stored.

(7) A law enforcement agency in possession of a completed kit shall enter into the tracking system the date that law enforcement agency reports to a prosecuting attorney that a forensic examination has been performed pursuant to Title 24, section 2986.

A law enforcement agency shall enter into the tracking system when it has delivered a kit to the Crime Laboratory.

(8) A crime laboratory shall identify when it has conducted an analysis of a completed kit and enter into the tracking system the date of the analysis.

(9) A law enforcement agency that receives a kit after analysis from a crime laboratory shall identify when it received the kit and whether that kit was stored or destroyed.

C. The tracking system must provide for the updating and tracking of a forensic examination kit as follows.

(1) An alleged victim of sexual assault from whom forensic evidence has been collected using a kit must have access to the tracking system on an anonymous and secure basis for the purposes of receiving updates regarding the kit and tracking the status of the kit.

(2) A licensed health care provider, law enforcement agency, the Crime Lab, prosecuting attorney or any other entity in possession of a kit must have access to the tracking system for the purposes of entering, updating and tracking the status and location of the kit.

3. Participation required. Law enforcement agencies, licensed health care providers, and crime laboratories and district attorneys in the State shall participate in the tracking system on the schedule and in the manner required by department rules adopted pursuant to subsection 6.

4. Immunity. A person or entity required by subsection 3 to participate in the tracking system is immune from civil liability for actions taken as a participant that are required by subsection 3 or by rules adopted pursuant to subsection 6.

5. Report. The department shall report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and the Governor by January 1, 2027, and annually thereafter, regarding the tracking system. The report may include recommendations from the department for improved operation of the tracking system and must include the following information, identified by the county from which a forensic examination kit was entered into the tracking system:

A. The number of reported kits and the number of anonymous kits in the tracking system and, of those kits, the number of kits on which analysis has been completed and the number of kits on which analysis has not been completed;

B. The number of reported kits and the number of anonymous kits entered into the tracking system during the prior calendar year and, of those kits, the number on which analysis has been completed and the number on which analysis has not been completed;

C. The average and median lengths of time for forensic examination kits to be sent for analysis after being entered into the tracking system and for analysis to be completed; and

D. The number of reported forensic examination kits entered into the tracking system for more than one year for which analysis has not been completed.

The State Police and any other law enforcement agency that performs its duties in more than one county shall provide to the department tracking information for each county where a forensic examination kit was entered into the tracking system.

6. Rules. The commissioner shall adopt rules to govern participation in and implementation of the tracking system. The rules must include provisions for maintaining confidentiality of tracking system information; provisions to ensure timely posting to the tracking system; a process for approving tracking system users and access for approved users; procedures for posting information and for updating information in the tracking system; and requirements for documentation of persons who have posted, accessed and updated information in the tracking system. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 3. 25 MRSA §3821, as amended by PL 2023, c. 236, §1, is further amended to read:

§3821. Transportation and storage of forensic examination kits

For the purposes of this section, "sexual assault" means any crime enumerated in Title 17-A, chapter 11 and "strangulation" has the same meaning as in Title 17-A, section 208, subsection 1, paragraph C.

If an alleged victim of sexual assault or strangulation has a forensic examination and has not reported the alleged offense to a law enforcement agency when the examination is complete, the licensed hospital or licensed health care practitioner that completed the forensic examination shall notify the nearest law enforcement agency. That law enforcement agency shall transport the completed forensic examination kit, identified only by a tracking number assigned by the kit manufacturer, to its evidence storage facility. ~~The law enforcement agency shall store the forensic examination kits involving sexual assault for 20 years and forensic examination kits involving only strangulation for 6 years. If during that storage period the alleged victim reports the offense to a law enforcement agency, the investigating agency shall take possession of the forensic examination kit. An alleged victim who has not reported the alleged offense to a law enforcement agency may request that a completed forensic examination kit be transported to the Maine State Police Crime~~

Laboratory and be processed by signing a consent form indicating that the alleged victim wants the kit to be tested, and the results of the analysis must be kept anonymous.

If an alleged victim of sexual assault or strangulation has a forensic examination and has reported the alleged offense to a law enforcement agency when the examination is complete, or the alleged victim reports the alleged offense after the forensic examination kit has been transported to the nearest law enforcement agency, the law enforcement agency investigating the offense shall take possession of that kit.

A law enforcement agency shall store the forensic examination kits involving sexual assault for 20 years and forensic examination kits involving only strangulation for 6 years, regardless of whether the alleged offense relating to the kit is reported to a law enforcement agency. Beginning January 1, 2027, completed forensic examination kits must be transported to the Maine State Police Crime Laboratory and be processed.

In the case of a forensic examination performed under Title 24, section 2986, subsection 5, the law enforcement agency must immediately notify the district attorney for the district in which the hospital or health care practitioner is located that such a forensic examination has been performed and a forensic examination kit has been completed under Title 24, section 2986, subsection 5.

Sec. 4. 25 MRSA §3822 is enacted to read:

§3822. Identifiable completed forensic examination kits; mandatory processing

Beginning January 1, 2027, all completed forensic examination kits that are not anonymous and that do identify an alleged victim must be transported to the Maine State Police Crime Laboratory and be processed.

Beginning January 1, 2027, a law enforcement agency shall transport to the Maine State Police Crime Laboratory completed forensic examination kits that are being stored by that law enforcement agency and that identify an alleged victim. After completing the inventory of past kits and entering those into the kit tracking system, each department must begin transporting these held kits for testing. Departments shall begin with the most recent kits and work backwards until all identified victim kits have been delivered to the lab. The Maine State Police Crime Laboratory shall process those kits on a rolling basis. The Department of Public Safety shall adopt rules to implement testing requirements under this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2 and every 5 years thereafter, a law enforcement agency shall transport to the Maine State Police Crime Laboratory completed forensic examination kits that are being stored by that law enforcement agency and that identify an alleged victim. Beginning with the kits most recently stored by the law enforcement agency, the Maine State Police Crime Laboratory shall process those kits on a rolling basis. The Department of Public Safety shall adopt rules to implement testing requirements under this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. Sexual assault forensic examination kit inventory. By June 1, 2026, all law enforcement agencies that receive, maintain, store or preserve forensic examination kits shall complete an inventory of all kits in their possession and shall report their findings to the Department of Public Safety. At a minimum, reported findings to the department must include a breakdown by year by each agency of the number of:

1. Reported (Victim Identified) and anonymous kits received;
2. Reported (Victim Identified) kits that were never analyzed; and
3. Reported (Victim Identified) kits returned after analysis.

The department shall compile all agency findings and present a report of the inventory by January 1, 2027 to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters. At the same time, the department shall post the report on its publicly accessible website.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill directs the Department of Public Safety to establish, operate and maintain a sexual assault forensic examination kit tracking system. The system must provide relevant information for victims, both those who choose to report to a law enforcement agency and those who choose not to report, and other approved users regarding the processing, custody, analysis and destruction of evidence. The department is required to submit an annual report beginning January 1, 2027 to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and the Governor concerning information related to the status of sexual assault forensic examination kits reported in the tracking system. The bill provides requirements for the tracking system and requires the department to adopt routine technical rules, including rules regarding participation in the tracking system, confidentiality and the operation of the tracking system.

The bill directs that, by June 1, 2026, a law enforcement agency that receives, maintains, stores or preserves sexual assault forensic examination kits must complete an inventory of all kits in its possession and report its findings to the Department of Public Safety. The department must compile all agency reports and present findings of the inventory by January 1, 2027 to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and at the same time post the report on the department's publicly accessible website.

Public Law 2023, chapter 236 changed a provision in the Maine Revised Statutes, Title 25 to require law enforcement agencies to store sexual assault forensic examination kits for 20 years. For consistency with that provision, this bill amends a provision in Title 24 to require law enforcement agencies to store sexual assault forensic examination kits for 20 years.

The bill allows an alleged victim who has not reported an alleged offense to a law enforcement agency to request that a completed kit be transported to the Maine State Police Crime Laboratory to be processed by signing a consent form, and the results of the analysis must be kept anonymous.

The bill requires that, beginning January 1, 2027, and every 5 years thereafter, all completed kits that identify an alleged victim and are being stored by a law enforcement agency must be transported to the Maine State Police Crime Laboratory and be processed on a rolling basis, beginning with kits most recently stored.

The bill also requires all forensic examination kits completed on or after January 1, 2027 to be transported to the Maine State Police Crime Laboratory and be processed.