

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee	13 Y, 0 N	Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

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 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 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.

CS/HB 607 amends s. 943.326, F.S., to require a SAK collected from a non-reporting victim to be retained for a minimum of eight years from the collection date by the medical facility that collected the kit, a certified rape crisis center with appropriate storage capabilities, or a LEA. The bill requires a SAK collected from a non-reporting victim to be stored 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 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, but likely insignificant fiscal impact on state, local, or private entities required to retain SAKs collected from non-reporting victims based on the costs associated with storing the kits in a manner consistent with the requirements of the bill.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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.⁴ All consent forms must be retained by the rape crisis center⁵ or medical facility conducting the examination.⁶

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.⁷

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-

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 Jan. 3, 2024).

³ Florida Department of Legal Affairs, 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 Jan. 3, 2024).

⁴ Sections 39.201(1) and (5), F.S., require 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 must conduct an assessment and send a written report to the appropriate county sheriff's office.

⁵ 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.

⁶ *Id.*

⁷ Florida Department of Law Enforcement, *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 Jan. 3, 2024).

reporting kits. However, DLA recommends a law enforcement agency to be utilized for long-term evidence storage.⁸

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 system⁹ 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 victims¹⁰ 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.¹¹
- 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 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.¹²

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 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 instructions on how to use the database. Additionally, an alleged victim or his or her parent, guardian, or legal or personal representative must be notified if the victim's SAK testing results in a DNA match,

⁸ *Id.* at pp. 20-21.

⁹ 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.

¹⁰ 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. Florida Department of Law Enforcement, *supra*, at 3.

¹¹ 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.

¹² S. 943.326, F.S.

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.¹³

Time Limitations for Prosecution

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated.¹⁴ The SOL in effect at the time a crime is committed controls.¹⁵ 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.¹⁶ 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.¹⁷

Capital felonies,¹⁸ life felonies,¹⁹ and felonies resulting in a death are not subject to time constraints, and the state may bring charges at any time.²⁰ The standard time limitations for other crimes are:²¹

- 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 begins²² for specified sexual battery offenses.²³

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;²⁴
 - Sexual battery involving a victim under 18;²⁵
 - First-degree felony sexual battery involving a victim under 18;²⁶ and
 - First or second-degree felony sexual battery involving a victim 16 or older but less than 18 years of age,²⁷ if the offense is reported within 72 hours of commission.²⁸
- 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.²⁹

¹³ S. 943.326(4)(c-e), F.S.

¹⁴ S. 775.15, F.S.

¹⁵ *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

¹⁶ S. 775.15(3-4), F.S.

¹⁷ S. 775.15(5), F.S.

¹⁸ S. 775.082, F.S.

¹⁹ *Id.*

²⁰ S. 775.15(1), F.S.

²¹ S. 775.15(2), F.S.

²² See s. 775.15, F.S.

²³ 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. s. 10, art. I, Fla. Const.; *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

²⁴ 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.

²⁵ 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.

²⁶ 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.

²⁷ 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.

²⁸ S. 775.15(13)(a) and (14)(a), F.S.

²⁹ 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.

- 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.³⁰

Effect of Proposed Changes

CS/HB 607 amends s. 943.326, F.S., to require a SAK collected from a non-reporting victim to be retained for a minimum of eight years from the collection date by the medical facility that collected the kit, a certified rape crisis center with appropriate storage capabilities, or a law enforcement agency. The bill requires a SAK collected from a non-reporting victim to be stored:

- 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.

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 provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.326, F.S., relating to DNA evidence collected in sexual offense investigations.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have an indeterminate, but likely insignificant fiscal impact on medical facilities, rape crisis centers, and law enforcement agencies required to retain SAKs collected from non-reporting victims

based on the costs associated with storing the kits for a minimum of eight years. FDLE has indicated that the number of kits required for storage by law enforcement agencies, medical facilities, or other entities as a result of the bill is not expected to require increased storage facilities or programs to remain compliant.³¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 12, 2023, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that DNA evidence not contained in a SAK and collected from a reporting victim must be retained until the prosecuting agency authorizes its destruction.
- Clarified that 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 be retained until the prosecuting agency authorizes its destruction.
- Removed the requirement that a SAK collected from a non-reporting victim must be stored in such a manner that it will not be submitted for testing unless an appropriate request is made.
- Made technical changes.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.