

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 528

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE TESTING OF SEXUAL ASSAULT EVIDENCE KITS; PROVIDING LEGISLA-
2 TIVE INTENT; AND AMENDING CHAPTER 29, TITLE 67, IDAHO CODE, BY THE AD-
3 DITION OF A NEW SECTION 67-2919, IDAHO CODE, TO PROVIDE THAT THE IDAHO
4 STATE POLICE FORENSIC SERVICES LABORATORY SHALL TEST SEXUAL ASSAULT EV-
5 IDENCE KITS, TO PROVIDE DUTIES FOR HEALTH CARE FACILITIES, TO PROVIDE
6 DUTIES FOR LOCAL LAW ENFORCEMENT, TO PROVIDE PROCEDURES FOR THE LABO-
7 RATORY FOR TESTING KITS, TO PROVIDE FOR RETENTION OF KITS, TO PROVIDE
8 FOR INDEPENDENT REVIEW OF KITS IN CERTAIN INSTANCES, TO PROVIDE RULE-
9 MAKING AUTHORITY, TO PROVIDE THAT IDAHO STATE POLICE FORENSIC SERVICES
10 SHALL PROVIDE KITS TO CERTAIN PARTIES, TO PROVIDE REPORTING AND AUDIT-
11 ING REQUIREMENTS FOR UNTESTED KITS, TO PROVIDE FOR VICTIM NOTIFICATION,
12 TO PROVIDE FOR REPORTING REQUIREMENTS AND TO DEFINE A TERM.
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. LEGISLATIVE INTENT. The Legislature finds that DNA evidence
16 is a powerful law enforcement tool that can identify unknown suspects, con-
17 nect crimes together and exonerate the innocent. It is the intent of the Leg-
18 islature that sexual assault evidence kits are tested in a timely manner to
19 advance public safety.

20 SECTION 2. That Chapter 29, Title 67, Idaho Code, be, and the same is
21 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
22 ignated as Section 67-2919, Idaho Code, and to read as follows:

23 67-2919. TESTING OF SEXUAL ASSAULT EVIDENCE KITS. (1) Unless an adult
24 victim of a reported sexual assault expressly indicates otherwise and except
25 as provided in subsection (6) of this section, evidence obtained in a sexual
26 assault evidence kit shall be tested by the Idaho state police forensic ser-
27 vices laboratory according to sampling protocols and procedures established
28 by the laboratory.

29 (2) A health care facility that has performed a medical examination of
30 a victim of a reported sexual assault using a sexual assault evidence kit
31 shall notify the local law enforcement agency of the jurisdiction where the
32 reported sexual assault occurred that sexual assault evidence has been col-
33 lected and is ready for law enforcement to take custody of such evidence ac-
34 cording to their established protocol.

35 (3) A local law enforcement agency that receives notice from a health
36 care facility as described in subsection (2) of this section shall facil-
37 itate the collection of the sexual assault evidence kit and any other col-
38 lected evidence from the health care facility. After obtaining the sexual
39 assault evidence kit and any other collected evidence from the health care
40 facility, the local law enforcement agency shall submit such kit, in adher-
41 ence to the submission policies of the Idaho state police forensic services

1 laboratory, to the Idaho state police forensic services laboratory for test-
2 ing as soon as reasonably practical, but not later than thirty (30) days af-
3 ter obtaining the kit. If kit submission to the Idaho state police foren-
4 sic services laboratory is not done within the thirty (30) day time limit
5 or testing is not done by the Idaho state police forensic services within
6 the ninety (90) day additional time limit established in this subsection, it
7 shall not affect the ability to prosecute or defeat the jurisdiction of the
8 court. Any law enforcement agency with sexual assault evidence kits or other
9 sexual assault case evidence belonging to another jurisdiction must notify
10 that jurisdiction within seven (7) days of obtaining the kits or evidence,
11 and the receiving jurisdiction must pick up the sexual assault evidence kits
12 or other sexual assault case evidence within seven (7) days.

13 (4) For all sexual assault evidence kits received pursuant to subsec-
14 tion (3) of this section, the Idaho state police forensic services labora-
15 tory shall test such kits and submit eligible results to the Idaho DNA data-
16 base within ninety (90) days. The laboratory shall report any kits not pro-
17 cessed within ninety (90) days to the county prosecutor with jurisdiction in
18 the case and to the Idaho legislature.

19 (5) Following analysis by the Idaho state police forensic services lab-
20 oratory, sexual assault evidence kits shall be returned to and retained by
21 the investigating agency in accordance with agency evidence standards fol-
22 lowing a reported sexual assault or for the period of time that any person re-
23 mains incarcerated in connection with the offense, whichever is greater.

24 (6) All sexual assault evidence kits collected in this state shall be
25 processed by the Idaho state police forensic services laboratory except when
26 there is no evidence to support a crime being committed, when it is no longer
27 being investigated as a crime or when an adult victim expressly indicates
28 that no further forensic examination or testing occur pursuant to subsec-
29 tion (1) of this section. Any sexual assault evidence kit that is not exam-
30 ined and tested shall be independently reviewed by the county prosecutor. In
31 the event such review concludes that the kit should have been tested, testing
32 shall occur as provided in subsections (3) and (4) of this section.

33 (7) The Idaho state police shall promulgate rules to create a tracking
34 process for sexual assault evidence kits in possession of the Idaho state po-
35 lice forensic services laboratory and every law enforcement agency through-
36 out the state. Such rules shall provide for the information to be submit-
37 ted to the Idaho state police by law enforcement agencies to assist in such
38 tracking.

39 (8) Idaho state police forensic services shall approve and provide, at
40 no cost to the victim, appropriate sexual assault evidence kits to request-
41 ing health care facilities and law enforcement agencies. All such kits shall
42 contain a form for victims to inform them of their right of notification pur-
43 suant to subsections (10) and (11) of this section and of their right to de-
44 cline to have a kit collected or tested pursuant to subsection (1) of this
45 section.

46 (9) Within one hundred eighty (180) days of the effective date of this
47 act, the Idaho state police forensic services laboratory shall provide a
48 one-time report to the legislature of all untested sexual assault evidence
49 kits in Idaho. To assist with this one-time report, all law enforcement
50 agencies in Idaho shall perform a one-time audit of any untested sexual as-

1 sault evidence kits in their possession and submit to the Idaho state police
2 forensic services director the following:

- 3 (a) The number of untested kits in the law enforcement agency's posses-
4 sion;
5 (b) The date each kit was collected and the reason it was not submitted
6 to Idaho state police forensic services for testing; and
7 (c) The number of any anonymous or unreported kits in the law enforce-
8 ment agency's possession.

9 Law enforcement agencies shall follow the same protocol to perform the audit
10 of untested sexual assault evidence kits as they would with any new kit sub-
11 mitted to the agency. The audit performed by a law enforcement agency shall
12 be reviewed by a law enforcement representative and the county prosecutor
13 before the final report is provided to the legislature.

14 (10) A law enforcement agency that submits a sexual assault evidence kit
15 pursuant to subsection (3) of this section shall upon written request notify
16 a victim of sexual assault, a parent or guardian if the victim is a minor at
17 the time of notification, or a relative if the victim is deceased, of the fol-
18 lowing:

- 19 (a) When the sexual assault evidence kit is submitted to the Idaho state
20 police forensic services laboratory;
21 (b) When any evidence sample DNA profile is entered into the Idaho DNA
22 database; and
23 (c) When a DNA match occurs; provided however, that such notification
24 shall state only that a match has occurred and shall not contain any ge-
25 netic or other identifying information.

26 (11) The county prosecutor, or their designee, shall upon written re-
27 quest notify a victim of sexual assault, a parent or guardian if the victim is
28 a minor at the time of notification, or a relative if the victim is deceased,
29 of the following:

- 30 (a) When there is any planned destruction of a sexual assault evidence
31 kit or any other sexual assault case evidence; and
32 (b) When there is any change in the status of their case or reopening of
33 the case.

34 (12) On or before January 20, 2017, and by January 20 of each year there-
35 after, Idaho state police forensic services shall submit a report to the
36 Idaho legislature regarding its examination of sexual assault evidence kits
37 throughout the state in the previous year. The report shall include, but not
38 be limited to, the number of kits purchased and distributed by Idaho state
39 police forensic services, the number of kits collected by each law enforce-
40 ment agency, the number of kits tested by the Idaho state police forensic
41 services laboratory, the number of kits not submitted to the Idaho state
42 police forensic services laboratory pursuant to subsection (1) or (6) of
43 this section, the number of DNA database hits from sexual assault cases,
44 a list of any law enforcement agencies that did not adhere to the tracking
45 process promulgated pursuant to subsection (7) of this section, and for the
46 report submitted in 2017, a list of any law enforcement agencies that did not
47 participate in the audit required in subsection (9) of this section. This
48 report shall be available on the website of the Idaho state police and read-
49 ily available to the public. No victim or alleged perpetrator names shall be

1 included in the report. Information shall be provided in aggregate and shall
2 not include case-specific information.

3 (13) As used in this section, "sexual assault evidence kit" means a set
4 of materials, such as swabs and tools for collecting blood samples, used to
5 gather forensic evidence from a victim of reported sexual assault and the ev-
6 idence obtained with such materials.