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SENATE BILL NO. 1041

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice on January 22, 2025)

(Patron Prior to Substitute—Senator Perry)

A BILL to amend and reenact §§ 9.1-191, 19.2-11.5, as it is currently effective and as it shall become effective, and 19.2-368.3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-11.6:1 and by adding in Article 8 of Chapter 5 of Title 32.1 a section numbered 32.1-162.15:12, relating to Virginia Forensic Nursing Advisory Council established; sexual assault forensic examiners; physical evidence recovery kits.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-191, 19.2-11.5, as it is currently effective and as it shall become effective, and 19.2-368.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-11.6:1 and by adding in Article 8 of Chapter 5 of Title 32.1 a section numbered 32.1-162.15:12 as follows:

§ 9.1-191. Virginia Sexual Assault Forensic Examiner Coordination Program.

A. The Department shall establish a the Virginia sexual assault forensic examiner coordination program Sexual Assault Forensic Examiner Coordination Program (the Program). The program Program shall be headed by a coordinator (the Coordinator). The Coordinator shall:

1. Create and coordinate an annual statewide sexual assault forensic nurse examiner training program in partnership with the Attorney General, the Department of Health, the Virginia Hospital and Healthcare Association, the Victim Compensation Fund, the International Association of Forensic Nurses, and the Secretary of Health and Human Services Resources, and the Virginia Forensic Nursing Advisory Council;

2. Coordinate the development and enhancement of sexual assault forensic examiner programs across the Commonwealth that include prevention of secondary trauma to survivors of sexual assault and culturally sensitive training for health professionals;

3. Participate in the development of hospital protocols and guidelines for treatment of survivors of sexual assault in partnership with the Department of Health;

4. Coordinate and strengthen communications among sexual assault nurse examiner medical directors, sexual assault response teams, and hospitals for existing and developing sexual assault nurse examiner programs;

5. Provide technical assistance for existing and developing sexual assault forensic examiner programs, including local sexual assault forensic examiner training programs;

6. Create and maintain a statewide list, updated biannually, to include the following:

a. A list of available sexual assault forensic examiners, sexual assault nurse examiners, sexual assault forensic nurse examiners, and pediatric sexual assault nurse examiners;

b. The location and facility affiliation of each examiner;

c. The duty hours for each examiner and affiliated facility for sexual assault exam services; and

d. The location of available local sexual assault forensic examiner training programs;

7. Coordinate, share, and disseminate the list created pursuant to subdivision 6 to the emergency operations communications system available to emergency medical services and law-enforcement agencies as well as the internal emergency and hospital communications system;

8. Share and disseminate the list created pursuant to subdivision 6 with all other relevant agencies, including law-enforcement agencies, attorneys for the Commonwealth, victim-witness programs, sexual assault service organizations, the Department of Juvenile Justice, the Department of Social Services, the Department of Education, and school divisions;

9. Create sexual assault nurse examiner recruitment materials for universities and colleges with nursing programs in partnership with the State Council of Higher Education for Virginia; and

10. Support and coordinate community education and public outreach, when appropriate, relating to sexual assault nurse examiner issues for the Commonwealth.

B. The Coordinator may request and shall receive from every department, division, board, bureau, commission, authority, or other agency created by the Commonwealth, or to which the Commonwealth is a party, or any political subdivision thereof, cooperation and assistance in the performance of its duties. The Coordinator may also consult and exchange information with local government agencies and interested stakeholders.

C. The Coordinator shall report annually on or before October 1 to the Governor and the General Assembly. The report shall include a summary of activities for the year and any recommendations to address sexual assault exams within the Commonwealth, including budget needs to increase the availability of sexual assault exam services across the Commonwealth. The Department shall ensure that such report is available to

SENATE SUBSTITUTE

SB1041S1

1/28/25 14:36

60 the public.

61 **§ 19.2-11.5. (Effective until July 1, 2025) Definitions.**

62 As used in this chapter, unless the context requires a different meaning:

63 "Anonymous physical evidence recovery kit" means a physical evidence recovery kit that is collected
64 from a victim of sexual assault through a forensic medical examination where the victim elects, at the time of
65 the examination, not to report the sexual assault offense to a law-enforcement agency.

66 "Department" means the Virginia Department of Forensic Science.

67 "Division" means the Division of Consolidated Laboratory Services of the Virginia Department of
68 General Services.

69 "Health care provider" means ~~any hospital, clinic, or other medical facility~~ a health care provider as
70 defined in § 8.01-581.1 that provides forensic medical examinations to victims of sexual assault.

71 "Law-enforcement agency" means the state or local law-enforcement agency with the primary
72 responsibility for investigating an alleged sexual assault offense case and includes the employees of that
73 agency.

74 "Physical evidence recovery kit" means any evidence collection kit supplied by the Department to health
75 care providers for use in collecting evidence from victims of sexual assault during forensic medical
76 examinations or to the Office of the Chief Medical Examiner for use during death investigations to collect
77 evidence from decedents who may be victims of sexual assault.

78 "Sexual assault forensic examiner" means a health care provider who has completed the education and
79 training recommended by the Virginia Forensic Nursing Advisory Council, approved by the Board of Health
80 pursuant to § 32.1-162.15:12, to conduct examinations using a physical evidence recovery kit.

81 "Sexual assault offense" means a violation or attempted violation of any offense enumerated in Article 7
82 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or of any offense specified in § 18.2-361, 18.2-370, or
83 18.2-370.1.

84 "Telehealth sexual assault forensic examination" means an in-person forensic medical examination by a
85 health care provider in consultation with and under the supervision of a sexual assault forensic examiner
86 using telehealth services as defined in § 32.1-122.03:1 to collect evidence using a physical evidence recovery
87 kit.

88 "Victim of sexual assault" means any person who undergoes a forensic medical examination for the
89 collection of a physical evidence recovery kit connected to a sexual assault offense.

90 **§ 19.2-11.5. (Effective July 1, 2025) Definitions.**

91 As used in this chapter, unless the context requires a different meaning:

92 "Anonymous physical evidence recovery kit" means a physical evidence recovery kit that is collected
93 from a victim of sexual assault through a forensic medical examination where the victim elects, at the time of
94 the examination, not to report the sexual assault offense to a law-enforcement agency.

95 "Anonymous trace evidence collection kit" means a trace evidence collection kit that is collected from a
96 victim of strangulation through a forensic medical examination where the victim elects, at the time of the
97 examination, not to report the strangulation to a law-enforcement agency.

98 "Department" means the Virginia Department of Forensic Science.

99 "Division" means the Division of Consolidated Laboratory Services of the Virginia Department of
100 General Services.

101 "Health care provider" means ~~any hospital, clinic, or other medical facility~~ a health care provider as
102 defined in § 8.01-581.1 that provides forensic medical examinations to victims of sexual assault.

103 "Law-enforcement agency" means the state or local law-enforcement agency with the primary
104 responsibility for investigating an alleged sexual assault offense case and includes the employees of that
105 agency.

106 "Physical evidence recovery kit" means any evidence collection kit supplied by the Department to health
107 care providers for use in collecting evidence from victims of sexual assault during forensic medical
108 examinations or to the Office of the Chief Medical Examiner for use during death investigations to collect
109 evidence from decedents who may be victims of sexual assault.

110 "Sexual assault forensic examiner" means a health care provider who has completed the education and
111 training recommended by the Virginia Forensic Nursing Advisory Council, approved by the Board of Health
112 pursuant to § 32.1-162.15:12, to conduct examinations using a physical evidence recovery kit.

113 "Sexual assault offense" means a violation or attempted violation of any offense enumerated in Article 7
114 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or of any offense specified in § 18.2-361, 18.2-370, or
115 18.2-370.1.

116 "Telehealth sexual assault forensic examination" means an in-person forensic medical examination by a
117 health care provider in consultation with and under the supervision of a sexual assault forensic examiner
118 using telehealth services as defined in § 32.1-122.03:1 to collect evidence using a physical evidence recovery
119 kit.

120 "Trace evidence collection kit" means any evidence collection kit supplied by the Department to health

121 care providers for use in collecting evidence from victims of strangulation during forensic medical
 122 examinations or to the Office of the Chief Medical Examiner for use during death investigations to collect
 123 evidence from decedents who may be victims of strangulation.

124 "Victim of sexual assault" means any person who undergoes a forensic medical examination for the
 125 collection of a physical evidence recovery kit connected to a sexual assault offense.

126 "Victim of strangulation" means any person who undergoes a forensic medical examination for the
 127 collection of evidence in connection with an alleged strangulation.

128 **§ 19.2-11.6:1. Telehealth sexual assault forensic examinations; admissibility of physical evidence**
 129 **recovery kit.**

130 *A. A health care provider may conduct a telehealth sexual assault forensic examination for a victim of*
 131 *sexual assault if a sexual assault forensic examiner is not readily available to conduct an in-person forensic*
 132 *medical examination for the collection of a physical evidence recovery kit.*

133 *B. A physical evidence recovery kit collected during a telehealth sexual assault forensic examination shall*
 134 *not be determined to be inadmissible solely because the physical evidence recovery kit was collected during a*
 135 *telehealth sexual assault forensic examination and not directly by a sexual assault forensic examiner,*
 136 *provided that such physical evidence recovery kit is otherwise admissible pursuant to the general rules of*
 137 *evidence.*

138 **§ 19.2-368.3. Powers and duties of Commission.**

139 The Commission shall have the following powers and duties in the administration of the provisions of this
 140 chapter:

141 1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and
 142 purposes of this chapter, to include a distinct policy (i) for the payment of physical evidence recovery kit
 143 examinations, *including mileage at a rate provided by law incurred by a sexual assault forensic examiner as*
 144 *defined in § 19.2-11.5,* and (ii) to require each health care provider as defined in § 8.01-581.1 that provides
 145 services under this chapter to negotiate with the Commission or its designee to establish prospective
 146 agreements relating to rates for payment of claims for such services allowed under § 19.2-368.11:1, such
 147 rates to discharge the obligation to the provider in full except where the provider is an agency of the
 148 Commonwealth and the claimant receives a third party recovery in addition to the payment from the Fund.

149 2. Notwithstanding the provisions of §§ 2.2-3706 and 2.2-3706.1, to acquire from the attorneys for the
 150 Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical
 151 Examiner such investigative results, information and data as will enable the Commission to determine if, in
 152 fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was
 153 responsible for his own injury. These data shall include prior adult arrest records and juvenile court
 154 disposition records of the offender. For such purposes and in accordance with § 16.1-305, the Commission
 155 may also acquire from the juvenile and domestic relations district courts a copy of the order of disposition
 156 relating to the crime. The use of any information received by the Commission pursuant to this subdivision
 157 shall be limited to carrying out the purposes set forth in this section, and this information shall be confidential
 158 and shall not be disseminated further. The agency from which the information is requested may submit
 159 original reports, portions thereof, summaries, or such other configurations of information as will comply with
 160 the requirements of this section.

161 3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter, and to
 162 reinvestigate or reopen cases as the Commission deems necessary.

163 4. To require and direct medical examination of victims.

164 5. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to
 165 issue summonses requiring the attendance and giving of testimony of witnesses and require the production of
 166 any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated
 167 by the Commission to any member or employee thereof.

168 6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

169 7. To render each year to the Governor and to the General Assembly a written report of its activities. This
 170 report shall include a detailed section on all unclaimed restitution collected and disbursed to the victim from
 171 the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1.

172 8. To accept from the government of the United States grants of federal moneys for disbursement under
 173 the provisions of this chapter.

174 9. To collect and disburse unclaimed restitution pursuant to subsection I of § 19.2-305.1 and develop, in
 175 consultation with circuit court clerks and the Office of the Executive Secretary of the Supreme Court of
 176 Virginia, policies and procedures for the receipt, collection, and disbursement of unclaimed restitution to
 177 victims of crime.

178 10. To identify and locate victims of crime for whom restitution owed to such victims has been deposited
 179 into the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1. Notwithstanding the
 180 provisions of §§ 2.2-3706 and 2.2-3706.1, the Commission may acquire from the attorneys for the
 181 Commonwealth, State Police, local police departments, and sheriffs' departments such information as will

182 enable the Commission to identify and locate such victims. The use of any information received by the
183 Commission pursuant to this subdivision shall be limited to carrying out the purposes set forth in this section,
184 and this information shall be confidential and shall not be disseminated further.

185 **§ 32.1-162.15:12. Virginia Forensic Nursing Advisory Council.**

186 *A. The Virginia Forensic Nursing Advisory Council (the Council) is hereby established as an advisory*
187 *board within the meaning of § 2.2-2100 in the executive branch of state government. The Council shall*
188 *consist of five members to be appointed by the Governor. Each member shall have expertise as a sexual*
189 *assault forensic examiner, as defined in § 19.2-11.5, and shall currently reside and practice in the*
190 *Commonwealth. Members shall be appointed for terms of four years and shall not be eligible to serve for*
191 *more than two consecutive terms.*

192 *B. The Council shall review and make recommendations as necessary to the Board with support from the*
193 *Coordinator of the Virginia Sexual Assault Forensic Examiner Coordination Program, established pursuant*
194 *to § 9.1-191, concerning:*

195 *1. Criteria to become a sexual assault forensic examiner;*

196 *2. The process for certification as a sexual assault forensic examiner;*

197 *3. The curriculum and training program of an entity seeking approval to train sexual assault forensic*
198 *examiners; and*

199 *4. Qualifications of prospective sexual assault forensic examiners.*

200 *C. The Council shall periodically, but at least annually, submit a report to the General Assembly*
201 *regarding the status of sexual assault forensics in the Commonwealth, including any recommendations to*
202 *improve the quality of such services throughout the Commonwealth.*