

Comprehensive Physical Evidence Recovery Kit (PERK) Legislation

HB1160 (R. Bell) and SB291 (Black)

The legislation, which is effective July 1, 2016, will be codified at Virginia Code § 19.2-11.5 *et seq.* and can be viewed at <http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0332+pdf>.

Primary features of the legislation include:

- All Anonymous PERKs Sent to DCLS for Storage
Anonymous PERKs are kits collected from victims of sexual assault who elect not to make a report of the offense to law enforcement at the time of the examination. All anonymous PERKs must be forwarded to the Division of Consolidated Laboratory Services (DCLS) for storage by the health care provider. DCLS is required to store these kits for a minimum of two years, but may retain longer in its discretion or at the request of the victim or the investigating law enforcement agency. If the victim makes a report to law enforcement, DCLS is required to release the PERK to the law enforcement agency.
- Law Enforcement Taking Custody of PERKs
If the victim elects to report the sexual assault to law enforcement at the time the PERK is collected, the health care provider is required to notify the investigating law enforcement agency forthwith that the kit has been collected, and the law enforcement agency is required to forthwith take possession of the kit upon receiving such notice.
- Mandatory Submission of Non-Anonymous PERKs to DFS within 60 days (4 exceptions)
Law enforcement is required submit to DFS within 60 days all PERKs where the victim has made a report of the offense, unless:
 1. It is an anonymous PERK;
 2. It is part of a routine death investigation and both the OCME and the law enforcement agency agree analysis is not warranted;
 3. It is connected to an out of state offense; or
 4. The law enforcement agency has determined that the PERK is not connected to a criminal offense.
- Retention of PERKs by Law Enforcement After Analysis
After analysis, DFS will return the PERK to the law enforcement agency. It shall be stored for 10 years or until two years after the victim reaches the age of majority, whichever is longer. After the mandatory retention period, the law enforcement agency may retain the PERK for a longer period of time.
- DNA Profiles from PERKs and Expungement from Data Bank
DNA profiles developed from the analysis of PERKs shall be uploaded into the DNA Data Bank, if eligible. DFS will expunge from the DNA Data Bank any profile developed from a PERK upon receiving written confirmation from the law enforcement agency or the Commonwealth's Attorney that the profile is not connected to a criminal offense or is the profile is of an individual who is not the putative perpetrator.
- Lack of Compliance with Procedures
Lack of compliance with the procedures provided in the legislation does not affect DFS's ability to analyze the evidence or upload any developed profiles into the Data Bank. A defendant has no standing to object to any failure to comply with the procedures and failure

to comply with the procedures is not grounds for challenge the admissibility of the evidence or setting aside a conviction.

- Victims Right to Notification of Scientific Analysis Information

A victim, a parent or guardian of a victim, or a close relative of a deceased victim has the right to request and receive from the investigating law enforcement agency information regarding:

- The submission of the PERK for analysis;
- The status of the analysis; and
- The results of the analysis.

However, the law enforcement agency can withhold the information if it would interfere with an investigation or prosecution, provided the victim, parent, guardian or relative is provided an estimated date on which the information may be disclosed. The victim, parent, guardian or relative must provide a current address or telephone number to the Commonwealth's Attorney and the law enforcement agency.

- DFS Provided Funding to Support Anticipated Increase in Kits

The Biennial Budget included ~\$900,000 to DFS per year to support the increase in PERK submissions anticipated as a result of this legislation. DFS will utilize these funds to hire six additional DNA examiners. During the first year, while those DNA examiners are hired and trained, DFS will outsource the analysis of approximately 700 PERKs to a private laboratory.