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# COMMONWEALTH OF VIRGINIA



## OFFICE OF THE GOVERNOR

### NUMBER NINETY-TWO (2009)

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#### **DIRECTING THE DIVISION OF CONSOLIDATED LABORATORY SERVICES OF THE DEPARTMENT OF GENERAL SERVICES TO ACCEPT AND STORE PHYSICAL EVIDENCE RECOVERY KITS RECEIVED FROM HEALTH CARE PROVIDERS**

##### Importance of the Issue

Under Section B of § 19.2-165.1 of the Code of Virginia, “*victims complaining of sexual assault shall not be required to participate in the criminal justice system or cooperate with law-enforcement authorities in order to be provided with such forensic medical exams.*”

Currently, there is a lack of clarity regarding the steps to be taken following a forensic medical examination in an instance where evidence is collected from an alleged victim but that victim is not yet prepared to release personal identifying information to law enforcement.

Law enforcement is not required by the Code of Virginia to accept responsibility for the receipt, transport, and/or storage of evidence without a report from the complainant. Health care providers are not equipped to accept the responsibility to store the evidence in a manner that preserves chain of custody and assures that it can be used in any future prosecution.

The Commonwealth is in a position to help resolve this situation and better facilitate the protection of the privacy rights of sexual assault victims and the preservation of vital evidence in the prosecution of a serious crime by providing a secure process for the acceptance and storage of physical evidence recovery kits (PERK) of alleged sexual assault victims.

##### Direction to the Division of Consolidated Laboratory Services

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution and the laws of the Commonwealth, including but not limited to Chapter 1 of Title

2.2 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the Division of Consolidated Laboratory Services of the Department of General Services to accept and store evidence from Physical Evidence Recovery Kits (PERK) received from health care providers provided that:

- 1) the PERK examinations have been conducted by a health care provider on victims complaining of sexual assault under Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2;
- 2) the health care provider has sent the PERK to the Division of Consolidated Laboratory Services by certified mail or other method of delivery approved by the Division that meets chain of custody requirements;
- 3) the unique PERK number found within the kit is placed on the outside of the PERK and the name of the alleged victim appears on the inside of the PERK. The name of the alleged victim is not disclosed by the Consolidated Lab without the alleged victim's express written consent in advance and the Consolidated Lab meets all federal HIPAA requirements in regard to patient confidentiality;
- 4) the health care provider may include the actual costs of delivery to the Division as a medical fee incurred in gathering evidence as authorized by Section 19.2-165.1 of the Code of Virginia;
- 5) if law enforcement and/or an Attorney for the Commonwealth does not inform the Division of Consolidated Laboratory Services in writing within 120 days of the receipt of the PERK kit by the Division that the alleged victim has proceeded with a report to law enforcement, the Division shall dispose of the PERK.

This Executive Order shall be effective September 30, 2009 and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 28th day of September 2009.

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Timothy M. Kaine, Governor

Attest:

  
  

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Executive Order Number 92 (2009)

Page 3

Secretary of the Commonwealth