HOUSE DOCKET, NO. 4170 FILED ON: 1/17/2025

HOUSE . . . . . No. 1896

The Commonwealth of Massachusetts

PRESENTED BY:

Samantha Montaño

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act providing for the allowance of early evidence kits.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Samantha Montaño	*15th Suffolk*	*1/17/2025*

HOUSE DOCKET, NO. 4170 FILED ON: 1/17/2025

HOUSE . . . . . No. 1896

By Representative Montaño of Boston, a petition (accompanied by bill, House, No. 1896) of Samantha Montaño relative to the admissibility of professional services that enable the early collection and storage of DNA after a sexual assault. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act providing for the allowance of early evidence kits.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 6A is hereby amended by inserting after section 18Y the following section:-

Section 18Z (a)

"Sexual assault evidence collection kit" means physical evidence collected (1) by a qualified health care provider; (2) from the body or clothing of a living or deceased person; sexual assault evidence collection kit does not include a self-administered sexual assault evidence collection kit.

"Early Evidence Kits" Professional services that enable the early collection and storage of DNA, when accessing a traditional sexual assault forensic exam is not possible. The admissibility of such kits are subject to scrutiny in court.

11 SECTION 2. Section 79 of Chapter 233 is amended by inserting the following
12 definition:-

13 "Hospital," means a hospital licensed or certified by the department pursuant to section
14 51 of chapter 111 or other applicable law, with an emergency department, and the teaching
15 hospital of the University of Massachusetts Medical School as defined in section 1 of chapter
16 111C.

17 SECTION 3. Section 97B of Chapter 41 of the General Laws is amended by removing
18 third through fifth paragraphs and inserting place thereof, the following:-

19 At the time the evidence is obtained, a hospital licensed pursuant to Chapter 111 shall
20 inform a victim of rape or sexual assault that the evidence of rape or sexual assault preserved in a
21 kit shall be kept for a period of not less than 15 years. This notice shall be provided to the victim
22 in writing by the hospital.

23 A governmental entity, including a local law enforcement agency, a district attorney's
24 office or any other official body of the commonwealth or of a county, city or town, that is in
25 possession of forensic evidence, as defined in section 220 of chapter 111shall not destroy or
26 dispose of: (i) a sexual assault evidence collection kit; or (ii) forensic evidence that is collected
27 for its potential evidentiary value during the investigation of a rape or sexual assault unless one
28 of the following occur: (i) the case for which the evidence was collected resulted in a conviction
29 and the sentence has been completed; (ii) all suspects identified by testing a sexual assault
30 evidence collection kit are deceased (iii) or the length of the statute of limitations for the
31 identified crime whether or not that crime has been charged, and in no case shall the forensic
32 evidence be retained for less than 15 years. Each governmental entity shall retain all such

33 forensic evidence in a manner that is reasonably designed to preserve the forensic evidence and
34 to prevent its destruction or deterioration.

35 On written request by the victim from whom the evidence was collected, a law
36 enforcement agency with custody of a sexual assault evidence collection kit or other crime scene
37 evidence relating to a sexual assault shall: (i) notify the victim no later than 60 days before the
38 date of intended destruction or disposal of the evidence; or (ii) retain the evidence for 12 months
39 longer than the time period specified in paragraph 3 of this subsection or for a time period agreed
40 to by the victim and 3 the law enforcement agency.

41 The director of the crime laboratory within the department of state police and the forensic
42 sciences advisory board established by section 184A of chapter 6, shall promulgate regulations
43 governing the retention and preservation of forensic evidence by a governmental entity. The
44 regulations shall include: (i) standards for maintaining the integrity of the materials over time;
45 (ii) the designation of officials at each governmental entity with custodial responsibility; and (iii)
46 requirements for contemporaneously recorded documentation of individuals having and
47 obtaining custody of the forensic evidence; (iv) guidance on the use of early evidence kits; and
48 (v) in consultation with the Consumer Protection Division of the Office of the Attorney General,
49 educating consumers about the use of early evidence kits, including information regarding the
50 kits' admissibility in a criminal prosecution and identifying other resources for victims of sexual
51 assault.

52 SECTION 4. Section 97B1/2 of Chapter 41 of the General Laws is amended by inserting
53 after subsection (a) the following:-

54 (b) A health care provider that performs a sexual assault evidence collection kit exam on
55 a victim of sexual assault shall provide the victim with: (i) contact information for the
56 investigating law enforcement agency that the victim may contact about the status and results of
57 the kit analysis; and (ii) written information describing the laws and policies governing the

58 testing, preservation, and disposal of a sexual assault evidence collection kit; (iv) all
59 available results of the kit analysis except results that would impede or compromise an ongoing
60 investigation; and (v) contact information for the investigating law enforcement agency that the
61 victim may contact about the status and results of the kit analysis.

62 SECTION 5. Section 97B1/2 of Chapter 41 of the General Laws is amended by striking
63 clauses (b)-(d) and inserting the following:-

64 (c) The crime laboratory within the department of the state police or the police
65 department of a municipality that operates a crime laboratory and has a population of more than
66 150,000, in the case of a sexual assault alleged to have taken place in that municipality, shall test
67 all sexual assault evidence kits within 30 days of receipt from local law enforcement.

68 (d) In instances where the crime laboratory within the department of the state police or
69 the police department of a municipality that operates a crime laboratory has a population of less
70 than 150,000, in the case of a sexual assault alleged to have taken place in that municipality, the
71 laboratory may accept self-administered sexual assault evidence kit as defined in section 18Z of
72 chapter 6A that if accepted shall be tested all sexual within 30 days of receipt from local law
73 enforcement.

74 (d) Early evidence kits may be transferred to a law enforcement agency: (i) by a hospital
75 or a child advocacy center within 30 days after the exam is performed; or (ii) by a government

76 agency in possession of a kit, unless the agency is otherwise required to retain the kit by law or
77 court rule.

78 (e) Except as provided in subsection Section 214 of Chapter 69 of the Acts of 2018, an
79 investigating law enforcement agency that receives an early evidence kit must label the early

80 evidence as such to differentiate between those collected by SANEs and those collected
81 by alleged victims. An investigating law enforcement agency that receives an early evidence kit
82 may: (i) submit the kit and all requested associated reference standards to a forensic laboratory
83 for analysis within 30 days of receipt of the kit and all requested associated reference standards;
84 and (ii) make use of certified sexual assault crisis programs or other qualified community–based
85 sexual assault victim service organizations that can provide services and support to survivors of
86 sexual assault.

87 (f) For the purpose of altering requirements for the storage and preservation of sexual
88 assault testing, preservation, and disposal of a sexual assault evidence collection kit, an
89 investigating law enforcement agency that receives a sexual assault evidence collection kit,
90 within 30 days after a request by the victim from whom the evidence was collected, shall provide
91 the victim with: (i) information about the status of the kit analysis; and (ii) all available results of
92 the kit analysis except results that would impede or compromise an ongoing investigation.

93 (g) In cases where testing results in a DNA profile, the crime laboratory shall enter the
94 full profile into CODIS and the state DNA database.

95 (h) Each sexual assault evidence kit shall be entered into the statewide sexual assault
96 evidence kit tracking system pursuant to section 18X of Chapter 6A.

97 SECTION 6. Section 214 of chapter 69 of the acts of 2018 is hereby amended by striking
98 out line XX after the words statute of limitations and inserting the following:-

99 An early evidence collection kit may be submitted to a forensic laboratory for analysis
100 unless: (i) there is clear evidence disproving the allegation of sexual assault; (ii) the facts alleged,
101 if true, could not be interpreted to violate a provision in sections 13B, 13B1/2, 13B3/4, 13F, 13H,

102 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or section 24B of chapter 265 or section 3 of
103 chapter 272; (iii) the alleged victim from whom the evidence was collected declines to give
104 consent for analysis; or (iv) the suspect's profile has been collected for entry as a convicted
105 offender for a qualifying offense in the Combined DNA Index System (CODIS) maintained by
106 the Federal Bureau of Investigation and the suspect has pleaded guilty to the offense that led to
107 the sexual assault evidence collection kit's use. If a provision of subsection (i) of this section is
108 determined to be satisfied after the submission of the victim's sexual assault evidence collection
109 kit for analysis, testing may be terminated or not initiated. A forensic laboratory that receives an
110 early evidence collection kit and all requested associated reference standards for analysis may
111 determine suitability and complete screening, testing, and analysis in a timely manner.

112 SECTION 7. Section 215 of chapter 69 of the acts of 2018 is hereby amended by
113 inserting after subsection (b)(v) the following:-

114 (vi) remain anonymous and not file a criminal complaint and shall be informed that the
115 victim may file a criminal complaint at a future time.