



Commonwealth of Virginia  
Office of the Governor

## Executive Order

**Number 54 (2016)**

**DIRECTING THE DEPARTMENT OF GENERAL SERVICES' DIVISION OF CONSOLIDATED LABORATORY SERVICES TO EXTEND THE STORAGE PERIOD FOR PHYSICAL EVIDENCE RECOVERY KITS RECEIVED FROM HEALTH CARE PROVIDERS**

Importance of the Issue

In 2009, then-Governor Timothy M. Kaine noted that there was 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 of sexual assault, but the victim is not prepared at the time to release personal identifying information to law enforcement. Governor Kaine noted Virginia Code § 19.2-165.1(B), which addresses these instances: *"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."*

To assist in clarifying the steps to be taken in such situations, Governor Kaine issued Executive Order 92, directing the Department of General Services' Division of Consolidated Laboratory Services (DCLS) to accept and store for 120 days, evidence from physical evidence recovery kits (PERKs) received from health care providers from victims of sexual assault who elected to not report the offense to law enforcement ("anonymous PERKs"). During the 120-day period, if the victim elected to report the offense to law enforcement, the kit would be transferred to the investigating agency for forensic testing. If DCLS did not receive notification from law enforcement and/or an Attorney for the Commonwealth within the 120-day period, DCLS was directed under Executive Order 92 to destroy the PERK.

In 2015, I convened a PERK Work Group to evaluate criteria for PERK evidence testing in the Commonwealth and to make recommendations related to the handling and storage of anonymous PERKs. The Work Group was chaired by the Secretary of Public Safety and Homeland Security, and included First Lady Dorothy McAuliffe and representatives of various stakeholder groups, including law enforcement, Commonwealth's Attorneys, the criminal defense bar, victim advocates, forensic nurses, and the Department of Forensic Science. The Work Group determined

that 120 days was not enough time for victims of sexual assault to make the determination about whether to report the offense to law enforcement. Therefore, the Work Group recommended that the time for storing anonymous PERKs should be extended to a minimum of two years, in order to provide victims sufficient time to fully consider their options. During the 2016 General Assembly, this recommendation, and others from the Work Group, were introduced in Senate Bill 291 and House Bill 1160 as the “Comprehensive PERK Act.” The Comprehensive PERK Act was passed by the General Assembly and signed by me, and will become law on July 1, 2016. When enacted, the Comprehensive PERK Act will include the requirement that DCLS store all anonymous PERKs for a minimum of two years.

Direction to the DGS 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 and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the Department of General Services’ Division of Consolidated Laboratory Services begin to immediately accept and store Physical Evidence Recovery Kits (PERKs) in a manner consistent with the requirements set forth in the Comprehensive PERK Act, including the requirement that the PERKs be retained for a minimum of two years. This Executive Order is in the best interest of the individual victims and the overall pursuit of justice in sexual assault cases.

This Executive Order shall be effective when signed and shall remain in full force and effect until the Comprehensive PERK Act becomes law on July 1, 2016, at which time DCLS shall comply with the Act.

Given under my hand and under the Seal of the Commonwealth of Virginia this 25<sup>th</sup> Day of April, 2016.

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Terence R. McAuliffe, Governor

Attest:

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Kelly Thomasson, Secretary of the Commonwealth