

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 858
Judiciary

(Delegate Rosenberg)

Sexual Offenses - Polygraph Examination of Alleged Victims - Prohibited

This bill prohibits a State's Attorney or law enforcement officer from requesting or requiring that an alleged victim of a sexual offense submit to a polygraph examination. The prohibition does not apply if the victim requests to take a polygraph examination or has previously made a false statement or report regarding a sexual offense.

Fiscal Summary

State Effect: None. It is believed that the bill would apply in a limited number of cases, because rape victims are not often required to submit to polygraph examinations. Government finances should not be affected.

Local Effect: None – see above.

Small Business Effect: None.

Analysis

Current Law: Statutes relating to polygraph examinations are limited to civil labor and employment laws and investigation of law enforcement officers for wrongdoing. Maryland case law precludes the admission of polygraph examination results in criminal trials. *Kelley v. State*, 288 Md. 298 (1980). Although the results of polygraph tests are inadmissible in court, law enforcement officials may attempt to use polygraph testing as part of criminal investigations.

Pursuant to the Maryland Rules applying to circuit court criminal cases, the results of a polygraph examination conducted by a State expert are discoverable upon request by the defendant, regardless of whether or not they contain exculpatory evidence. *Patrick v. State*, 329 Md. 24 (1992).

Background: In the wake of several high profile sexual assault cases involving celebrities, several state legislatures are attempting to institute tougher laws to protect victims of sexual assault. At least six other states, Colorado, Connecticut, Illinois, Iowa, Oregon, and Wisconsin, have laws prohibiting law enforcement from requiring alleged victims of sexual offenses to submit to a polygraph examination.

Additional Information

Prior Introductions: SB 106 of 2001, an identical bill, received an unfavorable report from the Judicial Proceedings Committee. SB 640 of 1999, a similar bill, received an unfavorable report from the Judicial Proceedings Committee.

Cross File: SB 166 (Senator Kelley, *et al.*) – Judicial Proceedings.

Information Source(s): State's Attorneys' Association, Montgomery County, Prince George's County, Garrett County, Dorchester County, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of State Police, Baltimore County, Anne Arundel County, Maryland Department of Transportation, Department of Public Safety and Correctional Services, Department of Legislative Services

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