

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 255
Judiciary

(Delegate Hettleman, *et al.*)

Judicial Proceedings

**Criminal Procedure - Sexual Assault Victims' Rights - Disposal of Rape Kit
Evidence and Notification**

This bill requires a health care provider that performs a sexual assault evidence collection kit exam on a victim of sexual assault to provide the victim with written information describing the laws and policies governing the testing, preservation, and disposal of a sexual assault evidence collection kit. The bill specifies when a sexual assault evidence collection kit must be transferred to a law enforcement agency, when a sexual assault evidence collection kit or other crime scene evidence relating to a sexual assault may be destroyed or disposed of, and when such evidence must be retained.

The Office of the Attorney General (OAG) must adopt regulations for uniform statewide implementation of the requirements.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures to the extent that the Department of State Police (DSP) must expand storage to maintain sexual assault evidence collection kits and other crime scene evidence relating to sexual assault. OAG can implement the bill with existing budgeted resources. Revenues are not affected.

Local Effect: Local expenditures increase, likely minimally, for local law enforcement agencies to accommodate the additional storage requirements necessary to meet the bill's requirements. Local revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: A sexual assault evidence collection kit must be transferred to a law enforcement agency (1) by a hospital or child advocacy center within 30 days after a specified exam is performed or (2) by a government agency in possession of a kit, unless the agency is otherwise required to retain the kit by law or court rule.

A law enforcement agency is prohibited from destroying or disposing of a sexual assault evidence collection kit or other crime scene evidence relating to a sexual assault that has been identified by the State's Attorney as relevant to prosecution within 20 years after the evidence is collected, unless the case for which the evidence was collected resulted in a conviction and the sentence has been completed or all suspects identified by testing a kit are deceased.

A law enforcement agency with custody of a sexual assault evidence collection kit, on written request by the victim, must (1) notify the victim at least 60 days before the date of intended destruction or disposal of the evidence or (2) retain the evidence, as specified.

Current Law: "Child advocacy center" means a child-focused entity within or outside a health care facility that investigates, diagnoses, and treats children who may have been abused or neglected that (1) includes local law enforcement officers, local criminal prosecutors, and the local department of social services and (2) may include child mental health service providers and other children and family service providers.

"Hospital" means an institution that (1) has a group of at least five physicians who are organized as a medical staff for the institution; (2) maintains facilities to provide, under the supervision of the medical staff, diagnostic and treatment services for two or more unrelated individuals; and (3) admits or retains the individuals for overnight care.

Under provisions set forth in the Criminal Procedure Article relating to help for victims of sexual assault offenses, the nearest facility to which a victim of sexual assault may be taken must be designated by the Department of Health and Mental Hygiene in cooperation with (1) the Medical and Chirurgical Faculty of the State of Maryland and (2) the State's Attorney in the subdivision where the sexual assault occurred. A police officer, sheriff, or deputy sheriff who receives a report of an alleged sexual assault must offer the alleged victim the opportunity to be taken immediately to the nearest facility. That offer must be made without regard for the place of the alleged sexual assault or where it is reported. Applicable health care services must be given without charge to a victim of sexual abuse.

Chapter 627 of 2014 requires each hospital that provides emergency medical services to have a protocol for providing timely access to a sexual assault medical forensic

examination by a forensic nurse examiner or a physician for a victim of an alleged rape or sexual offense who arrives at the hospital for treatment.

A health care provider that performs a sexual assault evidence collection kit exam on a victim of sexual assault must provide the victim with contact information for the investigating law enforcement agency that the victim may contact about the status and results of the kit analysis. An investigating law enforcement agency that receives a sexual assault evidence collection kit, within 30 days after a request by the victim from whom the evidence was collected, must provide the victim with (1) information about the status of the kit analysis and (2) all available results of the kit analysis except results that would impede or compromise an ongoing investigation.

As soon as reasonably possible following collection of the sample, the Public Safety Article requires testing of DNA evidence that is collected from a crime scene or collected as evidence of sexual assault at a hospital, and that a law enforcement investigator considers relevant to the identification or exoneration of a suspect.

Background: Chapter 37 of 2015 required a law enforcement agency or other State or local agency charged with the maintenance, storage, and preservation of sexual assault kit evidence to conduct an inventory of all kits that were stored by the agency by January 1, 2016, and report the results to OAG. Chapter 37 required OAG to prepare and transmit, by December 1, 2016, a report to the General Assembly detailing (1) the number of untested sexual assault collection kits stored by each agency, (2) the date that each untested sexual assault collection kit was collected, and (3) recommendations for addressing any backlog of untested sexual assault collection kits.

In January 2017, OAG released the required [report](#) detailing the findings of the audit and including recommendations for addressing the backlog. Major findings from the 102 law enforcement agencies surveyed revealed that approximately 3,700 untested sexual assault kits exist statewide. About 60% of the kits were collected between 2009 and 2016. Five percent were collected between 1981 and 1997, and the rest were collected between 1998 and 2009. Most jurisdictions reported no backlog of untested kits because the kits were deliberately not tested due to the agency's testing policies.

According to the report, statutory retention periods for sexual assault evidence kits vary among states that have enacted such laws. According to OAG, Kentucky, Pennsylvania, and Utah are among the states that have recently enacted legislation requiring law enforcement to advise survivors of key information related to testing and database matching. California and Idaho have more comprehensive victim notice requirements, which include mandatory notification to victims prior to destruction of a sexual assault evidence kit.

Best practices in this area include (1) retaining kits, other than anonymous kits, for at least the statute of limitations for the offense; (2) retaining all kits for at least the statute of limitations for the offense, regardless of whether a victim initially elects to prosecute; and (3) ensuring that all kits, after testing, are retained in a police-controlled evidence storage facility, with appropriate humidity, temperature, and related environmental controls as well as chain-of-custody controls. In September 2016, Congress passed the Survivor's Bill of Rights Act of 2016, which suggests that kits be preserved for 20 years as a standard.

Based on the findings, the OAG report outlines a series of recommendations. The recommendations, among other things, include:

- establish a statewide, uniform policy that sexual assault kits be tested within a defined time parameter;
- establish a fixed period of time for retaining untested kits, including anonymous kits, that is no shorter than prescribed by federal law, which requires kits to be preserved for the statute of limitations or 20 years, whichever is shorter;
- implement victim notification requirements that mandate that investigators notify victims when a kit is sent for testing to the crime laboratory and the results of the test; and
- develop a model policy with uniform standards for all jurisdictions and crime laboratories related to the collection, tracking, storage, testing, destroying, and reporting of the kits.

Local Expenditures: Local expenditures increase, likely minimally, for local law enforcement agencies to accommodate the additional storage requirements necessary to retain sexual assault evidence collection kits and other crime scene evidence relating to a sexual assault, as specified, for a minimum of 20 years after the evidence is collected.

For example, Montgomery County reports that maintaining sexual assault evidence kits for the required time period is consistent with current practice. However, maintaining other crime scene evidence relating to a sexual assault for the required time period requires additional storage space. The fiscal impact to the county cannot be specifically determined, but is likely minimal.

Additional Information

Prior Introductions: None.

Cross File: SB 349 (Senator Zirkin, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore City; Caroline and Montgomery counties; cities of Bowie and Takoma Park; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Health and Mental Hygiene; Department of Legislative Services

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