

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1076
 Judiciary

(Delegate Hettleman, *et al.*)

Criminal Procedure - Sexual Assault Evidence Collection Kits - Analysis

This bill requires that a sexual assault evidence collection kit from an exam of a victim of a sexual assault be submitted to a forensic laboratory for analysis, except as specified. By January 1, 2018, each State and local law enforcement agency must adopt written policies and procedures regarding the handling of sexual assault evidence collection kits consistent with the bill’s provisions.

The bill applies retroactively and must be applied to and interpreted to affect all sexual assault evidence collection kits in the possession of law enforcement agencies on October 1, 2017.

Fiscal Summary

State Effect: General fund expenditures for the Department of State Police (DSP) increase by *at least* \$6 million in FY 2018 to complete required testing of sexual assault evidence collection kits by law enforcement agencies due to the bill’s retroactive provision. Moving forward, it is anticipated that the bill’s requirements can generally be handled with existing resources, as discussed below. Revenues are not affected.

(\$ in millions)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	6.0	0	0	0	0
Net Effect	(\$6.0)	\$0.0	\$0.0	\$0.0	\$0.0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: While some local law enforcement units can implement the bill’s requirements with existing budgeted resources, others may require additional staff 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 submitted to a forensic laboratory for analysis unless:

- there is clear evidence disproving the allegation of sexual assault;
- the kit contains an insufficient amount of forensic evidence to enable an analysis to be performed;
- the victim from whom the evidence was collected declines to give consent for analysis; or
- the suspect's identity is not disputed, the suspect's profile is contained in the Combined DNA Index System (CODIS) maintained by the Federal Bureau of Investigation, and the suspect has been convicted of the sexual offense that is the basis for the sexual assault evidence collection kit and has exhausted all appeals.

A victim of sexual assault who wishes to remain anonymous must be given the option to consent to submission of the victim's sexual assault evidence collection kit for analysis without making any commitment to taking further action.

Except when submission of a sexual assault evidence collection kit is not required, an investigating law enforcement agency that receives a sexual assault evidence collection kit must:

- submit the kit to a forensic laboratory for analysis within 30 days of receipt of the kit;
- notify the victim when a kit is sent for analysis;
- notify the victim of the results of the analysis;
- make use of community-based sexual assault victim service organizations that can provide services and support to survivors of sexual assault; and
- ensure privacy protections for victims in connection with notification procedures.

A forensic laboratory that receives a sexual assault evidence collection kit for analysis must determine suitability and complete screening, testing, and analysis within 150 days of receipt. The eligible results of an analysis of a sexual assault evidence collection kit must be entered into CODIS.

Current Law: 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 the Office of the Attorney General (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.

State Expenditures: DSP estimates that there are approximately 2,500 untested sexual assault evidence kits in the possession of law enforcement agencies in the State that would use the DSP Forensic Lab for testing. Generally, DSP does all testing of sexual assault evidence kits in the DSP Forensic Lab, and it is anticipated that DSP can generally comply

with the bill's requirements using existing resources for sexual assault kits received for testing after the bill's effective date. Although DSP reported that all kits in possession of law enforcement must be tested, the Department of Legislative Services advises that a portion of these kits are still likely not to be tested for various reasons, even under the bill's provisions. Accordingly, this analysis assumes that at least 1,500 of the 2,500 sexual assault kits in possession of law enforcement agencies as of October 1, 2017, are subject to the bill's retroactive testing requirement.

DSP advises that its laboratory is not able to process more than 1,000 kits within the 150-day timeframe required by the bill. As a result, to comply with the bill, the kits must be sent to an outside laboratory. The average cost for testing by a contracted laboratory is \$4,000 per kit. Due to the bill's retroactive provision, assuming that at least 1,500 kits require immediate testing by a contracted lab, general fund expenditures increase by at least \$6.0 million in fiscal 2018.

As noted above, it is anticipated that DSP can generally use existing resources to implement the bill in fiscal 2019 and beyond; however, depending on the cases DSP is handling at any given time, DSP may occasionally need to outsource kit testing at a cost of \$4,000 per kit.

Local Expenditures: While some local law enforcement units can implement the bill's requirements with existing budgeted resources, others may require additional staff to meet the bill's requirements. For example, Washington County advises that an office associate needs to be hired to send out the required notifications and results at a cost of approximately \$10,300 annually.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Washington, and Worcester counties; cities of Salisbury and Westminster; towns of Bel Air and Leonardtown; Department of Health and Mental Hygiene; Department of State Police; Department of Legislative Services

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