

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 675
Judiciary

(Delegate Conaway)

Criminal Procedure - Victims' Rights - Notice of Destruction of Sexual Assault
Evidence

This bill repeals the requirement that a victim from whom evidence relating to a sexual assault was collected make a written request in order for a law enforcement agency with custody of the sexual assault evidence collection kit to give a specified notification before destruction or disposal of the evidence or retention of the evidence, as specified. The bill also repeals the requirement for a law enforcement agency with custody of the sexual assault evidence collection kit to retain the evidence for an additional 12 months beyond the specified required retention period. Instead, such evidence must be retained for a time period agreed to by the victim and the law enforcement agency.

Fiscal Summary

State Effect: Minimal increase in State expenditures to retain some evidence indefinitely. Revenues are not affected.

Local Effect: Minimal increase in local expenditures to retain some evidence indefinitely. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law: 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.

Chapters 158 and 159 of 2017 require that a sexual assault evidence collection kit 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 of a kit are deceased.

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.

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 for 12 months longer than the required retention period or for a time period agreed to by the victim and the law enforcement agency.

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, 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.

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.

State Expenditures: General fund expenditures increase minimally for the Department of State Police (DSP) Crime Lab to retain evidence indefinitely in situations where the victim refused to provide identity information, is unknown, or is unable to be located. DSP advises that the agency already provides notice to all known victims, without requiring a written request by the victim, before the destruction or disposal of a sexual assault evidence collection kit.

Local Expenditures: Similar to the DSP Crime Lab, local law enforcement agency crime lab expenditures increase minimally to retain evidence indefinitely in situations where the victim refused to provide identity information, is unknown, or is unable to be located.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Harford and Montgomery counties; City of College Park; Department of State Police; Department of Legislative Services

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mm/kdm

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