

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 767

(Senator Smith)

Judicial Proceedings

Judiciary

Criminal Procedure - Sexual Assault Evidence Collection Kits - Analysis

This bill requires a sexual assault evidence collection kit to be submitted to a forensic laboratory for testing unless specified requirements are met. The bill requires (1) a law enforcement agency to submit a sexual assault evidence collection kit and all requested associated reference standards to a forensic laboratory within 30 days of receipt and (2) a forensic laboratory to process a sexual assault evidence collection kit and all requested associated reference standards in a timely manner. The bill also requires (1) the Attorney General to adopt implementing regulations by December 1, 2019, and (2) the Maryland Sexual Assault Evidence Kit Policy and Funding Committee to establish an independent process to review and make recommendations relating to when a law enforcement agency may decide not to test a sexual assault evidence collection kit. **The provision requiring the Attorney General to adopt regulations takes effect June 1, 2019. The bill's other provisions take effect January 1, 2020.**

Fiscal Summary

State Effect: The bill's requirements can be handled with existing resources, assuming the bill does not apply retroactively to kits collected prior to the bill's effective date. To the extent the bill requires the processing of kits that have been collected but have not been tested, general fund expenditures likely increase significantly, as discussed below. Revenues are not affected.

Local Effect: Potential significant increase in expenditures for some jurisdictions, as discussed below. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The bill requires a sexual assault evidence collection kit to be submitted to a forensic laboratory for analysis unless (1) there is clear evidence disproving the allegation of sexual assault; (2) the facts alleged, if true, could not be interpreted to violate provisions of the Criminal Law Article (laws prohibiting assault, reckless endangerment, and other crimes; sexual crimes; abuse and other offensive conduct; and prostitution and related crimes); (3) the victim from whom the evidence was collected declines to give consent for analysis; or (4) the suspect's profile has been collected for entry as a convicted offender for a qualifying offense in the Combined DNA Index System (CODIS) and the suspect has pleaded guilty to the offense that led to the sexual assault evidence collection kit.

If a victim of sexual assault wishes to remain anonymous and not file a criminal complaint, the victim must be informed that the victim may file a criminal complaint at a future time. If one of the four exceptions listed above is determined to be satisfied after the submission of the victim's sexual assault evidence collection kit for analysis, testing may be terminated or not initiated.

Except when one of the four exceptions listed above applies, an investigating law enforcement agency that receives a sexual assault evidence collection kit must (1) submit the kit and all requested associated reference standards to a forensic laboratory for analysis within 30 days of receipt of the kit and all requested associated reference standards and (2) make use of certified sexual assault crisis programs or other qualified community-based sexual assault victim service organizations that can provide services and support to survivors of sexual assault.

A forensic laboratory that receives a sexual assault evidence collection kit and all requested associated reference standards for analysis must determine the suitability of testing the kit and complete screening, testing, and analysis in a timely manner. Failure to complete the screening, testing, and analysis in a timely manner as required by the bill may not constitute the basis for excluding the analysis or results as evidence in a criminal proceeding.

Forensic laboratories must report annually to the Maryland Sexual Assault Evidence Kit Policy and Funding Committee regarding the required time to complete testing, from receipt of the kit until a report is prepared, for each sexual assault evidence collection kit it receives.

The eligible results of an analysis of a sexual assault evidence collection kit must be entered into CODIS. The DNA collected from a victim may not be used for any purpose except as authorized by the bill.

Current Law/Background:

Victim's Rights

Under Maryland law, a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process. The State Board of Victim Services within the Governor's Office of Crime Control and Prevention (GOCCP), among other things, develops pamphlets to notify victims and their representatives of the rights, services, and procedures, provided under the Maryland Declaration of Rights or State law.

Sexual Assault Evidence Collection Kits – Requirements

Each hospital that provides emergency medical services must 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.

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.

As soon as reasonably possible following collection of the sample, the Public Safety Article requires testing of deoxyribonucleic acid (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 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.

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.

Untested Sexual Assault Evidence Kits

Chapter 37 of 2015 required an inventory of all untested sexual assault evidence kits and a report to the General Assembly on the number of untested kits, the date each kit was collected, and recommendations for addressing any backlog of untested kits. In response, Chapter 659 of 2017 established the Maryland Sexual Assault Evidence Kit Policy and Funding Committee to, among other things, develop and disseminate best practices information and recommendations regarding the testing and retention of sexual assault evidence collection kits. Chapter 429 of 2018 required the committee to develop recommendations for and apply for grant funding to support a statewide sexual assault evidence collection kit tracking system. On September 30, 2018, the U.S. Department of Justice awarded GOCCP a \$2.6 million Sexual Assault Initiative Kit grant to implement a program over three years that creates, implements, and adapts a testing system for sexual assault evidence collection kits.

In January 2019, the committee released its annual [report](#), which noted there are more than 6,000 “unsubmitted” (untested) sexual assault evidence collection kits in the State. The report indicates that it costs the Department of State Police (DSP) \$4,000 to test a sexual assault evidence collection kit in-house or \$3,000 to outsource testing to another forensic laboratory.

Background on Sexual Assault Evidence Kits and Forensic Laboratories in the State

Generally, sexual assault evidence collection kits (also known as rape kits, or sexual assault kits) are containers that include the information of a sexual assault victim, documentation forms, clothing collected from the victim or perpetrator that may contain forensic evidence, and other physical evidence that may assist in the resulting investigation.

As of February 2019, there are six forensic laboratories in the State capable of both processing sexual assault evidence collection kits and uploading the results to CODIS. DSP operates one forensic laboratory in Baltimore County (Pikesville), and the other five forensic laboratories are located in Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George’s counties.

DSP advises that, on average, it takes two to four months to process a sexual assault evidence collection kit, depending on if the kit is processed within DSP facilities or outsourced. DSP processes, on average, 120 sexual assault evidence collection kits each year.

Combined DNA Index System

CODIS was established in 1990 as a pilot software platform and was later formalized by the DNA Identification Act of 1994. Broadly, the Federal Bureau of Investigation (FBI) manages the CODIS database and assists with the matching of uploaded DNA samples from forensic laboratories processing evidence from crime scenes. If there is a match between DNA samples uploaded to CODIS, the system creates a match file and notifies the respective forensic laboratories that uploaded the samples of the pairing.

Relevant Offense Data

The Administrative Office of the Courts (AOC) advises that in fiscal 2018, there were 3,087 filings and 21 guilty dispositions in the District Court for the sexual offenses included in the bill. There were also 3,293 filings and 508 guilty dispositions in the circuit courts for the same fiscal year. **Exhibit 1** shows the filings and guilty dispositions by the relevant subtitles in the Criminal Law Article.

Exhibit 1
Filings and Guilty Dispositions of Specified Sexual Crimes
Fiscal 2018

<u>Section</u>	District Court		Circuit Courts	
	<u>Filings</u>	<u>Guilty Dispositions</u>	<u>Filings</u>	<u>Guilty Dispositions</u>
CR* § 3-303	169	0	146	23
CR § 3-304	439	0	598	65
CR § 3-305	67	0	85	15
CR § 3-306	236	0	491	72
CR § 3-307	715	0	1,003	202
CR § 3-308	1,108	21	718	95
CR § 3-309	14	0	17	3
CR § 3-310	41	0	49	5
CR § 3-314	9	0	5	2
CR § 3-315	76	0	59	12
CR § 3-321	58	0	46	4
CR § 3-322	155	0	76	10
Total	3,087	21	3,293	508

* CR: Criminal Law Article

Source: Judiciary (Administrative Office of the Courts)

State Expenditures: Although there are a significant number of untested sexual assault evidence collection kits in the State, in the absence of a specific provision in the bill to make the bill apply retroactively, this analysis assumes that the bill applies to sexual assault evidence collection kits presented to law enforcement agencies *after* the effective date of these provisions (January 1, 2020). Also, DSP advises that it can comply with the bill’s annual reporting requirement with existing resources. Therefore, it is anticipated that DSP is able to implement the bill’s requirements, including those requirements pertaining to sexual assault kits submitted on or after January 1, 2020, with existing resources.

DPS advises, however, if it must test sexual assault evidence collection kits that were submitted *before* the bill’s effective date, the department will require additional personnel. Furthermore, to the extent that DSP must test those kits, and additional personnel are unable to do so in “a timely manner,” as required by the bill, DSP may need to outsource the testing to private forensic laboratories. Either situation is likely to result in additional

significant general fund expenditures for DSP. Since any potential need for additional staff and general fund expenditures depends on how the bill is ultimately implemented, a reliable estimate of any increase in general fund expenditures cannot be made at this time.

AOC advises that the increase in available forensic evidence as a result of the bill may make criminal charges less difficult to prosecute. The availability of additional forensic material may affect charging practices, such as plea-bargaining, the length of court cases, and sentences imposed. AOC also advises that the additional forensic material may make some cases more difficult to prosecute due to the evidence excluding potential defendants. Any increase in caseloads may require additional clerical and court time to process and try cases, but AOC anticipates that the courts can handle the bill's requirements with existing resources.

The Office of the Attorney General can develop the required regulations with existing resources. The Maryland Department of Health also advises that the bill's requirements can be met with existing resources.

Local Expenditures: Local government expenditures may increase, potentially significantly, to meet the bill's requirements relating to the testing of sexual assault evidence collection kits in "a timely manner." Some jurisdictions, which lack forensic laboratory facilities, may choose to outsource the testing of sexual assault evidence collection kits to other jurisdictions, resulting in increased expenditures for the recipient jurisdiction. Other jurisdictions may choose to outsource testing to private forensic laboratories, incurring additional costs.

Montgomery County advises that compliance with the bill's testing requirements requires an additional genetic analysis workstation (costing approximately \$200,000 in the first year), in addition to the need to hire an additional forensic scientist (at a cost of approximately \$100,000 annually). Montgomery County expenditures further increase if sexual assault evidence collection kits are outsourced to private labs.

Prince George's County advises that it requires three additional laboratory technicians to meet the bill's requirements for testing sexual assault evidence kits (each at a cost of approximately \$118,500 annually, totaling \$355,500 annually). Prince George's County expenditures further increase if sexual assault evidence collection kits are outsourced to private labs. However, Prince George's County advises that it can comply with the bill's reporting requirement with existing resources.

The Maryland Municipal League and the City of Takoma Park advise that the bill's requirements can likely be met with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 1096 (Delegate Hettleman, *et al.*) - Judiciary.

Information Source(s): Department of State Police; Office of the Attorney General; Maryland Department of Health; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland Municipal League; Montgomery and Prince George's counties; City of Takoma Park; Federal Bureau of Investigation; Department of Legislative Services

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