

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1248
Judiciary

(Delegate Conaway)

Sexual Assault Evidence Kits - Voluntary Payment for Testing

This bill authorizes a victim, or the victim's insurance carrier, to pay for the testing of a sexual assault evidence collection kit if the kit has not been submitted to a forensic laboratory for analysis within six months after being transferred to a law enforcement agency. The victim, or the victim's insurance carrier, is also authorized to pay for testing if the kit was not required to be submitted to a forensic laboratory for analysis because specified criteria were met.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: None.

Analysis

Current Law/Background:

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. A health care provider who performs a sexual assault evidence collection kit exam 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. 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 an exam is performed or (2) by a government agency, unless the agency is otherwise required to retain the kit by law or court rule.

An investigating law enforcement agency that receives a sexual assault evidence collection kit, within 30 days after a request by the victim, must provide the victim with (1) information about the status of the kit analysis and (2) all available results, unless the results would impede or compromise an ongoing investigation.

Every sexual assault evidence collection kit must 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 specified provisions of the Criminal Law Article; (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 one of these exceptions 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.

Unless one of the above exceptions applies, each 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 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.

Statutory provisions set forth additional requirements for the testing, reporting, and disposal of sexual assault evidence collection kits and other related evidence.

Untested Sexual Assault Evidence Kits

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.

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 the State 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. Chapter 509 of 2019 established the Rape Kit Testing Grant Fund to provide law enforcement agencies with funding to pay for the testing of sexual assault evidence collection kits. The Governor's Office of Crime Control and Prevention announced in October 2019, that \$3.5 million was available for the grant fund.

In January 2020, 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.

Forensic Laboratories and CODIS

As of February 2020, 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.

CODIS was established in 1990 as a pilot software platform and was later formalized by the DNA Identification Act of 1994. Broadly, 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.

Additional Comment: For evidentiary purposes, DSP advises that once a kit has been transferred to a State or local forensic laboratory, that laboratory cannot release the kit, or its contents, for any reason other than prosecution, defense, or other identification purposes.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Anne Arundel, Garrett, and Montgomery counties; Maryland Association of Counties; City of Laurel; Maryland Municipal League; Governor's Office of Crime Control and Prevention; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Maryland Insurance Administration; Department of Legislative Services

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