

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1154
Judiciary

(Delegate Montgomery, *et al.*)

Sexual Offenses - Polygraph Examination of Alleged Victims - Prohibited

This bill prohibits a State's Attorney or law enforcement officer from requesting or requiring that an alleged victim of a sexual offense submit to a polygraph examination. The prohibition does not apply if the victim requests to take a polygraph examination or has previously made a false statement or report regarding a sexual offense. The bill applies to all sexual crimes contained in Title 3, Subtitle 3 of the Criminal Law Article, as well as child abuse, sexual abuse of a minor, and abuse or neglect of a vulnerable adult in the first or second degree.

Fiscal Summary

State Effect: None. The bill is procedural in nature and does not directly affect governmental finances.

Local Effect: None. The bill is procedural in nature and does not directly affect local governmental finances.

Small Business Effect: None.

Analysis

Current Law: Statutes relating to polygraph examinations are limited to civil labor and employment laws, investigation of law enforcement officers for wrongdoing, and conditions of parole supervision for sex offender registrants. Maryland case law precludes the admission of polygraph examination results in criminal trials. See *Kelley v. State*, 288 Md. 298 (1980). Although the results of polygraph tests are inadmissible in court, law enforcement officials may attempt to use polygraph testing as part of criminal investigations.

Pursuant to the Maryland Rules applying to circuit court criminal cases, the results of a polygraph examination conducted by a State expert are discoverable upon request by the defendant, regardless of whether or not they contain exculpatory evidence. See *Patrick v. State*, 329 Md. 24 (1992).

Title 3, Subtitle 3 of the Criminal Law Article pertains to an extensive list of sexual crimes, including rape, attempted rape, sexual offenses in the first through fourth degrees, and attempted sexual offenses in the first and second degrees.

Background: In the wake of several high profile sexual assault cases involving celebrities, several state legislatures attempted to institute tougher laws to protect victims of sexual assault. California, Connecticut, Florida, Michigan, New York, and Wisconsin are among the states that have laws prohibiting law enforcement officers from requesting or requiring alleged victims of sexual offenses to submit to a polygraph examination.

The Violence Against Women Act (VAWA), as amended in 2005, requires states to certify that "...their laws, policies, or practices will ensure that no law enforcement officer, prosecuting officer or other government official shall ask or require an adult, youth, or child victim of an alleged sex offense as defined under Federal, tribal, state, territorial, or local law to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense." The deadline for certification was January 5, 2009. States that do not make this certification deadline risk losing S.T.O.P. (Services, Training, Officers, and Prosecutors) formula grant funds under VAWA. The Governor's Office for Crime Control and Prevention (GOCCP) administers State S.T.O.P. grant funds. Maryland received approximately \$2.1 million in S.T.O.P. funding in fiscal 2008.

According to GOCCP, the U.S. Department of Justice's Office on Violence against Women (OVW), which administers federal VAWA funds, has not issued an official certification of compliance to any state. However, OVW has indicated to GOCCP on numerous occasions that Maryland is in compliance with VAWA requirements. GOCCP advises that though Maryland does not have a statute prohibiting the administration of polygraph examinations to victims, it is accepted practice among law enforcement and State's Attorneys that victims are not compelled to unilaterally submit to tests via polygraphs or other truth-telling devices as a condition of proceeding with the investigation of the offense. GOCCP plans to release a policy that mirrors the language in VAWA in March 2009.

Additional Information

Prior Introductions: SB 166 of 2005 received an unfavorable report from the Senate Judicial Proceedings Committee. SB 106 of 2001 received an unfavorable report from the Judicial Proceedings Committee. SB 640 of 1999 received an unfavorable report from the Judicial Proceedings Committee

Cross File: None.

Information Source(s): Allegany Harford, Montgomery, Talbot, and Wicomico counties, Baltimore City, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Maryland Department of Transportation, University System of Maryland, Maryland Coalition Against Sexual Assault, National Sexual Violence Resource Center, *The New York Times*, Department of Legislative Services

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