

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 780

(Senator Lee)

Judicial Proceedings

Local Government - Sexual Assault Cases - Local Audits

This bill requires a county or municipality to arrange for a third-party audit of sexual assault cases reported to or investigated by the law enforcement agency of the county or municipality, when the percentage of unfounded sexual assault cases in the county or municipality exceeds the national average of unfounded sexual assault cases by 5% or more, as specified. When not required, a county or municipality may arrange for a third-party audit of sexual assault cases reported to or investigated by the law enforcement agency of the county or municipality.

The Office of the Attorney General (OAG) must establish and periodically update guidelines for conducting third-party audits of sexual assault cases.

Fiscal Summary

State Effect: Although OAG did not respond to requests for information regarding the potential fiscal impact of this bill, it is assumed that the bill's requirements can be handled with existing resources. Revenues are not affected.

Local Effect: Potential increase in local expenditures to the extent that a third-party audit is required and must be funded by a local jurisdiction. 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 third-party audit:

- must be conducted by one or more sexual assault services programs without the supervision of the county or municipality that arranged the audit;
- must include a review of police reports, notes, and any other relevant records requested by the sexual assault services program conducting the audit;
- may not disclose any personally identifiable information of a victim, witness, or suspect; and
- must include a report for the county or municipality that arranged the audit with suggestions for improvements to the responses and reporting of sexual assaults.

“Sexual assault” means a sexual crime under Title 3, Subtitle 3 of the Criminal Law Article; sexual abuse of a minor; or sexual abuse of a vulnerable adult.

“Sexual assault services program” means a program that provides direct services to victims of sexual assault and has been approved by the federally recognized State sexual assault coalition.

Current Law: The Criminal Procedure Article defines “sexual assault” as rape or a sexual offense in any degree that is specified under the Criminal Law Article, including attempted rape or attempted sexual offenses.

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.

Under the Public Safety Article, by April 1 of every even-numbered year, each local law enforcement unit is required to report to the Governor's Office of Crime Control and Prevention (GOCCP) on the status of crime scene DNA collection and analysis in its respective jurisdiction for the preceding calendar year, and the Department of State Police (DSP) must report to GOCCP on the status of crime scene DNA collection statewide for the preceding calendar year, including:

- the crimes for which crime scene DNA evidence is routinely collected;
- the approximate number of crime scene DNA evidence samples collected during the preceding year for each category of crime;
- the average time between crime scene DNA evidence collection and analysis;
- the number of crime scene DNA evidence samples collected and not analyzed at the time of the study;
- the number of crime scene DNA evidence samples submitted to the statewide DNA data base during the preceding year; and
- the number of crime scene DNA evidence samples, including sexual assault evidence, collected by hospitals in the county during the preceding year.

GOCCP must compile the information reported by the local law enforcement units and DSP and submit the information to the Office of Legislative Audits (OLA). OLA must evaluate the information received and submit an annual summary report to the Governor and the General Assembly.

The Public Safety Article also requires 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, to be tested as soon as reasonably possible following collection of the sample.

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 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, more than 90% of the untested kits were in the custody of 13 of the 102 responding agencies. For example, the Montgomery County Police Department reported 1,082 untested kits in the department's possession, but the department's policy is to retain all untested kits indefinitely. The report notes that no conclusions should be drawn about an agency's operations based solely on the number of untested kits reported.

Based on the findings, the report outlines the following recommendations:

- 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 investigators notify victims when a kit is sent for testing to the crime laboratory and the results of the test;
- 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;
- create a Statewide Sexual Assault Evidence Kit Oversight Committee;
- provide funding for testing the current inventory of untested kits and designated funding for uniform standards and time mandates related to collection, tracking, storage, testing, and reporting of test results;
- pursue private and grant funding to provide training and education to support compliance with current and modified policies;
- amend the State's consent form for victims to authorize testing of the rape kit even if the victim does not wish to take any additional action, and specify that the victim's DNA profile will not be used for any other purpose; and
- enact a "Notice & Demand" statute governing chain of custody and confrontation issues at trial that is modeled after §§ 1-1001 *et seq.* of the Courts and Judicial Proceedings Article, and creates a statutory bypass that allows prosecutors to present DNA evidence without calling numerous live witnesses.

Additional Information

Prior Introductions: None.

Cross File: HB 260 (Delegate Queen, *et al.*) - Appropriations.

Information Source(s): Charles and Montgomery counties; cities of Frederick and Havre de Grace; Department of Legislative Services

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