

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1404
Judiciary

(Delegate McComas, *et al.*)

Public Safety - Sexual Assault Examination Kits - Best Practices Study

This bill requires the Secretary of State Police (or the Secretary's designee), the Forensic Laboratory Advisory Committee (FLAC), and the Secretary of Health and Mental Hygiene (or the Secretary's designee) to work collaboratively to research best practices for the collection, testing, and storage of sexual assault examination kits and victim notification procedures. By December 1, 2018, the Secretary of State Police must submit a report on the research conducted pursuant to the bill to the General Assembly.

Fiscal Summary

State Effect: Costs to conduct the required research and submit the required report are assumed to be minimal and absorbable within existing budgeted resources, as discussed below.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The research must include examining the practices and procedures of neighboring states, reviewing scientific publications, and soliciting input from experts regarding best practices for the collection, testing, and storage of sexual assault examination kits, as well as the feasibility and benefits of improved victim notification during the sexual assault examination kit testing process. In addition, the research must identify areas where the State could improve its own practices, and outline a plan for the implementation of improved practices, as well as recommend any regulations to be adopted

by any agency to improve collection, testing, and storage of sexual assault examination kits and victim notification procedures.

Current Law: 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 (DHMH) 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.

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.

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.

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 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, statutory retention periods for sexual assault evidence kits vary among states that have enacted such laws. According to OAG, Kentucky, Pennsylvania, and Utah are among the states that have recently enacted legislation requiring law enforcement to advise survivors of key information related to testing and database matching. California and Idaho have more comprehensive victim notice requirements, which include mandatory notification to victims prior to destruction of a sexual assault evidence kit.

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.

Based on the findings, the OAG report outlines a series of recommendations. The recommendations, among other things, include:

- 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 that investigators notify victims when a kit is sent for testing to the crime laboratory and the results of the test; and
- 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.

State Expenditures: The Department of State Police (DSP) advises that the bill's requirement for it to collect and compile information for the required report requires a

contractual employee for one year. Likewise, DHMH, which staffs FLAC, advises that the bill requires dedicated staff time and results in other associated costs. However, the Department of Legislative Services (DLS) disagrees. First, a significant amount of research on this issue has already been conducted as a result of Chapter 37 of 2015, as discussed above. Second, because the bill requires DSP, DHMH, and FLAC to work collaboratively, any necessary research can be divided among the entities with minimal impact on each entity. As a result, DLS advises that the bill does not require additional staff, and any costs are assumed to be minimal and absorbable within existing budgeted resources.

Additional Comments: Departmental legislation (House Bill 1428) has been introduced to establish a Victim Services Unit (VSU) in the Governor's Office of Crime Control and Prevention. Among other things, the bill transfers the existing functions and operations related to sexual assault forensic evidence examinations from DHMH to VSU.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2017
mm/lgc

Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510