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FISCAL AND POLICY NOTE
First Reader

Senate Bill 1094 (Senator Smith)
Judicial Proceedings

Criminal Procedure - Statewide Sexual Assault Evidence Collection Kit Tracking System - Requirements

The bill requires the Department of State Police (DSP) to create and operate a statewide sexual assault evidence collection kit tracking system. DSP may contract with others for the creation, operation, and maintenance of the system and may use a phased-in implementation process to launch the system and facilitate entry and use of the system for required participants. DSP may also phase in initial participation according to region, volume, or other appropriate classifications; however, any entity with sexual assault evidence collection kits in its custody must fully participate in the system by June 1, 2019. The bill also establishes (1) reporting requirements for DSP; (2) participation/tracking requirements for law enforcement agencies, the State Police Crime Laboratory, hospitals, and State's attorneys; and (3) provisions regarding civil liability and the inspection of records and information in the system.

Fiscal Summary

State Effect: Significant increase in general fund expenditures, likely in the millions of dollars, for DSP to develop and implement the tracking system. Other State entities, such as the University of Maryland Medical System, could also be affected. The Governor's Office of Crime Control and Prevention (GOCCP) can implement the bill with existing resources. Revenues are not affected.

Local Effect: Some local law enforcement agencies and State's Attorneys offices may be able to implement the bill's requirements with existing resources, while others may incur a potentially significant increase in expenditures. Local revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary:

Tracking System Requirements

The tracking system must:

- track the location and status of sexual assault evidence collection kits throughout the criminal justice process, including the initial collection in examinations performed at medical facilities, receipt and storage at law enforcement agencies, receipt and analysis at forensic laboratories, and storage and any destruction after completion of analysis;
- allow medical facilities performing sexual assault forensic examinations, law enforcement agencies, prosecutors, the State Police Crime Laboratory, and other entities that have custody of sexual assault evidence collection kits to update and track the status and location of sexual assault evidence collection kits;
- allow victims of sexual assault to anonymously track or receive updates regarding the status of the victim's sexual assault evidence collection kit; and
- allow continuous electronic access.

DSP may contract with State, local, or private entities, including software and technology providers, for the creation, operation, and maintenance of the system.

Tracking and Participation Requirements for Law Enforcement and Other Entities

Each local law enforcement agency must track the status of all sexual assault evidence collection kits in the custody of the local law enforcement agency and other entities contracting with the local law enforcement agency. In addition, the State Police Crime Laboratory must track the status of all sexual assault evidence collection kits in the custody of DSP and other entities contracting with DSP. Each licensed hospital must track the status of all sexual assault evidence collection kits collected by or in the custody of the hospital and other entities contracting with the hospital. Finally, the State's Attorney in each county must track the status of all kits connected to criminal investigations and prosecutions in the county.

Each law enforcement agency, the State Police Crime Laboratory, each hospital, and each State's Attorney must begin full participation in the system according to the implementation schedule established by DSP.

Reporting Requirements

DSP must submit a report to the General Assembly on the status and plan for launching the system, including the plan for phased-in implementation, by January 1, 2018. By July 1, 2019, and twice per year on January 31 and July 31 thereafter, DSP must submit a report on the system to GOCCP and may publish the report on its website. The report must include (statewide and by jurisdiction) the following:

- the number of sexual assault evidence collection kits in the system;
- the number of sexual assault evidence collection kits for which forensic analysis has been completed during the reporting period;
- the number of sexual assault evidence collection kits added to the system during the reporting period;
- the number of sexual assault evidence collection kits for which forensic analysis has been requested but not completed during the reporting period;
- the average and median length of time for sexual assault evidence collection kits to be submitted for forensic analysis after being added to the system during the reporting period;
- the average and median length of time for forensic analysis to be completed on sexual assault evidence collection kits after being submitted for analysis during the reporting period;
- the number of sexual assault evidence collection kits destroyed or removed from the system during the reporting period;
- the number of sexual assault evidence collection kits for which forensic analysis has not been completed and six months or more have passed since those sexual assault evidence collection kits were added to the system; and
- the number of sexual assault evidence collection kits for which forensic analysis has not been completed and one year or more has passed since those sexual assault evidence collection kits were added to the system.

For the required reports, a sexual assault evidence collection kit must be assigned to the jurisdiction associated with the law enforcement agency anticipated to receive the sexual assault evidence collection kit or that otherwise has custody of the sexual assault evidence collection kit.

Other Provisions

A public agency or entity, including its officials and employees, and a hospital and its employees providing services to victims of sexual assault, may not be held civilly liable for damages arising from a release of information or the failure to release information

related to the system if the release was without gross negligence. Any records and information contained in the system are exempt from public inspection and copying.

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 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: General fund expenditures increase significantly for DSP in fiscal 2018 to develop and begin implementing the tracking system and in future years to

maintain and audit the system. While a precise estimate of the increase in general fund expenditures cannot be made at this time, based on historical spending for other systems, the increase in expenditures is likely several million dollars.

DSP advises that, to its knowledge, a system of this magnitude has never been built, and that it is unable to locate a secure tracking system with access by multiple parties in different locations with 24-hour access for comparison. Although the bill allows for the system to be phased in over one and a half years, the foundation of the system has to be built along with required backups.

The bill requires that the system track sexual assault evidence collection kits from the time of collection at the hospital through the law enforcement and lab processes, as well as throughout the criminal justice process. The system, therefore, requires data entry from hospitals, law enforcement, lab personnel, and prosecutors. The number of personnel required to be trained to use the system, perform data entry, and continuously track the kits through the system cannot be reliably estimated at this time. In addition to DSP, other State entities, such as the University of Maryland Medical System, are likely affected.

In addition, the bill requires continuous electronic access by victims who can remain anonymous. As a result, DSP needs to contract for software development and hardware purchases. Information technology personnel need to be available 24 hours per day to ensure that the system remains operational. In addition, the system must be secure from unlawful entry and hardware must be immediately replaced when system failures occur.

Regular audits must be performed to ensure that data is being entered according to the standards required by the bill. DSP requires *at least* 10 auditors traveling to different areas of the State to check the system entry locations to ensure security is maintained and the data is accurate. The starting annual salary of a full-time auditor is approximately \$52,000.

For contextual purposes, the sex offender registry maintained by the Department of Public Safety and Correctional Services does not require the level of access and maintenance required by the bill; however, general fund expenditures have exceeded \$70 million for the creation and maintenance of the system.

GOCCP can receive the required reports using existing budgeted resources.

Local Expenditures: Some local law enforcement agencies and State's Attorneys' offices may be able to implement the bill's requirements with existing resources, while others may incur a potentially significant increase in expenditures.

For example, Charles and Frederick counties and the City of Frederick advise that the bill's requirements can be implemented with existing resources. However, the City of Havre de

Grace reports the bill could result in a significant increase in personnel costs. Montgomery County reports that, depending on the requirements for local law enforcement agencies, the bill may result in a significant increase in personnel and software costs.

Additional Information

Prior Introductions: None.

Cross File: HB 1141 (Delegate K. Young, *et al.*) - Judiciary.

Information Source(s): Charles, Frederick, and Montgomery counties; cities of Frederick and Havre de Grace; Governor's Office of Crime Control and Prevention; University System of Maryland; St. Mary's College of Maryland; Office of the Attorney General; Department of State Police; Department of Legislative Services

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