

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 8
Judiciary

(Delegate Conaway)

Criminal Procedure - Sexual Assault Evidence Collection Kit - Testing
Requirement

This bill requires that regulations adopted by the Attorney General relating to the collection, testing, and retention of sexual assault evidence collection kits in the State specifically include a requirement that any swab, slide, or other DNA collection item included in a sexual assault evidence collection kit be tested within one year after the item was collected.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures to comply with the required regulations. Revenues are not affected.

Local Effect: Potential significant increase in expenditures for local law enforcement agencies. Revenues are not affected. **This bill, through required regulations, imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law: Chapter 659 of 2017 requires the Attorney General, in consultation with the Maryland Sexual Assault and Evidence Kit Policy and Funding Committee, to adopt regulations based on the committee's recommendations providing for the collection, testing, and retention of sexual assault evidence collection kits in the State. The committee must evaluate State and local funding needs to determine whether funding allocations are sufficient and appropriate to implement the best practices developed by the committee and

the regulations adopted by the Attorney General. The stated purpose of the committee is to:

- increase access to justice for sexual assault victims;
- hold the perpetrators of sexual assault accountable;
- increase availability of sexual assault evidence collection exams; and
- create effective statewide policies regarding the collection, testing, and retention of medical forensic evidence in sexual assault cases.

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.

Chapters 158 and 159 of 2017 require that a sexual assault evidence collection kit be transferred to a law enforcement agency (1) by a hospital or child advocacy center within 30 days after a specified exam is performed or (2) by a government agency in possession of a kit, unless the agency is otherwise required to retain the kit by law or court rule.

A law enforcement agency is prohibited from destroying or disposing of a sexual assault evidence collection kit or other crime scene evidence relating to a sexual assault that has been identified by the State's Attorney as relevant to prosecution within 20 years after the evidence is collected, unless the case for which the evidence was collected resulted in a conviction and the sentence has been completed or all suspects identified by testing of a kit are deceased.

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.

A law enforcement agency with custody of a sexual assault evidence collection kit, on written request by the victim, must (1) notify the victim at least 60 days before the date of intended destruction or disposal of the evidence or (2) retain the evidence, as specified.

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, 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.

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.

State Expenditures: While OAG can promulgate the required regulations with existing resources, compliance with the regulations may result in significant general fund expenditures for the Department of State Police (DSP) crime lab. The crime lab evaluates each sexual assault evidence collection kit independently to determine which samples to test in order to obtain the most probative results. The complexity and information known about the case are factors considered in determining which samples to test. Although the lab tests many samples within the kits submitted, the lab advises that it does not test samples unnecessarily. In a victim sexual assault evidence collection kit, there are a total of 13 collection envelopes, and in the suspect sexual assault evidence collection kit, there are 6 collection envelopes. Depending on the number of pending cases and the number of samples required to be tested, the lab outsources testing of kits. On average, the cost to outsource testing of a sexual assault evidence collection kit in a manner consistent with

testing done by the DSP lab costs \$4,000 per kit. The cost to test all 19 collection envelopes is estimated to cost \$19,650 per case. On average, DSP tests 118 kits annually.

Local Expenditures: Similarly, compliance with the required regulations may result in significant expenditures for local law enforcement agencies. Although Baltimore City advises that there is no fiscal impact, Howard and Montgomery counties report fiscal impacts. Montgomery County advises that compliance results in the county outsourcing an estimated 121 kits annually. Assuming that there are an average of ten evidence samples per kit, the cost to process each kit is \$3,442, for an estimated total of \$414,062. Howard County reports that a new policy was implemented in 2017 requiring the testing of the majority of each sexual assault evidence kit; however, there are still a minimal number of kits that are not tested due to police discretion. The county estimates that testing every kit costs \$14,400.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Howard and Montgomery counties; Office of the Attorney General; Governor's Office of Crime Control and Prevention; Department of State Police; Department of Legislative Services

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