

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1575
Judiciary

(Delegate Bartlett)

**Criminal Procedure - Victims of Sexually Assaultive Behavior - Waivers of
Rights - Prohibition**

This bill prohibits a “criminal justice unit” from seeking specified waivers from a victim of “sexually assaultive behavior.” The bill authorizes an affected victim to bring an action seeking injunctive or declaratory relief against a criminal justice unit that violates the prohibition. Each criminal justice unit in the State must (1) adopt a policy to enforce the prohibition on seeking waivers from victims of sexually assaultive behavior, by January 1, 2021, and (2) provide a copy of the policy to the Maryland Sexual Assault Evidence Kit Policy and Funding Committee by January 15, 2021. The bill applies retroactively to any interaction between a criminal justice unit and an alleged or suspected victim of sexually assaultive behavior occurring before the bill’s October 1, 2020 effective date.

Fiscal Summary

State Effect: The bill is procedural and does not materially affect State finances or operations. Affected State entities can meet the bill’s reporting requirements with existing budgeted resources.

Local Effect: The bill is procedural and does not materially affect State finances or operations. Affected local entities can meet the bill’s reporting requirements with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: A criminal justice unit may not present a victim of sexually assaultive behavior with a form or seek from a victim a verbal agreement that (1) relieves the criminal justice unit of an obligation to the victim; (2) precludes or defines the scope of an investigation into an act allegedly committed against the victim; (3) prevents or limits a prosecution of such an act; or (4) limits a private right of action of the victim pertaining to such an act or to the victim's interaction with the criminal justice unit.

This prohibition applies whether the waiver was initiated by the criminal justice unit or requested by the victim. A prohibited waiver or agreement is unenforceable and inadmissible as evidence in a criminal, civil, or administrative proceeding. If a criminal justice unit violates the prohibition, an affected victim may bring an action seeking injunctive or declaratory relief.

Current Law: A "criminal justice unit" is a government unit or subunit that allocates a substantial part of its annual budget to specified functions and has specified legal authority, including (1) arresting, detaining, prosecuting, or adjudicating persons suspected of or charged with a crime; (2) correctional supervision, custodial treatment, confinement or rehabilitation of persons charged or convicted of a crime; or (3) criminal identification activities and the collection, storage, and dissemination of criminal history record information. A "criminal justice unit" includes specified entities, such as courts, State or local police units, sheriff's offices, State's Attorneys, the Office of the Attorney General, and correctional facilities. With specified exceptions involving delinquency and writs of attachment, a "criminal justice unit" does not include the Department of Juvenile Services or a juvenile court.

"Sexually assaultive behavior" is an act that would constitute (1) a sexual crime under Title 3, Subtitle 3 of the Criminal Law Article; (2) sexual abuse of a minor; (3) sexual abuse of a vulnerable adult; (4) a violation of 18 U.S.C. Chapter 109A (federal sexual abuse statutes); or (5) a violation of a law of another state, the United States, or a foreign country that is equivalent to these offenses.

Chapter 659 of 2017 established the Maryland Sexual Assault Evidence Kit Policy and Funding Committee to, among other things, develop and disseminate best practice information and recommendations regarding the testing and retention of sexual assault evidence collection kits. The committee is required to develop and disseminate best practices information and recommendations regarding several issues, including (1) coordination between State agencies, victim services providers, local law enforcement, and local sexual assault response teams and (2) increasing the availability of information to sexual assault victims regarding criminal prosecutions, available civil remedies, sexual assault evidence collection kits, and victim rights.

Background: According to a February 2019 *Baltimore Sun* investigation, police departments in the Baltimore region prompted sexual assault victims to sign waivers on 223 occasions during 2017 and 2018. Of these waivers, 172 were signed by victims in Baltimore County, 43 in Anne Arundel County, and 8 in Harford County. Anne Arundel and Baltimore counties reportedly stopped using the waiver forms following the investigation. According to news reports, the Baltimore Police Department, the Carroll County Sheriff's Office, and police departments in Howard, Montgomery, and Prince George's counties do not use waivers. The Harford County Sheriff's Office reportedly continues to use a form that a sexual assault victim can sign to request to end an investigation.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 807 (Senators Hettleman and Elfreth) - Judicial Proceedings.

Information Source(s): cities of Baltimore and Bowie; Montgomery and Prince George's counties; Maryland Association of Counties; Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland Municipal League; *Baltimore Sun*; Department of Legislative Services

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