

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 406

(Senator Waldstreicher, *et al.*)

Judicial Proceedings

Judiciary

**Criminal Procedure - Sexual Assault Evidence Kits - Privacy, Reimbursement,
and Notification**

This bill requires a physician, a qualified health care provider, or a hospital, when seeking compensation from the Criminal Injuries Compensation Board (CICB) (with respect to services provided to a victim of an alleged rape, sexual offense, or child sexual abuse), to provide written or electronic verification, signed by a physician or qualified health care provider, to CICB that specified services were rendered to a victim of one of the applicable offenses. The request for compensation may not include a narrative describing the alleged offense or a photograph of the victim. The bill also alters the services for which compensation from CICB may be requested. Under the bill, a physical *and sexual assault forensic* examination of specified victims is eligible for compensation from CICB when the examination is conducted within 15 days of the alleged crime or a longer period as provided by regulation. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances, as discussed below.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Current Law/Background:

Sexual Assault Forensic Examination

Under provisions set forth in the Criminal Procedure Article relating to assistance for victims of sexual assault offenses, the nearest facility to which a victim of sexual assault may be taken must be designated by the Maryland Department of Health 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 immediately offer the opportunity to take the alleged victim to the nearest facility. That offer must be made without regard for the place of the alleged sexual assault or where it is reported.

A victim of an alleged rape, sexual offense, or child sexual abuse may receive, without charge (1) a physical examination to gather information and evidence relating to the alleged crime; (2) emergency hospital treatment and follow-up medical testing for up to 90 days after the initial physical examination; and (3) up to five hours professional time to gather information and evidence. The physician, qualified health care provider, or hospital providing the services is entitled to payment by CICB within the Governor's Office of Crime Control and Prevention (GOCCP).

A physician or qualified health care provider who examines a victim of alleged child sexual abuse under applicable provisions is immune from any civil liability that may result from the failure of the physician to obtain consent from the child's parent, guardian, or custodian for the examination or treatment of the child. The immunity extends to any hospital with which the physician or provider is affiliated or to which the child is brought and any individual working under the control or supervision of the hospital.

Maryland Sexual Assault Evidence Kit Policy and Funding Committee

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's 2019 [annual report](#) noted that recent advancements in forensic science have extended the window that DNA can be collected and that GOCCP's reimbursement policy should reflect these advancements. Specifically, the committee recommended that GOCCP change its reimbursement policy to allow for reimbursement for the collection and submission of cervical swabs taken within 15 days of a sexual assault.

Reimbursements from the Criminal Injuries Compensation Board

As noted above, if a physician, qualified health care provider, or a hospital provides specified services to a victim of an alleged rape, a sexual offense, or child sexual abuse, the services must be provided without charge. The physician, health care provider, or hospital is entitled to be reimbursed by CICB for the costs of providing the following services: (1) a sexual assault forensic examination, which is a physical examination to gather information and evidence as to an alleged crime; (2) emergency hospital treatment and follow-up medical testing for up to 90 days after the initial physical examination; and (3) an initial assessment of a victim of alleged child sexual abuse (for up to five hours of professional time of specified professionals to gather information and evidence) by specified professionals.

State Expenditures: The bill is not anticipated to materially affect State operations or finances. GOCCP advises that submitted reimbursement applications for completed sexual assault forensic examinations generally include anatomical diagrams rather than actual photographs of the victim. However, GOCCP also advises that it requires, as a part of the reimbursement application, a written narrative describing the alleged assault in order to determine if a sexual assault occurred and whether the resulting medical examination is eligible for reimbursement. As a result, the bill may make it difficult for GOCCP to determine eligibility for reimbursements. It is assumed, however, that overall reimbursements from CICB are not significantly affected.

Additional Information

Prior Introductions: HB 1248 of 2019, a similar bill, passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 933, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: HB 425 (Delegate Bartlett, *et al.*) - Judiciary.

Information Source(s): Governor's Office of Crime Control and Prevention; Maryland State Police; Maryland Department of Health; Maryland State Treasurer's Office; Department of Legislative Services

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