

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 789

(Senator Hettleman)

Judicial Proceedings

Judiciary

Sexual Assault Evidence Collection Kits - Preservation and Storage

This bill increases, from 20 to 75 years, the time after the collection of evidence during which a sexual assault evidence collection kit or other specified evidence cannot be destroyed or disposed of by a law enforcement agency, unless specified criteria are met. The bill also establishes that a self-administered sexual assault evidence collection kit must be transferred to a law enforcement agency, as specified. The bill must be construed to apply to and interpreted to affect physical evidence of sexual assault collected from victims before and after October 1, 2023. Among other provisions, the bill also requires the Maryland Sexual Assault Evidence Kit Policy and Funding Committee, by December 1, 2023, to submit a report to the Governor and the General Assembly on specified information regarding sexual assault evidence collection kits and self-administered sexual assault evidence collection kits.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations in the near term; however, general fund expenditures may increase in future years should the Department of State Police (DSP) need to acquire additional storage for retaining sexual assault evidence collection kits and related evidence. The Office of the Attorney General (OAG) advises it can meet the bill's guidance and reporting requirement within existing resources. Revenues are not affected.

Local Effect: The bill is not anticipated to materially affect local finances or operations in the near term. Potential increase in local expenditures in future years for storage costs. Local revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: A sexual assault evidence collection kit collected before January 1, 2000, and stored by a hospital or child advocacy center must be (1) retained consistent with the requirements regarding the retention of sexual assault evidence collection kits and (2) transferred to a law enforcement agency for testing within 30 days after being identified as a sexual assault evidence collection kit, or as directed by OAG.

By December 1, 2023, the Maryland Sexual Assault Evidence Kit Policy and Funding Committee must issue a report to the Governor and the General Assembly making recommendations for (1) guidelines for the transfer of sexual assault evidence collection kits collected before January 1, 2000, to be transferred to law enforcement agencies for testing; (2) guidance on the use of self-administered sexual assault evidence collection kits; and (3) in consultation with the Consumer Protection Division of OAG, educating consumers about use of self-administered sexual assault evidence collection kits, including information regarding the kits' admissibility in a criminal prosecution and identifying other resources for victims of sexual assault.

“Sexual assault evidence collection kit” means physical evidence collected (1) by a qualified health care provider; (2) from the body or clothing of a living or deceased person; (3) following an allegation or suspicion of sexual assault; and (4) for the purpose of preserving the physical evidence. “Sexual assault evidence collection kit” does not include a self-administered sexual assault evidence collection kit.

Current Law:

Collection, Testing, and Storage Requirements for Sexual Assault Evidence Collection Kits

A sexual assault evidence collection kit must be transferred to a law enforcement agency (1) by a hospital or child advocacy center within 30 days after an 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. 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 for 12 months longer, as specified.

Except when a specified exception applies, an investigating law enforcement agency that receives a sexual assault evidence collection kit must (1) submit the kit and all requested associated reference standards to a forensic laboratory for analysis within 30 days of receipt of the kit and all requested associated reference standards and (2) make use of certified sexual assault crisis programs or other qualified community-based sexual assault victim service organizations that can provide services and support to survivors of sexual assault.

A sexual assault evidence collection kit must be submitted to a forensic laboratory for analysis unless (1) there is clear evidence disproving the allegation of sexual assault; (2) the facts alleged, if true, could not be interpreted to violate specified provisions of the Criminal Law Article; (3) the victim from whom the evidence was collected declines to give consent for analysis; or (4) the suspect's profile has been collected for entry as a convicted offender for a qualifying offense in the Combined DNA Index System (CODIS) and the suspect has pleaded guilty to the offense that led to the sexual assault evidence collection kit.

A forensic laboratory that receives a sexual assault evidence collection kit and all requested associated reference standards for analysis must determine the suitability of testing the kit and complete screening, testing, and analysis in a timely manner. Failure to complete the screening, testing, and analysis in a timely manner as specified may not constitute the basis for excluding the analysis or results as evidence in a criminal proceeding.

The eligible results of an analysis of a sexual assault evidence collection kit must be entered into CODIS. The DNA collected from a victim may not be used for any purpose except as authorized.

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 practices information and recommendations regarding the testing and retention of sexual assault evidence collection kits. In January 2023, the committee released its [annual report](#).

State/Local Fiscal Effect: DSP advises that the department maintains one long-term evidence storage facility in Hanover, Maryland. DSP advises that the department may require additional long-term storage facilities to comply with the bill's requirement of maintaining custody of sexual assault evidence collection kits and related evidence for 75 years (instead of 20 years as required under existing requirements). Similarly, DSP also advises that local law enforcement agencies may also need to acquire additional long-term storage facilities. However, any material fiscal impact will likely not occur until beyond the timeframe accounted for in this fiscal and policy note and therefore cannot be reliably estimated at this time.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 758 (Delegates Bartlett and Cardin) - Judiciary.

Information Source(s): Maryland Association of County Health Officers; Governor's Office of Crime Prevention, Youth, and Victim Services; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; Department of State Police; Office of the Attorney General; Baltimore County; Department of Legislative Services

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