

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 807

(Senators Hettleman and Elfreth)

Judicial Proceedings

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

This bill prohibits a “law enforcement agency” 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 law enforcement agency that violates the prohibition. Each law enforcement agency 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.

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 and otherwise implement the bill with existing budgeted resources, as discussed below.

Local Effect: The bill is procedural and does not materially affect local 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 law enforcement agency may not present a victim of sexually assaultive behavior with a form that (1) relieves the law enforcement agency 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 law enforcement agency. If a victim requests that the scope of an investigation be limited or that an investigation be temporarily or permanently suspended, the law enforcement agency must thoroughly document the request and follow up with the victim in accordance with practices recommended by the Maryland Police Training and Standards Commission (MPTSC).

If a law enforcement agency violates these provisions, an affected victim may bring an action seeking injunctive or declaratory relief.

Current Law: A "law enforcement agency" means a governmental police force, sheriff's office, or security force or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State. A "law enforcement agency" does not include specified members of the Maryland National Guard.

"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.

State Expenditures: MPTSC advises that researching and developing recommendations for law enforcement communication with sexual assault victims who have requested that the scope of an investigation be limited or that an investigation be temporarily or permanently suspended requires one contractual employee for one year at a cost of \$66,519 in fiscal 2021, which assumes a start date of July 1, 2020, in anticipation of the bill's October 1, 2020 effective date. However, the Department of Legislative Services advises that given the amount of material available on this topic and the limited scope of the required recommendations, MPTSC can meet the bill's requirements with existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1575 (Delegate Bartlett) - Judiciary.

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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