

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 754
Judiciary

(Delegate Jalisi, *et al.*)

Sexual Assault - Survivors' Right to Know - DNA Analysis of Kit Evidence

This bill requires a health care provider that performs a sexual assault evidence collection kit exam on a victim of sexual assault to provide the victim or the victim's representative with contact information for the investigating law enforcement agency that the victim may contact about the status and results of the kit analysis. The 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 or the victim's representative, must provide the victim or the victim's representative 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.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: The bill does not materially affect local government operations or finances. Local law enforcement agencies advise that the bill's requirements can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: The Criminal Procedure Article defines "sexual assault" as rape or a sexual offense in any degree that is specified under the Criminal Law Article, including attempted rape or attempted sexual offenses.

Under provisions set forth in the Criminal Procedure Article relating to help for victims of sexual assault offenses, the nearest facility to which a victim of sexual assault may be taken must be designated by the Department of Health and Mental Hygiene 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 offer the alleged victim the opportunity to be taken immediately to the nearest facility. That offer must be made without regard for the place of the alleged sexual assault or where it is reported. Applicable health care services must be given without charge to a victim of sexual abuse.

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.

Under the Public Safety Article, by April 1 of every even-numbered year, each local law enforcement unit is required to report to the Governor's Office of Crime Control and Prevention (GOCCP) on the status of crime scene DNA collection and analysis in its respective jurisdiction for the preceding calendar year, and the Department of State Police (DSP) must report to GOCCP on the status of crime scene DNA collection statewide for the preceding calendar year, including:

- the crimes for which crime scene DNA evidence is routinely collected;
- the approximate number of crime scene DNA evidence samples collected during the preceding year for each category of crime;
- the average time between crime scene DNA evidence collection and analysis;
- the number of crime scene DNA evidence samples collected and not analyzed at the time of the study;
- the number of crime scene DNA evidence samples submitted to the statewide DNA database during the preceding year; and
- the number of crime scene DNA evidence samples, including sexual assault evidence, collected by hospitals in the county during the preceding year.

GOCCP must compile the information reported by the local law enforcement units and DSP and submit the information to the Office of Legislative Audits (OLA). OLA must evaluate the information received and submit an annual summary report to the Governor and the General Assembly.

The Public Safety Article also requires 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, to be tested as soon as reasonably possible following collection of the sample.

Background: According to EndTheBacklog (a program of the Joyful Heart Foundation), the issue of untested rape kits is a nationwide problem, with the federal government estimating that there are hundreds of thousands of untested kits in police and crime lab storage facilities throughout the United States. The backlog of untested rape kits stems from two issues: (1) rape kits are booked into evidence and kept in police evidence storage facilities, but the detective and/or prosecutor does not request a DNA analysis; and (2) rape kits are submitted to crime laboratories for testing but are not tested in a timely manner. For untested rape kits in police storage facilities, the Joyful Heart Foundation defines a “backlogged kit” as one that has not been submitted to an accredited public or private crime lab for testing within 10 days of being booked into evidence. For untested rape kits at crime laboratories, a “backlogged kit” is one that has not been tested within 30 days of receipt by the crime lab.

President Obama’s proposed fiscal 2016 budget, released in February 2015, includes \$41 million for the Justice Department’s community-based sexual assault response initiative – a grant program to provide communities assistance with testing backlogged rape kits in storage facilities, investigating and prosecuting cases connected to the backlog, and enhancing victim engagement with the criminal justice system. The proposed federal budget also includes \$20 million for research on reducing the backlog of rape kits.

According to a December 2014 *Frederick News-Post* article, some local jurisdictions in the State send rape kit evidence to their own crime laboratories for processing, while others send evidence to DSP’s Forensic Sciences Division Laboratory, which handles about 130 DNA cases involving rape, sexual assault, sex offense, and sexual abuse each year and currently reports no backlog.

Additional Information

Prior Introductions: HB 1341 of 2014, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Baltimore, Dorchester, Garrett, Howard, and Montgomery counties; City of Laurel; Department of Health and Mental Hygiene; Department of State Police; *Frederick News-Post*; The Joyful Heart Foundation; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2015
min/lgc

Analysis by: Sasika Subramaniam

Direct Inquiries to:
(410) 946-5510
(301) 970-5510