

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 1123
Judiciary

(Delegate Conaway)

Sexual Assault Evidence Kits - Federal Best Practices

This bill requires that the best practices information and recommendations regarding the testing and retention of sexual assault evidence collection kits that is developed and disseminated by the Maryland Sexual Assault Evidence Kit Policy and Funding Committee be in accordance with federal recommendations published by the U.S. Department of Justice (DOJ).

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures to comply with the required best practices. Revenues are not affected.

Local Effect: Potential significant increase in local crime lab expenditures to comply with the required best practices. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law: Chapter 659 of 2017 established the Maryland Sexual Assault Evidence Kit Policy and Funding Committee. The stated purpose of the committee is to:

- increase access to justice for sexual assault victims;
- hold the perpetrators of sexual assault accountable;
- increase availability of sexual assault evidence collection exams; and

- create effective statewide policies regarding the collection, testing, and retention of medical forensic evidence in sexual assault cases.

The committee is required to develop and disseminate best practices information and recommendations regarding:

- the testing and retention of sexual assault evidence collection kits;
- coordination between State agencies, victim services providers, local law enforcement, and local sexual assault response teams;
- payment for sexual assault evidence collection kits;
- increasing the availability of sexual assault evidence collection exams for alleged victims of sexual assault;
- reducing the shortage of forensic nurse examiners; and
- increasing the availability of information to sexual assault victims regarding criminal prosecutions of sexual assault crimes, civil law remedies available to victims of sexual assault, sexual assault evidence collection kits, and victim rights.

The Attorney General, in consultation with the committee, is required to adopt regulations based on the committee's recommendations providing for the collection, testing, and retention of sexual assault evidence collection kits in the State. The committee must evaluate State and local funding needs to determine whether funding allocations are sufficient and appropriate to implement the best practices developed by the committee and the regulations adopted by the Attorney General.

Chapters 158 and 159 of 2017 require that a sexual assault evidence collection kit be transferred to a law enforcement agency (1) by a hospital or child advocacy center within 30 days after a specified 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.

As soon as reasonably possible following collection of the sample, the Public Safety Article requires testing of 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.

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, as specified.

Background: Chapter 37 of 2015 required a law enforcement agency or other State or local agency charged with the maintenance, storage, and preservation of sexual assault kit evidence to conduct an inventory of all kits that were stored by the agency by January 1, 2016, and report the results to the Office of the Attorney General (OAG). Chapter 37 required OAG to prepare and transmit, by December 1, 2016, a report to the General Assembly detailing (1) the number of untested sexual assault collection kits stored by each agency; (2) the date that each untested sexual assault collection kit was collected; and (3) recommendations for addressing any backlog of untested sexual assault collection kits.

In January 2017, OAG released the required [report](#) detailing the findings of the audit, including recommendations for addressing the backlog. Major findings from the 102 law enforcement agencies surveyed revealed that approximately 3,700 untested sexual assault kits existed statewide. About 60% of the kits were collected between 2009 and 2016. Five percent were collected between 1981 and 1997, and the rest were collected between 1998 and 2009. Most jurisdictions reported no backlog of untested kits because the kits were deliberately not tested due to the agency's testing policies.

Best practices in this area include (1) retaining kits, other than anonymous kits, for at least the statute of limitations for the offense; (2) retaining all kits for at least the statute of limitations for the offense, regardless of whether a victim initially elects to prosecute; and (3) ensuring that all kits, after testing, are retained in a police-controlled evidence storage facility, with appropriate humidity, temperature, and related environmental controls as well as chain-of-custody controls. In September 2016, Congress passed the Survivor's Bill of Rights Act of 2016, which suggests that kits be preserved for 20 years as a standard.

DOJ Recommendations

The Sexual Assault Forensic Evidence Reporting (SAFER) Working Group within DOJ was developed to address the SAFER Act of 2013, which recommended, in part, the development of best practices and protocols for the collection and processing of DNA evidence in sexual assault cases. The working group considered issues relating to evidence collection; prioritization of evidence and time periods for collection; evidence inventory, tracking, and auditing technology solutions; investigative and policy considerations; and communication strategies. The working group developed 35 recommendations as a guide to victim-centered approaches for responding to sexual assault cases and supporting victims throughout the criminal justice process. The recommendations emphasize the use of collaborative, victim-centered, and multidisciplinary approaches to improve evidence

collection and preservation, increase consistency and provide uniformity for the prioritization and transfer of evidence, enhance laboratory process efficiencies for DNA testing, and advance investigative practices and agency protocols for (1) evidence inventory; (2) tracking and audits; and (3) communication systems.

Specific recommendations that address testing and retention of sexual assault evidence collection kits include:

- law enforcement agencies and laboratories should partner to use one evidence tracking system;
- the federal government should develop an Electronic Evidence Exchange Standard for the data standards associated with physical forensic evidence;
- sexual assault evidence collection kits should be received by the local law enforcement agency from the hospital or clinic as soon as possible, ideally, no later than three business days from the collection of the kit, or as specified by statute;
- law enforcement agencies should submit the sexual assault evidence collection kits to the laboratory for analysis as soon as possible, ideally, no later than seven business days from the collection of the kit, or as specified by statute;
- law enforcement or laboratories should be responsible for the long-term storage of all sexual assault evidence collection kits, unless applicable law specifies otherwise;
- a comprehensive inventory should be conducted to determine the number, status, location, and individual descriptive information (*e.g.*, unique kit identifier, date collected) for all sexual assault evidence collection kits;
- law enforcement agencies should perform an annual audit verifying that all sexual assault evidence collection kits in the property room are present and in their specified location;
- with the goal of generating CODIS-eligible DNA profile, if a laboratory is unable to obtain an autosomal CODIS-eligible DNA profile, the laboratory should evaluate the case to determine if any other DNA-typing results could be used for investigative purposes;
- forensic laboratories should have an evidence submission policy/protocol that includes prioritization of evidentiary items;
- laboratories should consider the volume of sexual assault cases and use business process improvement tools to review their input/output, identify where bottlenecks occur, and determine if a high-throughput approach to processing will achieve efficiencies;
- laboratories should consider changing the order of processing the evidence by going to Direct, to DNA, and then, only if needed, proceed to serology;
- laboratories should consider incorporating robotics and/or automation at each step of the DNA process for the most efficient high-throughput approach; and

- laboratories should consider the use of standardized reporting templates, a paperless system, and specialized software to assist in the interpretation of DNA mixtures, to streamline the interpretation and reporting of DNA results.

State Expenditures: While the Maryland Sexual Assault Evidence Kit Policy and Funding Committee can develop and disseminate the federal recommendations for best practices information with the existing resources of OAG, implementation of the procedures and systems in compliance with those recommendations may result in significant general fund expenditures for the Department of State Police (DSP) crime lab.

There are more than 150 law enforcement agencies in the State and several crime labs with different policies, procedures, and systems for tracking evidence. The DOJ recommendations suggest that law enforcement agencies and laboratories establish partnerships to use one evidence tracking system. Such a system does not exist in the State. Although the recommendation does not specifically state who is required to develop the unified evidence tracking system, if DSP is required to develop the system, general fund expenditures increase by more than \$1 million for the agency to contract with developers to create the system and for DSP to employ staff to administer the system. In addition, general fund expenditures increase, potentially significantly, to meet the DOJ recommendation that specialized software be used to assist in the interpretation of DNA mixtures and to streamline the interpretation and reporting of DNA results. This analysis assumes that such specialized software does not exist at this time, and must be created to comply with the bill.

Other recommendations advising the establishment of specific policies and protocols can be done with existing resources or already exist.

Local Expenditures: Similar to DSP, local expenditures increase, potentially significantly, in counties with crime labs to meet the DOJ recommendation that specialized software be used to assist in the interpretation of DNA mixtures and to streamline the interpretation and reporting of DNA results. Other recommendations advising the establishment of specific policies and protocols can be done with existing resources or already exist.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore and Montgomery counties; Department of State Police; U.S. Department of Justice; Department of Legislative Services

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