

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1268
 Appropriations

(Delegate Hettleman, *et al.*)

Public Safety - Rape Kit Testing Grant Fund - Established

The bill establishes a Rape Kit Testing Grant Fund to provide “law enforcement agencies” with funding for testing of sexual assault evidence collection kits by “forensic laboratories.” The Department of State Police (DSP) must administer the fund, establish and publish procedures to distribute funding, and report by September 1 each year to the General Assembly regarding the distribution of funds from the fund.

Fiscal Summary

State Effect: General fund expenditures increase by \$3.06 million in FY 2020 to capitalize and administer the fund. Future year general fund expenditures are annualized and reflect ongoing costs, including capitalization. Special fund revenues to the new fund increase by \$3.0 million annually beginning in FY 2020; special fund expenditures increase correspondingly.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000
GF Expenditure	\$3,060,700	\$3,074,400	\$3,076,900	\$3,079,600	\$3,082,300
SF Expenditure	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000
Net Effect	(\$3,060,700)	(\$3,074,400)	(\$3,076,900)	(\$3,079,600)	(\$3,082,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local revenues and expenditures increase to the extent that local law enforcement agencies apply for and receive funding under the bill.

Small Business Effect: None.

Analysis

Bill Summary: A “forensic laboratory” means a facility, entity, or site that offers or performs forensic analysis and is owned or operated by the State, a county or municipal corporation within the State, or another governmental entity. “Law enforcement agency” means DSP or a police department of a county or municipal corporation in the State.

The fund is a special, nonlapsing fund consisting of money appropriated in the State budget, interest earnings, and any other money accepted for the benefit of the fund. Expenditures from the fund may only be made in accordance with the State budget. The fund may only be used for the testing of sexual assault evidence kits in forensic laboratories. Money expended from the fund is supplemental to and not intended to supplant funding that would otherwise be appropriated for testing of sexual assault evidence collection kits.

DSP must ensure that each jurisdiction in the State that has a forensic laboratory has access to the fund. DSP must also consider the number of sexual assault incidents investigated by a law enforcement agency in the prior fiscal year when distributing funding.

Current Law: Each hospital that provides emergency medical services must 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.

A health care provider that performs a sexual assault evidence collection kit exam on a victim of sexual assault must provide the victim with contact information for the investigating law enforcement agency that the victim may contact about the status and results of the kit analysis. An 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, must provide the victim 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.

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 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.

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 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, as specified.

Chapter 37 of 2015 required an inventory of all untested sexual assault evidence kits and a report to the General Assembly on the number of untested kits, the date each kit was collected, and recommendations for addressing any backlog of untested kits. In response, Chapter 659 of 2017 established the Maryland Sexual Assault Evidence Kit Policy and Funding Committee to, among other things, develop recommendations regarding payment for sexual assault evidence collection kits. Chapter 429 of 2018 required the committee to develop recommendations for and apply for grant funding to support a statewide sexual assault evidence collection kit tracking system. On September 30, 2018, the U.S. Department of Justice awarded the Governor's Office of Crime Control and Prevention a \$2.6 million Sexual Assault Initiative Kit grant to implement a program over three years that creates, implements, and adapts a testing system for sexual assault evidence collection kits.

In January 2019, the committee released its annual [report, which](#) noted there are more than 6,000 "unsubmitted" (untested) sexual assault evidence collection kits in the State. The report indicates that it costs DSP \$4,000 to test a sexual assault evidence collection kit in-house or \$3,000 to outsource testing to another forensic laboratory.

Background: Generally, sexual assault evidence collection kits (also known as rape kits, sexual assault kits, or SAEKs) are containers that include the information of a sexual assault victim, documentation forms, clothing collected from the victim or perpetrator that may contain forensic evidence, and other physical evidence that may assist in the resulting investigation.

As of February 2019, in total there are 14 licensed, government-owned and -operated forensic laboratories in the State. This includes 9 local laboratories: the Baltimore City and Hagerstown police laboratories and county law enforcement laboratories in Anne Arundel (which has 2 laboratories), Baltimore, Charles, Harford, Howard, Montgomery, and Prince George's counties. In addition, DSP operates 3 forensic laboratories (in Baltimore, Worcester, and Washington counties) and the Office of the Chief Medical Examiner laboratory in Baltimore City.

DSP advises that, on average, it takes two to four months to process a sexual assault evidence collection kit, depending on if the kit is processed within DSP facilities or outsourced. DSP processes, on average, 120 sexual assault evidence collection kits each year.

State Fiscal Effect:

Capitalization of the Fund and Funding for Eligible Law Enforcement Agencies

General fund expenditures increase by an estimated \$3.0 million annually beginning in fiscal 2020 to capitalize the fund in order to ensure the viability of the fund and to provide meaningful funding for eligible law enforcement agencies. To the extent that funds are received from another source, such as federal or private grant funding, general fund expenditures to capitalize the fund may be reduced. In addition, the Department of Legislative Services (DLS) notes that after the five-year period covered by this fiscal and policy note, assuming \$3.0 million is provided annually, the number of untested kits is likely to be significantly reduced. Once the inventory of untested kits is addressed, the need for continued general funds decreases.

Special fund revenues and expenditures increase correspondingly beginning in fiscal 2020, reflecting receipt of the general funds and the spending of the funds through awards to eligible law enforcement agencies. DLS notes that DSP itself may be eligible for funding from the new fund.

Administrative Expenses

The bill does not authorize the fund to be used to pay DSP's administrative expenses; accordingly, this analysis assumes that additional general funds are needed. DSP advises that it does not administer funding and, in order to implement the bill, it must hire two additional staff (one office services clerk and one grants administrator) to establish the required procedures, generally oversee the fund, and establish an electronic web platform and database to facilitate funding applications at a cost of more than \$650,000 in fiscal 2020, with ongoing costs ranging from about \$124,000 in fiscal 2021 to about \$337,000 by fiscal 2024.

DLS disagrees and notes that DSP can likely implement the bill with fewer than two positions and without a dedicated database. DLS estimates that DSP requires one additional administrator. DLS further advises that the bill does not require an online application process to facilitate the distribution of funding.

Therefore, general fund expenditures increase by \$60,723 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring

one full-time fund administrator to establish application procedures, evaluate applications, and generally oversee the operation of the fund. It includes a salary, fringe benefits, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$55,364
Operating Expenses	<u>5,359</u>
FY 2020 Administrative Expenditures	\$60,723

Future year administrative expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses. To the extent one fund administrator proves insufficient to implement the bill, DSP may request additional positions through the annual budget process. If additional staff are needed, general fund expenditures increase further.

Local Fiscal Effect: Local revenues and expenditures increase for any local law enforcement agency that successfully applies for and receives funding under the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 569 (Senator Elfreth) - Judicial Proceedings and Budget and Taxation.

Information Source(s): Montgomery, Washington, and Worcester counties; Maryland Association of Counties; City of Westminster; Town of Leonardtown; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2019
md/lgc

Analysis by: Thomas S. Elder

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