

SEXUAL ASSAULT KIT EVIDENCE SUBMISSION ACT

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House Bill 5445

Sponsor: Rep. John Walsh

Committee: Criminal Justice

Complete to 5-13-14

A SUMMARY OF HOUSE BILL 5445 AS INTRODUCED 4-17-14

House Bill 5445 would create a new act known as the Sexual Assault Kit Evidence Submission Act to establish time periods within which sexual assault evidence collection kits must be (1) retrieved by the investigating law enforcement agency, (2) submitted to Michigan State Police forensic laboratories or other MSP-designated forensic laboratories, and (3) analyzed for forensic evidence by the MSP or other MSP-designated forensic laboratories.

Release of Sexual Assault Kit Evidence

Under the Public Health Code (MCL 333.21527), if an individual alleges to a physician or other attending or admitting hospital staff that the individual has been the victim of criminal sexual conduct (CSC) within the past 24 hours, the attending health care staff treating the individual shall inform that individual of the availability of a sexual assault kit (SAK) to collect evidence and, with the individual's consent, have evidence of that alleged sexual assault collected.

House Bill 5445 provides that SAK evidence could not be released to a law enforcement agency by a health care facility without the victim's written consent. (In the case of a minor or person with a legally appointed guardian, the release consent could be provided by a parent or legal guardian.)

After the facility obtains written consent to release the SAK evidence, the facility would have to notify the appropriate investigating law enforcement agency. If a victim does not consent to the release of SAK evidence, the facility would have to notify the victim of the facility's policy on storing SAK evidence and provide information on how SAK evidence could be released to law enforcement at a later date. Any SAK evidence not released to law enforcement would have to be stored by the facility for at least one year.

Local Law Enforcement Retrieval of Sexual Assault Kit Evidence

Investigating law enforcement agencies would have to retrieve SAK evidence within 14 days after being notified by a health care facility that a victim has consented to the collection and release to law enforcement of SAK evidence. If the law enforcement agency determines that the alleged sexual assault took place outside their jurisdiction, the agency would have to notify the appropriate law enforcement agency within 14 days after retrieving the SAK. The appropriate law enforcement agency would have to retrieve the SAK within 14 days after being notified.

After taking possession of an SAK, the investigating law enforcement agency would have to assign a criminal complaint number to the SAK, and forward the SAK to the Michigan State Police (MSP) or other forensics laboratory approved and designated by MSP within 14 days. (Any SAK evidence received by an investigating law enforcement agency within 30 days before the bill's effective date would also have to be provided to MSP.)

Forensic Analysis of Sexual Assault Kit Evidence

All SAK evidence received by MSP on or after the bill's effective date would have to be analyzed for forensic evidence by MSP or another forensics laboratory approved and designated by MSP, "provided that sufficient staffing and resources are available to do so." Additionally, DNA profiles obtained from the SAK evidence would have to be uploaded to state and federal DNA databases.

Effect of Noncompliance on Criminal Proceedings

The failure of a law enforcement agency to take possession of, or forward for forensic testing, SAK evidence would not alter the authority of that agency to take possession of, or submit for testing, SAK evidence, and would not alter the authority of MSP or a designated forensics laboratory to accept and analyze SAK evidence or upload any DNA profiles into state and federal DNA databases.

Additionally, the failure to comply with the requirements set forth in the bill would not constitute grounds to challenge the validity of any evidence, including any DNA database match. Likewise, a court could not exclude that evidence on those grounds. The failure to comply with the requirements of the bill would also not be grounds to set aside the conviction or sentence.

Destruction of Sexual Assault Kit Evidence

If a law enforcement agency intends to destroy or dispose of any SAK evidence before the expiration of the statute of limitations, the agency would have to provide written notice to the victim at least 60 days before the SAK evidence is destroyed or disposed of.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the Department of State Police (MSP). The requirement that MSP analyze SAK evidence within 3 months of receiving the SAK evidence from an investigating law enforcement agency could potentially require the department to hire additional forensic scientists (biologists). The department reports that the turnaround time for processing SAK evidence in FY 2013-14 is about 79 days. Since March 2014, the average turnaround time has been 53 days. (These turnaround times do not include the time spent on creating DNA profiles for uploading to state and federal DNA database.)

Thus, based on current caseloads, the MSP forensics laboratories are meeting the turnaround time standards established in the bill. However, it is expected that the bill would increase the number of SAKs submitted for testing, potentially requiring additional staffing and resources for MSP. However, the bill provides that the forensic turnaround

time requirements applies "provided that sufficient staffing and resources are available to do so." Thus, the bill would not directly require additional resources per se. At present, MSP does not have an estimate on the projected increase in caseload or the resulting increase in staff necessary to adhere to the 3-month time standard.

BACKGROUND INFORMATION:

Following the closure of the Detroit Police Department (DPD) crime lab in 2008, a cache of more than 10,000 sexual assault kits – some going back more than 20 years – were discovered in a DPD evidence storage facility. Since that discovery, state and local law enforcement agencies have begun the process of testing that cache of untested kits. The process began several years ago with "Project 400" as a way to begin understanding the evidentiary status of these kits – i.e., whether the case was adjudicated, whether the statute of limitations had run out, victim profiles, and perpetrator profiles. Of that first batch of 400 kits, there were more than 90 associations ("hits" against state and federal DNA databases) made identifying known perpetrators or unknown, but potentially serial, perpetrators. Federal funding enabled MSP, in partnership with the Wayne County Prosecutor's Office, DPD, and private forensics laboratories to test a second tranche of 1,600 untested SAKs, resulting in an additional 455 associations.

Following the testing of these two batches of SAKs, the Wayne County Prosecutor's Office and DPD identified about 8,000 SAKs that still required testing. 2013 PA 102 (HB 4112) provided \$4.0 million from the Attorney General's lawsuit settlement proceeds, which otherwise lapses to the General Fund, to MSP to process this remaining backlog of untested kits. MSP is outsourcing that work among two contractors, and has worked with them to streamline the testing (focusing on DNA), which has helped speed testing times and greatly reduce the cost. (MSP's contract with Bode Technology provides a cost of \$453/SAK.) Because of that, the testing and DNA profiling of the remaining balance of the cache of untested Detroit SAKs should be completed by March 2015, according to MSP. As of last week, MSP had indicated that nearly 1,000 of the remaining SAKs had been tested, with an expectation that the vendors will test about 1,000 SAKs each month when they're operating at full capacity.

Reportedly, MSP has been working with the Prosecuting Attorney's Association of Michigan (PAAM) and the Michigan Association of Chiefs of Police to determine the extent to which local law enforcement agencies also have a stockpile of untested SAKs sitting in police evidence storage lockers around the state. This bill does not address testing of those kits.

Legislative/Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.