



Senate Fiscal Agency  
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Senate Bills 998, 1004, and 1021 (as enacted) **PUBLIC ACTS 318, 319, & 320 of 2014**  
Sponsor: Senator Rick Jones (S.B. 998)  
Senator Bert Johnson (S.B. 1004 & 1021)  
Senate Committee: Judiciary  
House Committee: Criminal Justice

Date Completed: 11-7-14

### **CONTENT**

**Senate Bill 998 enacts a new statute to do the following:**

- Create the Sexual Assault Evidence Kit Tracking and Reporting Commission within the Domestic and Sexual Violence Prevention and Treatment Board.
- Require the Commission to develop various guidelines and plans concerning sexual assault evidence kits, as well as guidelines and a plan to safeguard confidentiality.
- Require the Commission to oversee implementation of the plans, subject to the appropriation of sufficient funding.
- Require the Commission to submit a report on the plans to certain legislative committees and the Senate and House Fiscal Agencies.
- Appropriate \$25,000 in fiscal year 2014-15 and each subsequent fiscal year for the Department of Human Services to implement the act.
- Abolish the Commission either two years after the required report is submitted, if funds are not appropriated, or upon final implementation of the plans developed, if funds are appropriated.

The bill's title states that it creates the "Sexual Assault Evidence Kit Tracking and Reporting Act".

**Senate Bill 1004 creates the "Sexual Assault Victim's Access to Justice Act" to do the following:**

- Require the investigating law enforcement agency to give certain information to a sexual assault victim within 24 hours after the initial contact between the victim and the agency.
- Require the investigating law enforcement agency to give a sexual assault victim certain information regarding the investigation of the case and DNA testing results, if the victim requests that information.
- Allow a sexual assault victim to designate another person to receive the requested information.
- Require the Domestic and Sexual Violence Prevention and Treatment Board to develop a sample notice card for sexual assault victims.
- Require the Board to develop an informational handout for sexual assault victims, explaining the meaning of possible forensic testing results.
- Require the Board to make the card and the handout available electronically to law enforcement agencies.

- **Specify that the Act does not create a cause of action for monetary damages against the State, a county, a municipality, or any of their agencies, instrumentalities, or employees.**

**Senate Bill 1021 amends the Public Health Code to do the following:**

- **Extend the period during which health care personnel must inform a person alleging to have been the victim of criminal sexual conduct of the availability of a sexual assault evidence kit; and refer to a "medical forensic examination, including the administration of a sexual assault evidence kit".**
- **Require attending medical personnel to inform the individual of statutory provisions for payment for a sexual assault medical forensic exam.**
- **Delete a statement that the administration of a sexual assault evidence kit is not a medical procedure.**

Senate Bills 998 and 1021 will take effect on January 1, 2015. Senate Bill 1004 will take effect on April 1, 2015.

**Senate Bill 998**

Commission

The bill creates the Sexual Assault Evidence Kit Tracking and Reporting Commission within the Domestic and Sexual Violence Prevention and Treatment Board (in the Department of Human Services). Members of the Commission must include the Director of the Michigan Department of State Police (MSP), or his or her designee from within the MSP, and the Attorney General, or his or her designee from within the Department of Attorney General.

The Commission also must include the following individuals or their representatives:

- The president of the Prosecuting Attorneys Association of Michigan.
- The president of the Michigan Association of Chiefs of Police.
- The president of the Michigan Sheriff's Association.
- The executive director of the Michigan Domestic and Sexual Violence Prevention and Treatment Board.
- The executive director of the Michigan Coalition to End Domestic and Sexual Violence.
- The president of the Michigan Health and Hospital Association.
- The president of the Michigan Chapter of the International Association of Forensic Nurses.
- The chairperson of the Michigan Crime Victim Services Commission.

In addition, Commission members must include the following:

- A representative appointed by the Governor from the Executive office.
- One State Senator, from the majority party, appointed by the Senate Majority Leader.
- One State Senator, from the minority party, appointed by the Senate Minority Leader.
- One State Representative, from the majority party, appointed by the Speaker of the House.
- One State Representative, from the minority party, appointed by the House Minority Leader.

The Governor's representative and the legislators first appointed to the Commission must be appointed within 90 days after the bill's effective date. If there is a vacancy on the Commission, the appropriate entity must make a new appointment in the same manner as the original appointment.

Within 30 days after the bill's effective date, the MSP Director or his or her designee, or the executive director of the Michigan Domestic and Sexual Violence Prevention and Treatment Board, must call the first meeting of the Commission. At that meeting, the Commission must elect a chairperson and other officers it considers necessary or appropriate. The Commission then is required to meet quarterly, or more frequently at the call of the chairperson or if requested by at least seven members.

The Commission will be subject to the Open Meetings Act and its documents subject to the Freedom of Information Act.

#### Duties & Responsibilities

The Commission must develop guidelines and a plan to implement the following:

- A uniform statewide system to track the location, lab submission status, completion of forensic testing, and storage of sexual assault evidence kits.
- A uniform system to audit the proper submission of sexual assault evidence kits as mandated in the Sexual Assault Kit Evidence Submission Act.
- A secure electronic access that allows a victim, or his or her designee, to receive or have access to information about the location, lab submission status, and storage of sexual assault evidence that was gathered from him or her, as long as disclosure does not impede or compromise an ongoing investigation.
- A uniform system to audit untested sexual assault evidence kits that have been released by the victims and were collected 30 days before the effective date of the Sexual Assault Kit Evidence Submission Act.

Access to any information collected through the statewide system of unreleased or unused sexual assault evidence kits may be disclosed only to specific entities selected and identified by the Commission that will use the information only for policy or training purposes and to sexual assault victims or their designees. Information collected from an unreleased sexual assault evidence kit may not contain any information identifying the victim with whom the kit is associated.

The Commission also must do all of the following:

- Develop guidelines and a plan to safeguard confidentiality of the information and limited disclosure.
- Recommend sources of public and private funding to implement the plans developed under these provisions.
- Recommend any changes to law or policy needed to support implementation of the plans.

The Commission must submit a report on the plans to the following:

- The standing committees of the Senate and House of Representatives with jurisdiction over issues pertaining to the prosecution of criminal sexual conduct.
- The Senate and House Appropriations subcommittees on the MSP and the Attorney General.
- The Senate and House Fiscal Agencies.

The Commission must perform the responsibilities described above within 365 days after its initial meeting.

Subject to appropriation of sufficient funding, the Commission also must oversee implementation of the plans developed under the bill.

"Sexual assault evidence kit" means that term as defined in Section 21527 of the Public Health Code. (That Section, which Senate Bill 1021 amends, defines the term as a standardized set of equipment and written procedures approved by the Department of State Police that have been designed to be administered to an individual principally for the purpose of gathering evidence of sexual conduct, which evidence is of the type offered in court by the Forensic Science Division of the Department for prosecuting a case of criminal sexual conduct.)

#### Appropriation

The bill appropriates \$25,000 for the Department of Human Services for the 2014-15 fiscal year and each subsequent fiscal year. The funds may be used only to implement and carry out the purposes of the bill.

#### Abolishment

If funds are not appropriated to implement the plans developed under the bill, the Commission must be abolished two years after the date on which the required report is submitted.

If funds are appropriated to implement the plans, the Commission must be abolished upon the final implementation of the plans.

### **Senate Bill 1004**

#### Providing Required Information

Within 24 hours after the initial contact between a sexual assault victim and the investigating law enforcement agency, the agency must give the victim a written copy of, or access to, the following information:

- Contact information for a local community-based sexual assault services program, if available.
- Notice that the victim may have a sexual assault evidence kit administered and that he or she may not be billed for the examination.
- Notice that the victim may choose to have a sexual assault evidence kit administered without being required to participate in the criminal justice system or cooperate with law enforcement.
- Notice of the right to request information regarding the investigation of the case and DNA testing results under the Sexual Assault Victim's Access to Justice Act.
- Notice of the right to request a personal protection order (PPO) under Section 2950 or 2950a of the Revised Judicature Act.

(Section 2950 provides for obtaining a PPO in a domestic violence case. Section 2950a provides for obtaining a PPO in a stalking case.)

Law enforcement agencies must give sexual assault victims the information described above beginning September 30, 2015, at the latest.

The required information and notice also must include any notice that is required under the Crime Victim's Rights Act.

The bill defines "sexual assault victim" as an individual subjected to a sexual assault offense and, for the purposes of making communications and receiving notices, a person designated by the victim to receive requested information. "Sexual assault offense" means first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) or assault with intent to commit CSC, or an attempt to commit any of those violations.

"Sexual assault evidence kit" means that term as defined in Section 21527 of the Public Health Code.

"Investigating law enforcement agency" means the local, county, or State law enforcement agency with the primary responsibility for investigating an alleged sexual assault offense case, including the employees of that agency. The term includes a law enforcement agency of a community college or university, if that agency is responsible for collecting sexual assault evidence.

#### Providing Requested Information

When a sexual assault victim requests information described below from an investigating law enforcement agency, the agency must respond by telephone, in writing mailed to the victim, or by electronic mail, as specified by the victim. If the victim does not specify, the agency may respond using any of those methods. If new or updated information becomes available after a response to a victim's request, the agency may, but is not required to, provide the new or updated information to the victim in the absence of a new request. The law enforcement agency does not have to communicate with the victim regarding information described below if he or she does not specifically make a request to the agency.

A sexual assault victim may designate an alternative person to receive the requested information, and the law enforcement agency must direct any requested information to that person.

To receive requested information, the sexual assault victim must give the law enforcement agency the name, address, telephone number, and e-mail address of the person to whom the information should be provided. The agency may require a victim's request for information to be in writing. If a victim has submitted a written request for information, subsequent requests for updated information also must be in writing.

Upon the request of a sexual assault victim to the investigating law enforcement agency, the victim must be given the following information, if available and if the disclosure does not impede or compromise an ongoing investigation:

- The contact information for the officer investigating the case.
- The current status of the case.
- Whether the case has been submitted to the office of the prosecuting attorney for review.
- If the case has been closed and the documented reason for closure.

Upon the victim's request to the law enforcement agency for information about DNA testing results, the victim must be given the following information, if available and if the disclosure does not impede or compromise an ongoing investigation:

- When the sexual assault evidence kit has been submitted to the forensic laboratory.
- Whether a DNA profile of a suspect has been obtained from the processing of evidence in the case.
- Whether a DNA profile of a suspect has been entered into any data bank designed or intended to be used for the retention or comparison of case evidence.
- Whether there is a match between the DNA profile of a suspect obtained in the case to any DNA profile contained in any such data bank.

If a sexual assault victim is given information about forensic testing results, he or she also must be given a copy of, or access to, an information handout developed by the Domestic and Sexual Violence Prevention and Treatment Board.

The bill defines "forensic laboratory" as a DNA laboratory that has received formal recognition that it meets or exceeds a list of standards, including the FBI director's quality assurance standards, to perform specific tests, established by a nonprofit professional association of people actively involved in forensic science that is nationally recognized within the forensic community in accordance with the Federal DNA Identification Act or subsequent laws.

#### Board Requirements

The bill requires the Michigan Domestic and Sexual Violence Prevention and Treatment Board, in consultation with law enforcement, to develop a sample notice card for sexual assault victims. The card must be made available electronically to Michigan law enforcement agencies by June 30, 2015.

By September 30, 2015, the Board, in consultation with the MSP, also must develop an informational handout for sexual assault victims that explains the meaning of possible forensic testing results. The handout must be made available electronically to Michigan law enforcement agencies.

#### **Senate Bill 1021**

Currently, if a person alleges to a physician or other member of a hospital's attending or admitting staff that he or she has been the victim of criminal sexual conduct within the preceding 24 hours, the attending health care personnel responsible for examining or treating the person must immediately inform him or her of the availability of a sexual assault evidence kit. Under the bill, this requirement applies if a person alleges that he or she has been the victim of CSC within the preceding 120 hours, and the attending health care personnel must inform the person of the availability of a sexual assault medical forensic examination, including the administration of a sexual assault evidence kit.

Currently, with the consent of the individual, the health care personnel responsible for examining or treating him or her must perform procedures required by the sexual assault evidence kit, or have those procedures performed on the individual. The bill requires the personnel to perform, or have performed, a sexual assault medical forensic examination, including the procedures required by the sexual assault evidence kit.

In addition, the bill requires the attending health care personnel to inform the individual of the provisions for payment for the sexual assault medical forensic exam under Public Act 223 of 1976. (Section 5a of that Act specifies that a health care provider is eligible to be paid for a sexual assault medical forensic exam only if it meets certain requirements, including the administration of a sexual assault evidence kit. A health care provider may not submit a bill for any portion of the costs of a sexual assault medical forensic exam to the victim, including any insurance deductible or co-pay, denial of claim by an insurer, or any other out-of-pocket expense.)

MCL 752.961-752.962 (S.B. 998)  
752.951-752.957 (S.B. 1004)  
333.21527 (S.B. 1021)

#### **BACKGROUND**

Public Act 227 of 2014 enacted the Sexual Assault Kit Evidence Submission Act to do the following:

- Require a health care facility to notify a law enforcement agency within 24 hours after obtaining consent to release sexual assault kit evidence.

- Require a health care facility, if it does not obtain consent, to store sexual assault kit evidence for at least one year.
- Require a law enforcement agency that receives notice of consent to take possession of the evidence within 14 days.
- Require an investigating law enforcement agency to submit sexual assault kit evidence to the Michigan State Police, or another accredited laboratory, for analysis within 14 days after it takes possession.
- Require sexual assault kit evidence to be analyzed within 90 days after the MSP receives the evidence.
- Require DNA profiles from analyzed sexual assault kit evidence to be uploaded into databases specified by the MSP.
- Require a law enforcement agency that intends to destroy or dispose of sexual assault kit evidence before the applicable statute of limitations expires to notify the victim at least 60 days before doing so.

The Act will take effect on the 91<sup>st</sup> day following the adjournment of the 2014 legislative session.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bill 998**

The bill appropriates \$25,000 to the Department of Human Services to operate the Commission. The funds will be used for expenditures, including travel reimbursements for members and the procurement of materials and other supplies.

### **Senate Bill 1004**

The bill requires the Michigan State Police or any other law enforcement agency with the primary responsibility for investigating a sexual assault to provide the victim, or a person designated by the victim, with specific notices and information, including information regarding the status of evidence in the case, as required or if requested. These provisions will result in minimal additional costs to law enforcement agencies, as they currently have victim communication responsibilities – though not as expansive as the bill requires – under the Crime Victim's Rights Act.

The bill also will result in minimal costs to the Domestic and Sexual Violence Prevention and Treatment Board and the Department of Human Services budget for developing a sample notice card and an informational handout for victims, which will have to be made available electronically to law enforcement agencies.

### **Senate Bill 1021**

The bill will have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.