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House Bill 5445 (Substitute H-1 as passed by the House)  
Sponsor: Representative John Walsh  
House Committee: Criminal Justice  
Senate Committee: Judiciary

Date Completed: 6-3-14

### **CONTENT**

**The bill would create 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 did not obtain consent, to store sexual assault kit evidence for at least one year.**
- **Require a law enforcement agency that received 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 Department of State Police (MSP), or another accredited laboratory, for analysis within 14 days after it took possession.**
- **Require sexual assault kit evidence to be analyzed within 90 days after the MSP received the evidence.**
- **Require DNA profiles from analyzed sexual assault kit evidence to be uploaded into databases specified by the MSP.**
- **Specify that failure to meet the requirements of the proposed Act would not alter the authority of law enforcement agencies, the MSP, or another accredited laboratory, and would not constitute grounds for challenging the validity of a database match.**
- **Require a law enforcement agency that intended to destroy or dispose of sexual assault kit evidence before the applicable statute of limitations expired to notify the victim at least 60 days before doing so.**

#### Release of Evidence

A health care facility that obtained written consent to release sexual assault kit evidence would have to notify the investigating law enforcement agency, if known, or the law enforcement agency having jurisdiction in that portion of the local unit of government in which the medical facility was located, within 24 hours after obtaining consent.

A health care facility that had not obtained written consent would have to inform the individual from whom sexual assault kit evidence was obtained of its storage policy for such evidence. This information would have to include a statement of the period for which that evidence would be stored before it was destroyed and how the individual could have the evidence released to the investigating law enforcement agency at a later date. Any sexual assault kit evidence that was not released to a law enforcement agency would have to be stored for at least one year before it was destroyed.

The proposed Act states that "health care facility" would include a hospital, clinic, or urgent care center that is regulated under the Public Health Code, and any other facility that is authorized to provide sexual assault medical forensic exams under the Code.

"Sexual assault evidence kit" would mean that term as defined in Section 21527 of the Public Health Code, which defines the term as a standardized set of equipment and written procedures approved by the MSP that have been designed to be administered to an individual principally for the purpose of gathering evidence of sexual conduct of the type offered in court by the Forensic Science Division of the MSP for prosecuting criminal sexual conduct (CSC) cases.

"Sexual assault offense" would mean a violation or attempted violation of first-, second-, third-, or fourth-degree CSC or assault with intent to commit CSC.

#### Possession & Analysis of Evidence

A law enforcement agency that received notice that sexual assault kit evidence had been released to it would have to take possession of the evidence from the health care facility within 14 days after receiving the notice.

If the agency determined that the alleged sexual assault occurred within the jurisdiction of another law enforcement agency and that it did not otherwise have jurisdiction over the assault, it would have to notify the other law enforcement agency within 14 days after receiving the kit from the health care facility that collected the evidence. The law enforcement agency that received this notice would have to take possession of the evidence from the other law enforcement agency within 14 days.

An investigating law enforcement agency that took possession of sexual assault kit evidence would have to assign a criminal complaint number to the evidence and submit it to the MSP or another accredited laboratory, for analysis within 14 days after it took possession of the evidence. Sexual assault kit evidence that a law enforcement agency received within 30 days before the bill's effective date also would have to be submitted to the MSP or other accredited laboratory as required in this provision. Each submission of sexual assault kit evidence for analysis under the proposed Act would have to be accompanied by the criminal complaint number.

("Accredited laboratory" would mean 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 provisions of the Federal DNA Identification Act or subsequent laws.)

All sexual assault kit evidence submitted to the MSP or an accredited laboratory on or after the bill's effective date would have to be analyzed within 90 days after the MSP or other accredited laboratory received all of the necessary evidence, provided that sufficient staffing and resources were available to analyze the evidence. ("Analyzed" would mean evaluating items for the presence of a body fluid, cellular material, or DNA followed by the testing of suitable items at forensic DNA regions for comparison purposes.)

The DNA profiles of all sexual assault kit evidence analyzed on or after the bill's effective date would have to be uploaded only into databases at the State and national levels specified by the MSP.

### Failure to Comply

The failure of a law enforcement agency to take possession of sexual assault kit evidence as provided in the proposed Act, or to submit that evidence to the MSP or other accredited laboratory within the time prescribed under the Act, would not alter the agency's authority to take possession of the evidence or to submit it to the MSP or other accredited laboratory. It also would not alter the authority of the MSP or other accredited laboratory to accept and analyze the evidence or to upload the DNA profile obtained from it into State and national DNA databases.

The failure to comply with the proposed Act would not constitute grounds in any criminal proceeding for challenging the validity of a database match or of any database information, and evidence of that DNA record could not be excluded by a court on those grounds.

A person accused or convicted of committing a crime against the victim would have no standing to object to any failure to comply with the requirements of the Act, and failure to comply would not be grounds for setting aside the conviction or sentence.

### Destruction or Disposal of Evidence

If a law enforcement agency intended to destroy or otherwise dispose of any sexual assault kit evidence in a sexual assault case before the expiration for the limitation period applicable under Section 24 of Chapter VII of the Code of Criminal Procedure, and its destruction did not otherwise conflict with the requirements of Section 16 of Chapter X of that Code, the law enforcement agency with the primary responsibility for investigating the case would have to notify the victim of that intention, in writing, at least 60 days before it destroyed or otherwise disposed of the evidence.

(Section 24 of Chapter VII establishes the limitation period for indictments for certain offenses. Section 16 of Chapter X allows certain defendants, after they are convicted, to petition the circuit court to order DNA testing of biological material identified during the investigation, and for a new trial based on results of that testing. The investigating law enforcement agency must preserve any biological material identified during the investigation of a crime for which a person may file a petition, for the period of time that any person is incarcerated in connection with the case.)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have a minimal fiscal impact on the MSP in the short term and an indeterminate fiscal impact in the long term. The bill's requirement that the MSP analyze sexual assault kits within 90 days

of receiving such evidence initially should be able to be accomplished within existing Department resources, as its turnaround time for this analysis is currently 53 days, based on present caseloads. However, should the bill's provisions result in a significant increase in the number of sexual assault kits submitted for testing, the Department could require additional resources to meet the bill's standard. The MSP does not have an estimate as to the projected increase in caseload or the impact on its resources.

Fiscal Analyst: Bruce Baker

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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.