

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 949

(Senator Hettleman)

Judicial Proceedings and Finance

Rules and Executive Nominations

Consumer Protection - Self-Administered Sexual Assault Evidence Collection Kits

This emergency bill generally (1) prohibits the sale or distribution of a self-administered sexual assault evidence collection kit, with a violation deemed as an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA) and subject to MCPA’s civil and criminal penalty provisions; (2) specifies that information indicating the physical evidence of “sexually assaultive behavior” was obtained using the specified prohibited materials is not admissible in a criminal or civil proceeding involving the allegation of sexually assaultive behavior; (3) prohibits the limitation or waiver of rights, remedies, and warranties regarding sexual assault evidence collection; and (4) establishes the Forensic Nurse Examiner Training Grant Program and associated special fund administered by the Governor’s Office of Crime Prevention and Policy (GOCPP).

Fiscal Summary

State Effect: No material effect anticipated in FY 2024. General fund expenditures increase by at least \$50,000 annually beginning in FY 2025 to establish the grant program; special fund revenues and expenditures are assumed to increase correspondingly. To the extent that institutions of higher education receive grants from the program, revenues and expenditures increase minimally for these institutions (not reflected below). General fund interest revenues increase minimally.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	-	-	-	-	-
SF Revenue	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
GF Expenditure	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
SF Expenditure	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Net Effect	(\$50,000)	(\$50,000)	(\$50,000)	(\$50,000)	(\$50,000)

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

Local Effect: Potential minimal increase in local community college grant revenues and expenditures. Otherwise, the bill is not anticipated to materially impact local government operations or finances.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Self-administered Sexual Assault Evidence Collection Kits

Except for a self-administered sexual assault evidence collection kit that is issued by the Maryland Department of Health, a person is prohibited from selling, offering for sale, or distributing a self-administered sexual assault evidence collection kit. A violation of this prohibition is an unfair, abusive, or deceptive trade practice and subject to enforcement by the Attorney General under MCPA. In addition to existing civil and criminal penalties pursuant to MCPA, a violator is subject to a maximum civil penalty of \$1,000 for each violation.

Any fines, penalties, or damages collected for a violation of this prohibition must be credited to the Forensic Nurse Examiner Training Grant Program Fund established by the bill.

Forensic Nurse Examiner Training Grant Program and Special Fund

The Forensic Nurse Examiner Training Grant Program is established to assist nonprofit entities that provide resources for victims of sexual assault in the State to fund training for nurses in the State to develop the skills necessary to conduct forensic examinations of sexual assault victims. The associated fund is a special, nonlapsing fund consisting of revenues from civil penalties (and fines/damages) imposed from violations of the bill and any other money from any other source accepted for the benefit of the fund. The fund may only be used for grants to nonprofit entities through the program. The interest earnings of the fund must be credited to the State's general fund.

GOCPP must administer the program and the fund, as specified, including by establishing an application process for nonprofit entities and higher education institutions and colleges in the State to apply for grant funding from the program.

Admissibility in Civil and Criminal Proceedings

The bill prohibits admissibility, in a criminal or civil proceeding involving an allegation of sexually assaultive behavior, of information that the physical evidence of sexually assaultive behavior was obtained using a self-administered sexual assault evidence collection kit sold in violation of the bill's prohibition. However, the bill does not require a court to admit the specified physical evidence.

Limitation and Waiver of Rights

Under the bill, the following are deemed null and void as against the public policy of the State: (1) any agreement, condition of access or use, or policy that limits or waives any substantive or procedural right or remedy to a claim against any person who provides a victim or other person with any service, product, information, or other means to collect evidence of a sexual assault; and (2) any disclaimer of any warranties, express or implied, of merchantability, fitness for a particular purpose, or noninfringement regarding any service, product, information, or other means to collect evidence of a sexual assault. The Attorney General must adopt regulations for uniform statewide implementation.

Current Law:

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind, which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division within the Office of the Attorney General (OAG) is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Maryland Sexual Assault Evidence Kit Policy and Funding Committee

Chapter 659 of 2017 established the Maryland Sexual Assault Evidence Kit Policy and Funding Committee to, among other things, develop and disseminate best practices information and recommendations regarding the testing and retention of sexual assault evidence collection kits. In January 2024, the committee released its [annual report](#).

Chapters 702 and 703 of 2023, among other things, required the committee to issue a report by December 1, 2023, to the Governor and the General Assembly making recommendations for (1) guidelines for the transfer of sexual assault evidence collection kits collected before January 1, 2000, to be transferred to law enforcement agencies for testing; (2) guidance on the use of self-administered sexual assault evidence collection kits; and (3) in consultation with the Consumer Protection Division of OAG, educating consumers about use of self-administered sexual assault evidence collection kits, including information regarding the kits' admissibility in a criminal prosecution and identifying other resources for victims of sexual assault. In its [report](#), the committee recommended, among other things, (1) condemning any unfair, abusive, or deceptive trade practices from marketers of commercial, self-administered sexual assault kits and (2) supporting funding mechanisms to improve access to medical forensic care including the hiring and retention of forensic nursing staff.

Rules of Evidence

The Maryland Rules of Evidence generally follow the Federal Rules of Evidence. Except as otherwise specified, all relevant evidence is admissible. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Although relevant, evidence may be excluded under Maryland Rule 5-403 if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

“Sexually assaultive behavior” means an act that would constitute (1) a sexual crime under Title 3, Subtitle 3 of the Criminal Law Article; (2) sexual abuse of a minor under § 3-602 of the Criminal Law Article; (3) sexual abuse of a vulnerable adult under § 3-604 of the Criminal Law Article; (4) a violation of specified federal law; or (5) a violation of a law of another state, the United States, or a foreign country that is equivalent to a specified offense.

State Fiscal Effect:

Forensic Nurse Examiner Training Special Fund and Grant Program

The special fund established by the bill to be used to support the grant program includes revenues from any civil penalties (and fines/damages) collected for violations of the bill's prohibition and any other source accepted for the benefit of the fund. Assuming that the bill's prohibition applies in a small number of cases, special fund revenues from the resulting penalties are assumed to be negligible and insufficient to cover the cost of a viable grant program. As there is no other revenue source identified, this analysis assumes general funds are necessary to capitalize the fund.

Thus, general fund expenditures increase by *at least* \$50,000 annually beginning in fiscal 2025 in order to provide funding to establish and support a modest grant program. Special fund revenues and expenditures are assumed to increase correspondingly, reflecting receipt of the capitalization funding and the awarding of grants. Any interest earnings of the fund, credited to the general fund under the bill, are likely to be minimal. To the extent that any other revenue source is identified, special fund revenues and expenditures may increase further or the impact on the general fund may be mitigated.

To the extent that institutions of higher education apply for and receive grants under the bill, associated revenues and expenditures increase.

Despite the bill's designation as emergency legislation, this analysis assumes grant funding is not provided until fiscal 2025.

Governor's Office of Crime Prevention and Policy

GOCPP advises that in order to administer the grant program and special fund established under the bill, it requires additional resources (specifically, one part-time agency grant specialist and one part-time fiscal services officer to assist in, among other tasks, reviewing grant applications, proposals, and reports for accuracy, producing notices on funding availability, and monitoring/approving grant expenditures), with estimated expenditures of approximately \$67,000 on an annual basis.

However, given that the grant program is limited to nonprofits, institutions of higher education, and colleges, the number of resulting grant applications is not anticipated to be significant. Thus, GOCPP can likely administer the fund and the grant program using existing budgeted resources, particularly if the program receives only the minimal funding assumed in this analysis. To the extent, however, that more significant funding is made available for grant awards, GOCPP may require dedicated staff for the program and can request additional positions through the annual budget process.

Other Impacts

OAG advises that it can handle enforcement with existing budgeted resources. This analysis also assumes that OAG can adopt necessary regulations using existing budgeted resources. The bill is not anticipated to have a material impact on the finances or operations of the Judiciary.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1047 (Delegate Bartlett, *et al.*) - Judiciary.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Governor's Office of Crime Prevention and Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Legislative Services

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