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FISCAL IMPACT REPORT

SPONSOR Stewart ORIGINAL DATE 2/28/17
LAST UPDATED 3/02/17 HB _____

SHORT TITLE Require Rape Kit Policies SB 475/aSJC

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 491.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Department of Public Safety (DPS)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 475 adds language to subsections 1 and 2 of Section 1 specifying how an agency handles the kit of a survivor “who reported the sexual assault to law enforcement.” Before the amendment, the bill did not specify the sexual assault needed to be reported to law enforcement.

Synopsis of Bill

Senate Bill 475 amends Section 30-9-19 NMSA 1978 by requiring every law enforcement agency to develop and implement a policy for how it handles material collected from a sexual assault victim kit and how it prioritizes a sample for DNA testing by the agency’s servicing laboratory by October 1, 2017.

SB 475 requires the law enforcement agency to send the kit for testing “as soon as practicable, after receiving the sample and, in all cases, within thirty day of the agency’s receipt of the sample.”

Finally, SB 475 requires a law enforcement agency's servicing laboratory to report to the legislature by November 1 of each year if during the preceding fiscal year more than three hundred untested samples of biological material collected from sexual assault victims were pending.

FISCAL IMPLICATIONS

DPS reports no fiscal impact as a result of this bill. The provision of time limits within which to process sexual assault kits could increase costs to law enforcement agencies across the state. At the Department of Public Safety, many of the forensic scientist positions are difficult to fill and remain vacant for significant periods of time, frequently due to low pay. Statewide, vacancy rates or small forensic laboratory staff sizes could prohibit the timely completion of cases and require additional employees, lab space, and equipment. The bill states policies to comply with the bill's provisions must be implemented by October 1, 2017, leaving only four months from the effective date of the bill to implement the policies.

Of note, last fall the Department of Public Safety (DPS) was awarded a \$2 million competitive grant from the U.S. Department of Justice that will provide the remaining amount needed to process a backlog of sexual assault kits under the jurisdiction of the department. Grant funds were available at the beginning of October, 2016. The grant will fund salaries and supplies for three forensic scientists for three years and provide funds for DPS to create a sexual assault case management database that is open to the public.

The AOC states there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional personnel and resources to handle the increase.

SIGNIFICANT ISSUES

The AOC explains SB 475 does not have any significant issues for the judiciary. "The thirty-day deadline for submitting samples of biological material collected pursuant to a sexual assault victim's medical exam is necessary to ensure that the current backlog of these rape kits does not continue to increase. It is crucial that any evidence in a sexual assault case is processed and submitted for analysis as soon as possible so the case can move efficiently through the criminal justice system."

DPS submits the following analysis:

Section 1 (A) requires a law enforcement agency to implement a policy on how a sample of biological material collected pursuant to a medical examination of a sexual assault victim will be handled. Many law enforcement agencies hold sexual assault kits (SAKs) that are from both reported cases (a police report is filed) and non-reported cases (in which the victim has not yet chosen to file a police report). For clarification, it is suggested the language be amended to insert "for which a police report is filed" after the word "victim" on page 2, line 2.

Section 1 (A) (2) requires a law enforcement agency to include in the policy how the agency will prioritize a sample for DNA testing. Each SAK contains an average of five samples that can be tested. In the bill, the term “sample” appears to be used in lieu of “case.” It is appropriate for the law enforcement agency to prioritize the submission of SAKs based upon individual assault case information. However, the agency would not prioritize which samples within the SAK would be tested. This would be done in conjunction with the agency’s servicing laboratory, which would have the required expertise to determine which samples would be most effective and efficient for testing. It is recommended that the word “sample” on page 2, line 5 be replaced with “sexual assault kit.”

Section 1 (A) (3) requires the submission of biological material samples to the servicing laboratory for DNA testing within no more than thirty days. Note that in cases where the victim reported the potential use of drugs by the offender to assist in the sexual assault, those samples (drug-facilitated sexual assault or DFSA) are tested by the State Laboratory Division of the Department of Health. DFSA samples have a short shelf life and in some cases such samples have been submitted after the point at which they were testable. Legislation could be considered regarding the timely submission of DFSA samples.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 491.

TR/jle/sb/jle