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Lawmakers set to pass rape kit retention bill, but not mandatory testing



Daniel Katz, director of Maryland State Police's forensic science division, and Lt. Jeffrey Kloiber, executive officer of the criminal investigation bureau, talk about testing sexual assault kits. (Lloyd Fox/Baltimore Sun video)



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The Baltimore Sun

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State lawmakers are poised this week to pass legislation that will require police in Maryland to keep rape kits for 20 years.

But what to do with the kits remains a topic of considerable debate.

Advocates for victims and others say testing all rape kits is the right thing to do for victims, and will get more rapists off the streets.

But opponents of that approach, including Baltimore County's top prosecutor, say testing every kit would be costly and might not do anything to advance certain cases, particularly those in which the alleged assailant's identity is known.

Legislation that would have required the kits to be tested within 150 days died in committee. Del. Shelly Hettleman, who sponsored both measures, said she plans to reintroduce it next year.

"If we have have found that we need a law to preserve kits, why not have one about how we examine them?" the Baltimore County Democrat asked.

Baltimore County State's Attorney Scott Shellenberger warned against telling local law enforcement how to manage their limited resources.

"If I have a boyfriend and an ex-girlfriend where identity is not an issue and I have to get [a kit tested] in 150 days, do I put that in front of a murder case?" Shellenberger asked lawmakers at a hearing in February.

Rape kits contain evidence collected in a medical examination after a suspected sexual assault. Examiners extract blood, hair, saliva, semen and other DNA-bearing materials that could help investigators find a perpetrator, uncover repeat offenders or exonerate suspects.

In Maryland, policies on the retention and testing of rape kits vary greatly from police department to police department, The Baltimore Sun reported last year. Some destroy untested rape kits after one year; others keep them indefinitely.

The Sun report included the story of Catherine Becket. The former Baltimore County woman waited three years before deciding to pursue charges against a man who she says sexually assaulted her.

She discovered Baltimore County police had destroyed her rape kit.

"The evidence that was in my rape kit was everything," Becket said. "To say I was mad was an extreme understatement. There is no statute of limitations, so I'm bewildered as to why they would destroy evidence."

Hettleman said Becket's experience inspired her to introduce the bills to require police to keep the kits and test them.

"In addition to having been abused by her abuser, she was abused by the system," she said.

The Maryland Attorney General's Office audited 135 law enforcement agencies in the state and found 3,700 untested kits. The office recommended statewide standards for retention and testing.

Hettleman's retention bill would require hospitals to transfer kits to a police department within 30 days of the examination, and police departments to keep the kits for 20 years. It requires victims to be notified at least 60 days before a kit is destroyed.

The House voted 139-0 last month to approve the measure. It now awaits action by the Senate, which is expected to approve it as early as Tuesday.

Baltimore County State's Attorney Scott Shellenberger called the retention bill a "common sense" reform with "minimal impact." Most rape kits are the size of an 8-by-10-inch envelope and do not require refrigeration.

More than half the states have laws mandating a minimum time period to retain evidence in sexual assault cases, according to AEquitas. The Washington-based organization offers training to prosecutors who handle cases of sexual and domestic violence.

But Shellenberger said testing is costly, and certain kits might not help a case, might not be eligible for upload into a national DNA database and might not be viable for prosecution.

Testing a rape kit for DNA costs around \$1,000. The price can increase with the complexity of the samples.

Shellenberger warned that taking discretion from the Baltimore County police on testing rape kits could jeopardize DNA testing for other crimes, including homicides.

He told lawmakers in a letter that there is already a six-month wait for DNA results from the county's forensics lab. A time limit to test rape kits and no time limit to test DNA for other crimes, he said, could put sex offense cases that would not be viable in court in front of stronger cases on other charges.

Supporters say mandatory testing will get more rapists off the streets. They say testing backlogged kits has produced arrests and convictions.

Testing nearly 5,000 backlogged kits in Cuyahoga County, Ohio, has led to more than 500 indictments and 250 convictions to date, researchers say.

Testing more than 10,000 backlogged kits in Detroit has led to 64 convictions.

Rachel Lovell, a researcher at Case Western Reserve University in Ohio, said processing untested kits is a "first step" to addressing a "gender bias in the criminal justice system."

About 99 percent of the alleged victims in the Cuyahoga study were female.

"After having been traumatized by the rapist, victims were also re-traumatized by a system that forgot about them," she said.

Eighteen states have passed laws mandating rape kit testing.

Advocates for sexual assault victims say prosecutors and police have been slow to recognize the value of mandatory testing. Even in cases where the perpetrator is known, they say, DNA can corroborate the victim's account, show a pattern of offenses and identify serial offenders.

Baltimore County does not test such cases unless the known suspect denies that intercourse occurred, Shellenberger said. In such cases, testing DNA might help prove what happened.

Hettleman wrote to the Baltimore House legislative delegation this month to respond to Shellenberger's arguments.

"I'm honestly perplexed as to why a prosecutor wouldn't want to use the fullest array of tools available to him or her," she wrote.

Howard County State's Attorney Dario J. Broccolino said prosecutors have to make choices about how to spend resources.

"I could say, 'let's test them all,'" he said. "But there is a budget issue and the odds of getting a hit on someone who is a serial rapist is very remote."

Baltimore State's Attorney Marilyn Mosby said she favors testing rape kits when the alleged perpetrator is known.

Baltimore Police do not prioritize the testing of stranger-rape cases over those of known perpetrators.

Adam Rosenberg, executive director of the Baltimore Child Abuse Center, testified in favor of the mandatory testing bill. He cited cases he prosecuted when he was an assistant state's attorney.

In one, a father confessed to a sexually assaulting his 8-year-old daughter, only to recant his confession at trial more than a year later.

"But we had the DNA," Rosenberg said. "And we were able to use that to secure a successful conviction."

Shellenberger called comparisons to cities with many more untested rape kits "apples and oranges." He said it's unlikely that there are cases with serial rapists "sitting around" in area storage rooms.

Michigan State University psychology professor Rebecca Campbell, principal investigator for a report on Detroit's untested kits, said it's impossible to know how helpful the rape kits could be until you test them.

"As a researcher, my question is: 'Why don't you find out first rather than advocate against it?'"

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