

TO: Sean Kealy
FROM: Carly Gillingham
DATE: December 22, 2021
RE: Legislative History for H. 4013

The bill I researched was “An Act Relative to Sexual Assault Evidence Kits” (H. 4013) (the “Act”), approved by Governor Baker on August 3, 2021. I began my search on malegislature.gov, which provided me with an overview of the Act. The Act began as a budget item within the General Appropriation Bill, but later emerged as its own separate bill. It was presented with an emergency preamble and aimed to address the problem of over 6,000 untested and backlogged sexual assault evidence kits. In its final version, the bill: (1) required the state crime lab to report within ninety days of the act how many untested kits there were, and tell the legislature how many kits it cannot test; (2) required the state crime lab to transfer eligible kits to private labs for testing within 180 days (ineligible kits are those that cannot be tested without destroying all of the evidence); and (3) required district attorneys to notify survivors of sexual assault whose kits are subject to these requirements whether the kit will finally be tested – and if not, why.

I started with the prior history of the Act on malegislature.com, and learned that after being enacted as an item in the General Appropriation Bill, Governor Baker returned it with a message expressing the concerns he wanted to see addressed before he would approve it. The Governor first noted that the definition of “previously untested sexual assault evidence kits” was too broad because it included kits associated with already-adjudicated cases and included samples too small to test without destroying all the evidence, then noted the legislative deadline

of testing 6,000 kits in 180 days is not possible for crime labs; he recommended altered language corresponding to these concerns. After this, the bill was referred to the committee on House Bills in the Third Reading. The House considered and rejected the Governor's amendment, instead adopting Representative Michael S. Day's amendment, which set out the final provisions of the bill as noted above (reporting requirement, 180 day deadline to at least transfer kits to private labs, and the notification to survivors). An emergency preamble was also adopted. The revised version of the bill was then signed by the governor. Searching elsewhere on malegislature.gov, it does not appear there were any hearings on this bill, and the only videos are from sessions where the legislature adopted the amendment and re-enacted the revised bill.

I next went to MassTrac to see whether this resource had any other legislative history information or documents. MassTrac did not have any information on floor votes for this particular bill, nor did it have any debate information, lobbying information, or testimony or comments. MassTrac did provide a link to a report by MassLive discussing how the bill was passed to rectify a loophole leaving 6,300 kits untested. Through reading this article, I discovered that Rep. Natalie Higgins was involved in spearheading the original budget initiative to provide for the testing of untested sexual assault evidence kits.

State House News provided very basic coverage of the Act during its legislative process, with its only mentions of it coming from general summaries of House and Senate sessions, including the sessions where the Governor's amendment was rejected in favor of Rep. Day's, and the eventual re-enactment by both houses of the legislature. I turned to Google to find more news articles, which proved a very useful resource for learning more about the Act. Rep. Higgins apparently spearheaded the initiative to resolve the untested assault kits issue because she herself is a survivor. Further, the discovery of the sheer amount (roughly 6,300) of untested kits was the

result of media investigations by Channel 5 News, which helped put pressure on the legislature to solve the problem. When the Governor rejected the budget initiative initially, he received negative media attention for it; one WCVB.com headline stated, “Massachusetts governor opposes Legislature’s rape kit testing requirements,” and discussed how the lack of accountability and justice for survivors was a serious obstacle to justice for survivors.

Given the relative lack of information online about this bill’s history I located Rep. Higgins’s information on MassTrac’s directory and reached out to see whether she had any useful non-privileged information that can help with this legislative history search. She offered to set up a time to chat. During this meeting, I learned that this bill had a much longer history than meets the eye, with several versions and budget initiatives preceding this one. A bill was initiated in 2017 by Rep. Higgins and Rep. Gentile which would have mandated the testing of untested sexual assault evidence kits in language similar to the one recently approved. The Speaker decided she did not want to wait for the full process for this bill, so she added it to an appropriations bill, S.2371 (the Criminal Justice Reform omnibus bill). The bill required crime labs to test “unsubmitted tests.” In 2019, the following language was passed as an item in the supplementary budget for the State Police Crime Lab:

8100-1014 For costs associated with the collection and testing of sexual assault evidence kits required to be collected and tested by section 214 of chapter 69 of the acts of 2018, including testimony regarding such collection and testing; provided, that any unexpended funds in this item shall not revert but shall be made available for the purpose of this item until June 30,
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Then, in December of 2020, Rep. Higgins, along with the other representatives and advocate groups with whom she was working, discovered (with help from the Channel 5 investigation) the presence of over 6,000 untested sexual assault kits at the state crime lab despite these past

efforts. They discovered that the crime lab had been interpreting the word “unsubmitted” (in the context of the 2017 legislation) loosely, to mean “unsubmitted to the crime lab,” rather than “unsubmitted for testing.” Thus, Rep. Higgins and Minority Leader Brad Jones initiated a new bill, H. 1701 to address this problem. They introduced in H.1701 language that removed the “unsubmitted” language and required previously untested investigatory sexual assault evidence kits” to be tested within 180 days. This bill is still ongoing and had a hearing scheduled for December 7, 2021; even though this initiative was already approved in H. 4013 through the budget initiative, Rep. Higgins said it is not uncommon to continue having hearings on the same initiative from a different bill, especially in this case, which will allow a number of sexual assault reform advocates’ voices to be heard. Finally, Reps. Higgins and Jones filed Amendment 1074 to H. 4000 to reappropriate funding and update the language to require DNA testing of kits. This resulted in modified language by the House in H. 4001, which eventually was part of the Appropriations Bill that Governor Baker sent back, discussed above. This then resulted in H. 4013, the primary subject of this project, whose history is discussed further above.

Rep. Higgins continues to be concerned about untested kits. She said that the resistance to the bill initiative has been “heartbreaking,” because district attorneys and the Crime Lab have blatantly said they would rather prioritize other criminal matters. Further, there has been contention on the survivor notification requirement. Some representatives have opposed this because they say it will inflict unnecessary further trauma upon such survivors to contact them and notify them of the status of their testing kit. Rep. Higgins said this is likely just an excuse to avoid the extra burden of notification, but that some advocates she has worked with are actually also concerned with the risk of triggering trauma responses from survivors. The bill leaves the notification requirement relatively broad on purpose given this resistance. There is also still

resistance on the issue of testing “quantity-limited” kits where testing may destroy criminal evidence; crime labs have been unable to give a count of how many there are, but the legislature would like them to prioritize ones they can test in the meantime. Rep. Higgins has devoted the vast majority of her short time in the legislature to this cause and is dedicated to continuing to do so.

Each of the bill versions predating this one discussed above are uploaded to the Google Drive along with past versions of H. 4013 itself.