

MARYLAND SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE

ANNUAL REPORT

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INTRODUCTION

The Maryland Sexual Assault Evidence Kit Policy and Funding Committee (“SAEK Committee” or “Committee”) was established in 2017 by the Maryland General Assembly to develop and disseminate best practices information and recommendations regarding:

- i) The testing and retention of sexual assault evidence collection kits;
- ii) Coordination between State agencies, victim¹ services providers, local law enforcement, and local sexual assault response teams;
- iii) Payment for sexual assault evidence collection kits;
- iv) Increasing the availability of sexual assault evidence collection exams for alleged victims of sexual assault;
- v) Reducing the shortage of forensic nurse examiners;
- vi) Increasing the availability of information to sexual assault victims regarding:
 1. Criminal prosecutions of sexual assault crimes;
 2. Civil law remedies available to victims of sexual assault;
 3. Sexual assault evidence collection kits; and
 4. Victim rights;
- vii) Creating and operating a statewide sexual assault evidence collection kit tracking system that is accessible to victims of sexual assault and law enforcement; and
- viii) Establishing an independent process to review and make recommendations regarding a decision of a law enforcement agency not to test a sexual assault evidence collection kit.²

The Committee is also required to submit an annual “report on [its] activities during the prior fiscal year to the Governor and...the General Assembly.”³

In accordance with Section 11-927(i) of the Criminal Procedure Article of the Maryland Code, the SAEK Committee submits this report which sets forth its activities during FY2020.⁴ This year the Committee: (1) supported legislation to protect the privacy of sexual assault victims,

¹ The term “victim” is used throughout this report to refer to people who have experienced sexual assault because it is a term used in relevant statutes and the criminal justice system. We appreciate, however, that many people who have suffered sexual assault prefer the term “survivor.” We respect that preference and mean no disrespect by our choice of language

² MD. CODE ANN., Crim. Proc. § 11-927(e)(1) (West 2020)

³ Crim. Proc. § 11-927(i). For prior annual reports published by the Committee, visit the Committee’s website at: <https://www.marylandattorneygeneral.gov/Pages/Groups/SAEK.aspx>.

⁴ This report also contains information regarding the Committee’s activities in fiscal year 2021.

expand the time by which victims may obtain a sexual assault forensic exam (“SAFE”), and prevent law enforcement from presenting victims with forms that purport to limit or stop a sexual assault investigation; (2) made significant advancements under the Sexual Assault Kit Initiative (SAKI”) grant; (3) worked to advance previous SAEK Committee initiatives and statutory mandates; and (4) developed new recommendations.⁵

For most of 2020, the Committee executed its duties as the nation worked to combat the COVID-19 pandemic, which by the end of 2020 had killed more than 332,246 Americans⁶ and over 5,636 Marylanders.⁷ During this same period, the country experienced the largest social movement in U.S. history challenging police brutality and structural racism sparked by the brutal killings of George Floyd, Breonna Taylor, and numerous other unarmed African Americans by law enforcement. Prompted by this call to action, the SAEK Committee discussed the inequities that have been documented in sexual assault investigations and committed to conducting its reform work in an inclusive manner and with the intent of combating bias and discrimination.

I. Legislative Update

The SAEK Committee was active during the 2020 legislative session. Committee members submitted oral and written testimony and lobbied in support of the Committee’s legislative priority bills. Ultimately, the Maryland General Assembly passed two of the Committee’s three priority bills. Each of these bills is outlined below.

⁵ The SAEK Committee met four times this year: March 10th, June 9th, September 10th, and December 3rd. Each of the Subcommittees also met several times throughout the year. Information about SAEK Committee meetings is available on the Committee’s webpage, which can be accessed using this link: <http://www.marylandattorneygeneral.gov/Pages/Groups/SAEK.aspx>.

⁶ CENTERS FOR DISEASE CONTROL AND PREVENTION, CDC COVID DATA TRACKER, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (last visited Dec. 29, 2020).

⁷ MARYLAND DEPARTMENT OF HEALTH, MARYLAND COVID-19 DATA DASHBOARD, <https://coronavirus.maryland.gov/> (last visited Dec. 29, 2020).

A. Privacy and Reimbursement—HB425/SB406

House Bill 425, Chapter 204 (2020)—cross-filed under Senate Bill 406, Chapter 205 (2020)—ensures that health care providers are reimbursed for services provided to victims up to 15 days after the sexual assault and expands privacy protections for victims of sexual assault.

Prior to this legislation, COMAR 10.12.02.03(B)(1)(a) provided that a “sexual assault forensic examination shall be performed...within 120 hours [five days] of the alleged sexual offense.” Based on this provision, medical personnel were only reimbursed for SAEK samples collected within five days of the sexual assault. This five-day collection requirement was based on outdated research.

Recent advancements in forensic science have extended the window that DNA can be collected from a victim’s cervix to at least 9 days after the assault and potentially up until the victim’s next menstrual cycle.⁸ Based on this research, in both its April 2018 Preliminary Recommendations and its 2019 Annual Report, the SAEK Committee recommended that the Governor’s Office of Crime Prevention, Youth, and Victim Services (“GOCPYVS”)—formerly known as the Governor’s Office of Crime Control and Prevention—amend its regulations to allow health care providers to be reimbursed for cervical swabs collected within 15 days of the sexual assault.⁹

HB425 and SB406, which were sponsored by Delegate J. Sandy Bartlett and Senator Jeff Waldstreicher respectively, codifies the Committee’s recommendation and ensures that GOCPYVS’ reimbursement policy reflects current forensic advancements. Under this legislation,

⁸ PATRICIA SPECK & JACK BALLANTYNE, POST-COITAL DNA RECOVERY STUDY 77–80 (2015), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/248682.pdf>.

⁹ See MARYLAND SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE, PRELIMINARY RECOMMENDATIONS 4–5 (2019), available at https://www.marylandattorneygeneral.gov/Pages/Groups/SAEK_Committee_Preliminary_Recommendations_April_2018.pdf.

health care providers are reimbursed for “a physical and sexual assault forensic examination to gather information and evidence as to an alleged crime when the examination is conducted within 15 days of the alleged crime or a longer period as provided by regulation[.]”¹⁰ These extended timeframes guarantee that key evidence that could identify perpetrators of sexual assault and be admissible in criminal prosecutions is collected. The law also increases victims’ access to SAFEs, and ultimately justice, by increasing the amount of time victims may obtain an exam after the alleged assault.

In addition to extending the reimbursement timeframe, HB425/SB406 also protects the privacy of victims by narrowing the scope of information that health care providers are required to provide in order to be reimbursed for the SAFE. Prior to the legislation, health care providers were often required to submit a detailed description of the sexual assault as well as any associated photographs to the Criminal Injuries Compensation Board to be reimbursed for the services. The practice of providing this information was a violation of a victim’s privacy as the detailed descriptions of the assault revealed intimate information about the victim and providing photographs identified the victim and depicted them in a vulnerable state. These documents are not necessary for reimbursement purposes and, due to the sensitive and identifying nature of these items, should never be transmitted unnecessarily.

Last year, the SAEK Committee received testimony regarding the traumatic impact of sexual assault and the effects this trauma can have on a victim. It is critical that victims of sexual assault not be further victimized by having unnecessary details of the alleged offense or

¹⁰ H.B. 425, Chapter 204 (2020); S.B. 406, Chapter 205 (2020); Md. Code Ann., Crim. Proc. § 11-1007(c)(1) (West 2020).

photographs transmitted by health care professionals for the purpose of seeking reimbursement for services provided.

The General Assembly acknowledged the need to protect victims' privacy and passed HB425/SB406 which prohibits health care providers from including a narrative of the sexual assault and any pictures of the victim in the request to obtain reimbursement for the exam. In lieu of submitting these items, health care providers are now required to submit "written or electronic verification signed by a physician or qualified health care provider...[indicating] that [covered] services...were rendered to a victim of an alleged rape or sexual offense..."¹¹

The passage of HB425/SB406, which went into effect July 1, 2020, created the need for GOCPYVS to update its regulations to extend the exam reimbursement timeframe and narrow the scope of information that must be provided for reimbursement. SAEK Committee members from the Maryland Coalition Against Sexual Assault ("MCASA") and the Maryland Hospital Association ("MHA") worked with GOCPYVS to update the regulations and ensure compliance with HB425/SB406. The SAEK Committee will continue to work with GOCPYVS to review and finalize the regulations before they are published in the Maryland Register.

B. Waiver of Rights Prohibition—HB1575/SB807

In addition to protecting the privacy of victims, the General Assembly also passed legislation that prohibits law enforcement from presenting victims with forms that purport to limit the scope of or prevent an investigation or prosecution.¹²

¹¹ The term covered services refers to "a physical and sexual assault forensic examination to gather information and evidence as to an alleged crime when the examination is conducted within 15 days of the alleged crime or a longer period as provided by regulation;" Crim. Proc. § 11-1007(c)(1).

¹² See S.B. 807, Chapter 584 (2020); *see also* Crim. Proc. § 11-929(b).

Throughout the criminal justice process, victims of crime may decline to participate for a variety of reasons. Sexual assault victims in particular may be reluctant to follow through with prosecution due to personal circumstances, shame, fear of retaliation, or experiences of secondary victimization by criminal justice authorities.¹³ Over the years, some Maryland law enforcement agencies (“LEAs”) have used “waivers of rights forms” to document a sexual assault victim’s decision to no longer participate in the investigation or prosecution of their alleged sexual assault.¹⁴ In these forms, victims would waive their right to have their claims investigated and the right to file a civil suit against the LEA for failing to complete an investigation.¹⁵

The use of waivers to document a victim’s declination to proceed has been widely discouraged by both law enforcement and victim rights advocates. The International Association of Chiefs of Police specifically discourages pressuring “the victim to make any decision regarding participation in the investigation or prosecution during the initial interview or initial stages of the investigation.”¹⁶ Individuals who experience sexual violence may struggle with decision-making due to the effects of trauma.¹⁷ As such, having to make such crucial decisions concerning the assault may be premature and could re-traumatize the victim.

Use of “waivers of rights forms” are problematic even after the initial stages of the investigation as some forms may be used to intimidate the victim or contain coercive language that

¹³ MELISSA S. MORABITO, LINDA M. WILLIAMS, APRIL PATTAVINA, DECISION MAKING IN SEXUAL ASSAULT CASES: REPLICATION RESEARCH ON SEXUAL VIOLENCE CASE ATTRITION IN THE U.S, 7 (2019), *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/252689.pdf>.

¹⁴ Catherine Rentz, *Hundreds of Baltimore-area sex assault victims signed waivers releasing police from duty of investigating*, BALTIMORE SUN, Feb. 19, 2019, <http://www.baltimoresun.com/news/investigations/bs-md-sex-assault-waivers-20190219-story.html>.

¹⁵ *Id.*

¹⁶ INTERNATIONAL ASSOCIATION OF CHIEF OF POLICE, SEXUAL ASSAULT INCIDENT REPORTS: INVESTIGATIVE STRATEGIES, 5 (2018), *available at* <https://www.theiacp.org/sites/default/files/all/s/SexualAssaultGuidelines.pdf>.

¹⁷ DR. LORI HASKEL & DR. MELANIE RANDALL, THE IMPACT OF TRAUMA ON ADULT SEXUAL ASSAULT VICTIMS, 10 (2019), *available at* https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf.

encourages the victim to stop reporting the assault.¹⁸ In addition, seeking the victim’s signature on such documents can send the message that law enforcement simply wants to close the case without providing justice for the victim.¹⁹

Sponsored by Senator Shelly Hettleman and Delegate J. Sandy Bartlett, Senate Bill 807, Chapter 584 (2020) and House Bill 1575, prohibit law enforcement agencies from presenting sexual assault victims with forms that purport to:

- (1) Relieve the law enforcement agency of an obligation to the victim;
- (2) Preclude or define the scope of an investigation by the law enforcement agency into an act allegedly committed against the victim;
- (3) Prevent or limit a prosecution of an act allegedly committed against the victim; or
- (4) Limit private right of action of the victim pertaining to an act allegedly committed against the victim or the victim’s interaction with the law enforcement agency.²⁰

The legislation does, however, allow the victim to initiate the discussion and independently—without prompting by law enforcement—request to limit or suspend an investigation.²¹ If the victim makes such a request, law enforcement must document the victim’s decision and follow up with the victim in accordance with specific standards recommended by the Maryland Police Training and Standards Commission.²²

SB807/HB1575 went into effect on October 1, 2020.²³ The law requires LEAs to adopt a policy to enforce the prohibition on seeking waivers from victims of sexual assault by January 1,

¹⁸ *See supra* note 14.

¹⁹ *Id.*

²⁰ S.B. 807, Chapter 584 (2020); Crim. Proc. § 11-929(b)(1)–(4).

²¹ *Id.*

²² In July 2020, the Maryland Police Training and Standards Commission (MPTSC) published recommended standards for law enforcement to follow-up with victims of sexual assault who wish to limit or suspend an investigation. A copy of MPTSC recommended standards have been attached to this report as Appendix A.

²³ S.B. 807, Chapter 584 (2020).

2021.²⁴ Each LEA must also provide a copy of their updated policies to the SAEK Committee by January 15, 2021.²⁵

In October, the SAEK Committee published guidance for law enforcement on how to document a victim's request to limit or suspend an investigation. This guidance document is available on the Committee's website and is attached to this report as Appendix B. This document will be discussed in more detail under Section III, below.

C. DNA Chain of Custody—HB1096

Unfortunately, not all of the SAEK Committee priority bills were successful during the 2020 legislative session. Sponsored by Delegate Wanika Fisher, House Bill 1096, sought to enact a "Notice & Demand" statute governing the chain of custody of DNA evidence.²⁶ The bill would permit prosecutors to introduce DNA evidence and establish a DNA profile without calling numerous live witnesses solely to establish the chain of custody. This would promote efficiency by avoiding the testimony of low-level lab technicians whose testimony add no substantive value to the proceeding. It would also preserve resources by ensuring that DNA analysts and law enforcement officers are only required to appear and testify regarding contested matters. The legislation provided for the interest of victims by shortening the length of trials, which cause long waiting periods for victims who often remain secluded, reliving the trauma, waiting for justice. The bill also considered the rights of the defendant by allowing the defense to require the presence of all witnesses, if desired.

²⁴ Crim. Proc. § 11-929(e)(1).

²⁵ Crim. Proc. § 11-929(e)(2).

²⁶ In order to admit physical evidence during trial, the offering party must establish the chain of custody (i.e. account for its handling from the time it was seized until it is offered in evidence). *See Lester v. State*, 82 Md. App. 391, 394 (1990).

This was the third time that the Committee supported legislation of this nature. We are appreciative of the bill’s previous sponsors and all individuals who advocated on behalf of this legislation. At this time, the Committee does not intend to advocate for the passage of a DNA Chain of Custody bill during the next legislative session. The Committee will re-evaluate the provisions of the legislation and determine whether further advocacy is appropriate.

II. SAKI Grant Update

In addition to advocating for SAEK reform during the 2020 legislative session, the Committee continued to fulfill its obligations under the SAKI grant. SAKI is a federal grant program administered by the U.S. Department of Justice’s Bureau of Justice Assistance (“BJA”).²⁷ BJA provides funding to reduce the number of untested kits nationwide and help jurisdictions implement best practices and comprehensive reform in the handling of sexual assault cases.²⁸ In September 2018, Maryland was awarded \$2.6 million in SAKI grant funding to: (1) conduct a statewide inventory; (2) test a portion of the unsubmitted kits; (3) establish a statewide tracking system; and (4) provide victim services.

The grant is being administered by GOCPYVS and overseen by the Office of the Attorney General (“OAG”). OAG is also responsible for conducting the statewide inventory of unsubmitted SAEKs.²⁹ The Maryland State Police Forensic Sciences Division (“MSP”) in conjunction with several local forensic laboratories³⁰ is facilitating the process of testing kits and uploading qualifying DNA into CODIS. MCASA is developing and implementing the victim notification

²⁷ *Bureau of Justice Assistance Sexual Assault Kit Initiative*, BUREAU OF JUSTICE ASSISTANCE, https://www.bja.gov/ProgramDetails.aspx?Program_ID=117 (last visited Nov. 29, 2020).

²⁸ *Id.*

²⁹ An unsubmitted SAEK includes all SAEKs that have not been submitted to a forensic laboratory for testing regardless of the reason for not testing the kit.

³⁰ These local laboratories include: Anne Arundel, Baltimore City, Baltimore County, Montgomery County, and Prince George’s County.

protocol and providing victim services. The SAEK Committee is responsible for selecting a statewide tracking system and GOCOPYVS will serve as the system's host agency.

A. SAKI Inventory Results

Each SAKI grant recipient must conduct an inventory of unsubmitted kits as a condition to access the full SAKI grant funding. Maryland began its inventory in March 2019, hiring six investigators to travel to each law enforcement agency in possession of one or more unsubmitted SAEKs to capture all data required under the grant.³¹

OAG originally decided to conduct the inventory in four phases, dividing the State into geographical regions. The inventory started with the jurisdictions that possessed the largest numbers of unsubmitted SAEKs and ended with the agencies who reported possessing smaller numbers of unsubmitted SAEKs.

OAG submitted its original Phase I inventory for certification in September 2019. The original Phase I inventory did not include partially tested kits.³² BJA advised that they would not be able to certify the inventory without the partially tested kit information. OAG reengaged each LEA to ensure that this information would be included in all future submissions.

At the outset, each LEA was advised that the SAEK investigators would document partially tested kits. This documentation was viewed as optional. Some agencies included partially tested kits in their inventory and others did not.

³¹ The investigators documented the following data elements for the SAKI inventory: (1) Date the SAEK was collected; (2) Date SAEK was obtained by the law enforcement agency; (3) Date of the offense; (4) Age of the victim; (5) Law enforcement incident number (or any other unique identifiers); (6) Agency in possession of the SAEK; (7) Location where the SAEK is stored (e.g. evidence room, offsite property storage facility); and (8) Reason why the SAEK was not submitted for testing (if attainable).

³² Partially tested kits are "kits that received serology-only testing, or that were previously tested for DNA with antiquated technology (e.g., RFLP or DQAlpha) that prevented upload into CODIS... These types of partially tested SAKs may hold valuable forensic evidence for sexual assault cases." SAKI, *SAKI Site Inventory Guidance*, SAKI TTA, https://sakitta.org/resources/docs/SAKI_Site_Inventory_Guidance.pdf.

To ensure agencies had adequate time to provide partially tested kit data, OAG reorganized the inventory phases so that the agencies whose inventories included partially tested kits were submitted first. The remaining agencies and phases were organized based on their efficiency and ability to timely produce the requested data.

In March 2020, OAG submitted the new Phase I inventory for certification, which was ultimately approved by BJA. OAG submitted the Phase II inventory in April, which was also certified by BJA. Unfortunately, the Phase III and IV inventories were delayed due to the preventative measures put in place to combat COVID-19.

Like many states, Governor Larry Hogan executed a stay-at-home order for nonessential workers in Maryland. Government agencies, including LEAs, implemented preventative measures such as teleworking and reduced work hours. These preventative measures greatly impacted several LEAs' ability to document partially tested kits. As such, the Phase III inventory was not submitted until September 2020 and was subsequently approved in November. The Phase IV inventory will be submitted in early 2021 and should be certified by BJA shortly thereafter. All certified inventory data will be available on the SAEK Committee's SAKI grant webpage, which should be active in January 2021.

Maryland's inventory includes all unsubmitted and partially tested kits that were obtained by an LEA on or before April 30, 2018—the month when Maryland applied for SAKI grant funding. The inventory data varies for several reasons, including the fact that some agencies have longer retention requirements than the state's 20-year mandate, which was not implemented until 2017.³³ Prior to this requirement, each jurisdiction set its own policy for retaining untested SAEKs. For example, the Montgomery County Police Department's ("MCPD") policy is to retain all

³³ Md. Code Ann., Crim. Proc. § 11-926(d)(2) (West 2017).

untested kits indefinitely. Therefore, MCPD’s number of untested kits is higher when compared to other agencies. Conversely, some agencies policies provided for the destruction of kits within a shorter timeframe. As such, these agencies’ number of untested kits is smaller compared to other agencies. The inventory data should be viewed within this context.

The inventory data is set forth within the table below.³⁴

Law Enforcement Agency	Total # Unsubmitted Kits	Total # Unsubmitted Kits w/o Anonymous Kits
Aberdeen Police Department	19	18
Allegany County Sheriff’s Office	11	10
Annapolis Police Department	70	61
Anne Arundel County Police Department	688	538
Baltimore City Police Department	857	809
Baltimore County Police Department	514	420
Bel Air Police Department	2	2
Berlin Police Department	19	0
Cambridge Police Department	76	75
Carroll County Sheriff’s Office	83	47
Cecil County Sheriff’s Office	35	34
Charles County Sheriff’s Office	236	230
Chestertown Police Department	14	8
Crisfield Police Department	6	6
Cumberland City Police Department	18	14
Denton Police Department	7	6
Dorchester Police Department	3	2
Easton Police Department	58	54
Elkton Police Department	12	10
Frederick City Police Department	130	112
Frederick County Sheriff’s Office	28	22
Fruitland Police Department	1	1
Garrett County Sheriff’s Office	2	1
Greenbelt Police Department	1	1
Hagerstown Police Department	11	11
Harford County Sheriff’s Office	61	56

³⁴ This inventory data does not include partially tested kit data. All certified inventory data, including partially tested kit data, will be available on the SAEK Committee’s SAKI grant webpage in early 2021.

Law Enforcement Agency	Total # Unsubmitted Kits	Total # Unsubmitted Kits w/o Anonymous Kits
Havre de Grace Police Department	25	23
Howard County Police Department	548	460
Hurlock Police Department	1	1
Hyattsville Police Department	37	37
Maryland State Police Department	64	52
Montgomery County Police Department	838	674
New Carrollton Police Department	1	1
Ocean City Police Department	83	82
Pocomoke City Police Department	2	2
Prince George's County Police Department	1863	1676
Queen Anne's County Sheriff's Office	9	9
Salisbury Police Department	89	89
Salisbury University Police Department	1	1
St. Mary's County Sheriff's Office	87	83
St. Michaels Police Department	2	2
Takoma Park Police Department	10	10
Talbot County Sheriff's Office	16	15
Thurmont Police Department	2	2
UMBC Police Department	4	4
University of Maryland College Park	5	5
University of Maryland Eastern Shore	11	11
Washington County Sheriff's Office	7	7
Wicomico County Sheriff's Office	53	20
Worcester County Sheriff's Office	1	1
Total	6,721	5,815

B. SAKI Grant Testing

Similar to the phased inventory, testing under the SAKI grant is being conducted in phases. MSP negotiated a contract with Bode Technology to outsource testing at a rate of about \$1,000 per kit. We anticipate that approximately \$900,000 of the current SAKI grant will be used to test kits. This will allow the state to test about 900 kits.

As discussed in the SAEK Committee's 2020 Annual Report, all agencies who have less than 10 unsubmitted kits are allowed to submit all of their kits for testing under the SAKI grant.

This will allow 22 LEAs to eliminate their SAEK backlog. The remaining grant funds allocated for testing have been distributed among the remaining agencies proportionate to the number of unsubmitted kits in each agency's inventory. For example, if there is a total of 5,000 kits in the entire inventory, an agency with 900 kits would be able to send 18% of their kits for testing, which is equivalent to 162 kits.

Agencies are required to submit kits for testing based on the date of the offense. The more recent cases will be tested first. Anonymous/Jane Doe kits will not be tested. There are additional guidelines regarding unfounded cases and cases where the offender's DNA is already in CODIS. The SAEK Committee published a detailed outline specifying the "SAKI Grant Testing Order & Protocol." This document has been attached to this report as Appendix C and should be referenced for additional information regarding which kits should be submitted for testing under the grant.

Thus far, the Phase I, II, and III agencies have begun submitting kits for analysis in accordance with the testing order and protocol established by the Committee. We will provide a general overview of the SAKI grant test results as soon as testing is complete. The Committee will publish the results on its SAKI grant webpage.

C. Victim Notification

To continue providing victim services under the SAKI grant, MCASA developed a victim notification protocol. The protocol, which is currently a draft version,³⁵ was developed to give local law enforcement agencies and victim advocates guidance on how to conduct victim notifications—the process of contacting a victim to advise them about information concerning

³⁵ We will refer to the victim notification protocol as a "draft protocol" because the protocol is a living document, subject to change given the special circumstances of the COVID crisis and the need to field test the process. When the protocol is finalized, it will also be submitted to the U.S. Department of Justice for their review.

their case. MCASA included the input of the SAEK Committee as well as several Sexual Assault Response Teams (“SARTs”) throughout the State.

The local SARTs were receptive of the draft protocol which is victim-centered and trauma informed. The protocol has two layers: (1) survivor opt-in system, which allows victims to make the first contact through an information line or email support, and (2) advocate-initiated notification, which covers notifications when the victim has not utilized the opt-in system.

MCASA opened the survivor opt-in notification system in November 2020. The opt-in process is conducted using an information phone line and email support option which gives survivors the opportunity to directly contact an MCASA SAKI advocate to discuss how and when they would like to be contacted about the testing of their kit. The advocate-initiated notifications will be conducted by an MCASA SAKI advocate in collaboration with the appropriate investigating LEA.

MCASA developed a digital toolkit, including a digital flyer and social media graphics which are available in both English and Spanish, to help advertise the survivor opt-in information line and email support. This digital toolkit was disseminated to stakeholders throughout Maryland, including SAEK Committee members, LEAs, rape crisis and sexual assault programs, and legislators with a request to help inform survivors of the opt-in services through social media postings and agency websites. The digital toolkit is available on MCASA’s website³⁶ and the flyer is attached to this report as Appendix D.

MCASA also expanded its SAKI team to include a SAKI staff attorney and a SAKI legal advocate. They manage the opt-in information line and email support system, assist law

³⁶ MCASA’s digital toolkit: <https://mcasa.org/survivors/saki>.

enforcement agencies with notifications, and support local SARTs. Most importantly, they are available to survivors participating in the SAKI process.

MCASA submitted the protocol to BJA for approval in December 2020. The protocol will be published on MCASA's website when it is approved. The protocol will remain open for comment until September 30, 2021. This will allow LEAs to provide feedback as they begin to utilize the notification protocol and see success or encounter challenges. The MCASA SAKI Team will review all comments and recommendations at the end of 2021.

The COVID-19 pandemic has directly affected the implementation of the SAKI victim notification protocol. The MCASA SAKI Team has decided to refrain from conducting advocate-initiated notifications during this public health crisis. This decision was made in acknowledgement of the unique trauma and stress that the pandemic has had on the public and the unique stressors with which sexual assault survivors may be struggling. Although MCASA will not be actively contacting survivors during the COVID-19 pandemic, the opt-in information line and email support will remain open and available to survivors interested in learning more about the SAKI project and the testing of their kit. Additionally, MCASA recognizes that law enforcement agencies are still required to submit SAEKs for testing during the pandemic and notification may be necessary in certain circumstances. As a result, MCASA SAKI advocates will work with each agency to address testing results and the development of an individualized notification plan that aims to reduce retraumatization while acknowledging the additional barriers of COVID-19.

Survivors that have been affected by the backlog of untested SAEKs in Maryland can contact an MCASA SAKI advocate by calling the opt-in information line at (833) 364-0046 or emailing notification@mcasa.org.³⁷

³⁷ MCASA's Sexual Assault Legal Institute is available to assist survivors whose kits fall outside of the SAKI window.

D. SAEK Tracking System

The SAEK Committee is responsible for selecting a tracking system that will be implemented pursuant to the SAKI grant. In 2019, the Governor identified GOCPYVS as the host agency for Maryland's tracking system. GOCPYVS and the Committee began working with the Maryland Department of Information Technology ("DoIT") to determine the technological requirements to launch and maintain a statewide tracking system. It immediately became apparent that DoIT would be best to spearhead this endeavor and also assist the Committee in the process of selecting and implementing the tracking system.

The SAEK Committee provided DoIT with information regarding each tracking system that the Committee previously reviewed: STACS DNA Track-Kit System, Portland's Sexual Assault Management System ("SAMS"), Idaho's tracking system, and the Montgomery County Police Department's tracking system.

DoIT conducted a cursory review of each system and selected the most viable systems that could be implemented on a statewide level. DoIT then scheduled demonstrations for Committee members to reexamine STACs, SAMS, and Idaho's tracking systems and discuss any questions with each system's representatives.

DoIT also met with SAEK Committee members to establish all the necessary requirements for Maryland's tracking system. Moving forward, the Committee will work with DoIT to identify the system that meets Maryland's needs and is cost-efficient. The SAEK Committee intends to select a system by January 2021. DoIT, GOCPYVS, and OAG meet weekly to ensure that the project progresses according to plan.

E. Applying for Additional SAKI Grant Funding

Although Maryland received the initial SAKI grant funding award, there are several areas in which additional funding is necessary to produce widespread SAEK reform and maintain the progress begun pursuant to the initial SAKI award. Typically, each year, BJA releases a SAKI grant solicitation seeking grant applications to provide funding to “inventory, track, and expeditiously test previously unsubmitted SA[E]Ks...and optimize victim notification protocols and services.”³⁸ The solicitations are open to non-SAKI grant recipients and current SAKI grant recipients.

In FY2021, Maryland intends to apply for additional SAKI grant funding to test more of the State’s unsubmitted kits and, if necessary, to fully implement the tracking system. As previously discussed, Maryland will be able to test approximately 900 kits. Recognizing that this is only a small portion of Maryland’s backlog³⁹ of unsubmitted kits, the Committee intends to seek funding to test additional kits in an effort to further reduce the backlog.

Likewise, when the SAEK Committee selects a tracking system, we will evaluate whether the current SAKI grant funds allocated to implement the system are sufficient to address the State’s needs. If necessary, the Committee will apply for additional funds for this purpose.

III. Advancing Previous SAEK Committee Initiatives and Statutory Mandates

In addition to implementing the SAKI grant, the Committee completed its statutory mandates and advanced many of its initiatives including: (1) Publishing guidance documents to assist law enforcement as they implement the waiver of rights prohibition and begin to test kits

³⁸ *FY2020 National Sexual Assault Kit Initiative*, Bureau of Justice Assistance, <https://bja.ojp.gov/funding/opportunities/bja-2020-17018> (last visited Nov. 30, 2020).

³⁹ Maryland does not have a backlog of untested kits in the traditional sense, meaning that there is no waitlist of kits that have been submitted, but have not been tested. Rather, the majority of untested kits are kits that law enforcement has determined should not be tested.

under the new SAEK testing criteria, which went into effect on January 1, 2020; (2) Updating the Attorney General’s COMAR Regulations; and (3) Assisting GOCPYVS in implementing the HIV nPEP Pilot Program.

A. Published Guidance Documents

The SAEK Committee routinely publishes guidance documents when there are changes made to SAEK polices and procedures. This year, the Committee published two guidance documents; one to offer guidance on the Waiver of Rights Prohibition legislation and a flow chart to visually outline which kits should be submitted for testing.

1. Waiver of Rights Prohibition Bill

As discussed above, each LEA is required to adopt a policy to enforce the prohibition on seeking waivers from victims of sexual assault and provide a copy of the policy to the SAEK Committee.⁴⁰ The Committee developed guidance to assist LEAs in adopting policies and practices that thoroughly and accurately capture a victim’s decisions, consistent with State law and best practices.⁴¹

Lieutenant Brian Edwards of the Baltimore County Police Department, in consultation with MCASA and the SAEK Committee, led this effort. The document explains why the use of “waiver of rights forms” is problematic and offers alternatives to document a victim’s decision to limit or stop an investigation or prosecution.⁴² Notably, the guidance offers that “[i]t is best practice to use audio and audio-video recordings to document victim interviews...[and] LEAs should obtain the victim’s permission to audio or audio-video record.”⁴³

⁴⁰ S.B. 807, Chapter 584 (2020); Crim. Proc. § 11-929(e)(1)–(2).

⁴¹ See Appendix B.

⁴² *Id.* at 1–2.

⁴³ *Id.* at 1.

Prior to finalizing the guidance document, the SAEK Committee met with FreeState Justice and Baltimore Safe Haven—two LGBTQ+ advocate organizations in Maryland—to obtain their input and ensure that the recommended guidance was informed by the needs of members of the LGBTQ+ community. FreeState Justice and Baltimore Safe Haven emphasized the importance of obtaining the victim’s consent before audio or audio-visually recording and advising the victim of the purpose of the recording and who will have access to it. They also explained the effectiveness of addressing individuals by their preferred pronouns and many of the hardships members of the LGBTQ+ community face as they interact with the criminal justice system. The SAEK Committee incorporated FreeState Justice’s and Baltimore Safe Haven’s feedback and discussed collaborating in the future.

Overall, the guidance document highlights the importance of allowing the victim to initiate the conversation about limiting the scope of the investigation or prosecution.⁴⁴ The LEA should not introduce the conversation “unless there is a specific and articulable investigative purpose for doing so.”⁴⁵ Thus, in most instances, a conversation of this nature should only occur when a victim expresses concern about or objects to moving forward with any aspect of the investigation.”⁴⁶

The guidance document concludes by offering the key elements of a model policy and explaining the importance (and requirement) of utilizing the services of victim advocates and Rape Crisis Centers.⁴⁷ The Waiver of Rights Prohibition guidance document is available on the Committee’s website and is attached to this report as Appendix B.

⁴⁴ Appendix B at 3.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 3–4.

2. Uniform Statewide Testing Criteria—Flow Chart

Throughout the year, the Committee received questions from LEAs about which cases must be submitted for testing pursuant to the SAKI grant and the new testing criteria which went into effect on January 1, 2020. The Committee, led by MCASA and MSP, developed a visual flow chart to help LEAs apply the new testing criteria and determine which kits should be submitted for testing under the grant. The flow chart presents a step-by-step guide for law enforcement to easily determine if testing is mandated, discretionary, or prohibited. The flow chart is available on the Committee's website and has been attached to this report as Appendix F.

B. Untested Kit Review Regulations

When the General Assembly established the new SAEK testing criteria, it directed the SAEK Committee to establish an independent process to review law enforcement decisions not to test a SAEK.⁴⁸ The SAEK Committee worked with OAG to codify the review process under Title 02 of COMAR.

OAG submitted proposed regulations for publication in January 2020. After the proposed regulations were published by the Maryland Register, the Committee received comments from the Maryland Chiefs of Police Association, Maryland Sheriff's Association, MHA, and MSP.

In April, the Committee hosted a meeting and invited representatives from each agency and organization that submitted a comment. We discussed everyone's concerns and identified areas that needed clarification. The Committee provided written responses to each comment and also published a Frequently Asked Questions document to aid law enforcement and sexual assault practitioners as they implement the new regulations. This guidance document is available on the Committee's website and is attached to this report as Appendix E.

⁴⁸ Crim. Proc. § 11-927(e)(viii).

C. HIV nPEP Pilot Program

In 2019, the legislature established a three-year pilot program to fund the full 28-day course of Human Immunodeficiency Virus (“HIV”) non-occupational post-exposure prophylaxis (“nPEP”) treatment for victims of sexual assault.⁴⁹ HIV nPEP is a form of medical intervention designed to prevent HIV infection after exposure to the virus.⁵⁰ The medication must be started within 72 hours (3 days) to maximize its effectiveness.⁵¹ Under the Pilot Program, a victim of sexual assault or child sexual abuse will be provided the full course of nPEP treatment and follow-up care free of charge, if the medication is requested by the victim or proscribed by a healthcare provider.⁵²

The Pilot Program went into effect on October 1, 2019 and is being administered by GOCPYVS.⁵³ This year, the SAEK Committee, led by MCASA and MHA, assisted GOCPYVS in creating a statewide protocol to provide guidance to physicians, qualified healthcare providers, hospitals, and victim advocates on the implementation and operation of the Pilot Program, as well as instruction to ensure victims of sexual assault are served in the most efficient and effective manner. The protocol was published in December 2020.

In its first year of operation, GOCPYVS reported the following data:

⁴⁹ MD. CODE ANN., Crim. Proc. § 11-1008(b)(1)–(3) (West 2020).

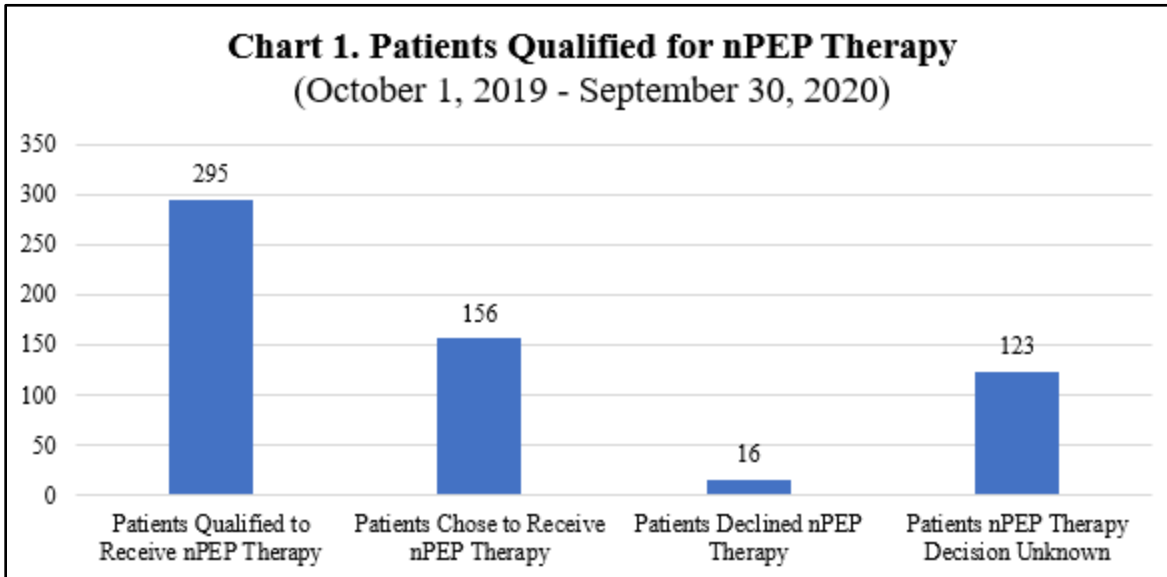
⁵⁰ MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE & MARYLAND INSTITUTE OF EMERGENCY MEDICAL SERVICES SYSTEMS, IMPROVED ACCESS TO SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS IN MARYLAND 15 (2015), *available at* <https://phpa.health.maryland.gov/Documents/Sexual-Assault-Forensic-Exam-Report-2015.pdf>.

⁵¹ *Id.*

⁵² Crim. Proc. § 11-1008(c)(2)(iii)(1).

⁵³ Crim. Proc. § 11-1008(b)(3).

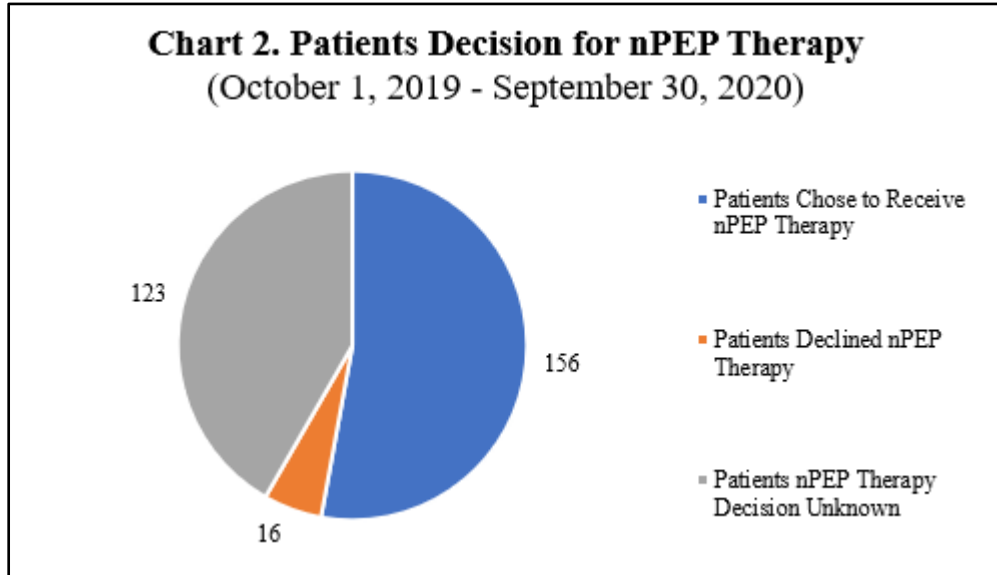
Chart 1. Patients Qualified for nPEP Therapy



- Between October 1, 2019 and September 30, 2020, the GOCOPYVS’ Sexual Assault Reimbursement Unit (“SARU”) processed 295 claims⁵⁴ for nPEP-related expenses.
- Each of the 295 patients were qualified to receive the nPEP therapy.
- Of the 295 patients who qualified for nPEP, 156 patients chose to receive the nPEP therapy (this is over 52%)
- Of the 156 patients that chose to receive nPEP therapy, 75 claims were submitted and billed to the SARU for reimbursement, and 81 were submitted to the SARU, but were covered by an alternate method.
 - The 75 claims included reimbursement of the full course of medication (28-days), or a starter pack ranging from 1-7 days of medication; however, it was often not possible to determine the amount provided to a patient based on the documentation received by the SARU.
 - The 81 claims identified patients who chose to receive nPEP therapy through an alternative method (e.g., a retail pharmacy, co-pay assistance program, etc.). Even though the 81 claims were submitted to the SARU and used for documentation of the Pilot Program, the nPEP medication was not billed to the SARU. Based on the narrative information that was provided with each claim, the SARU determined that the 81 claims had nPEP therapy covered by an alternate method.

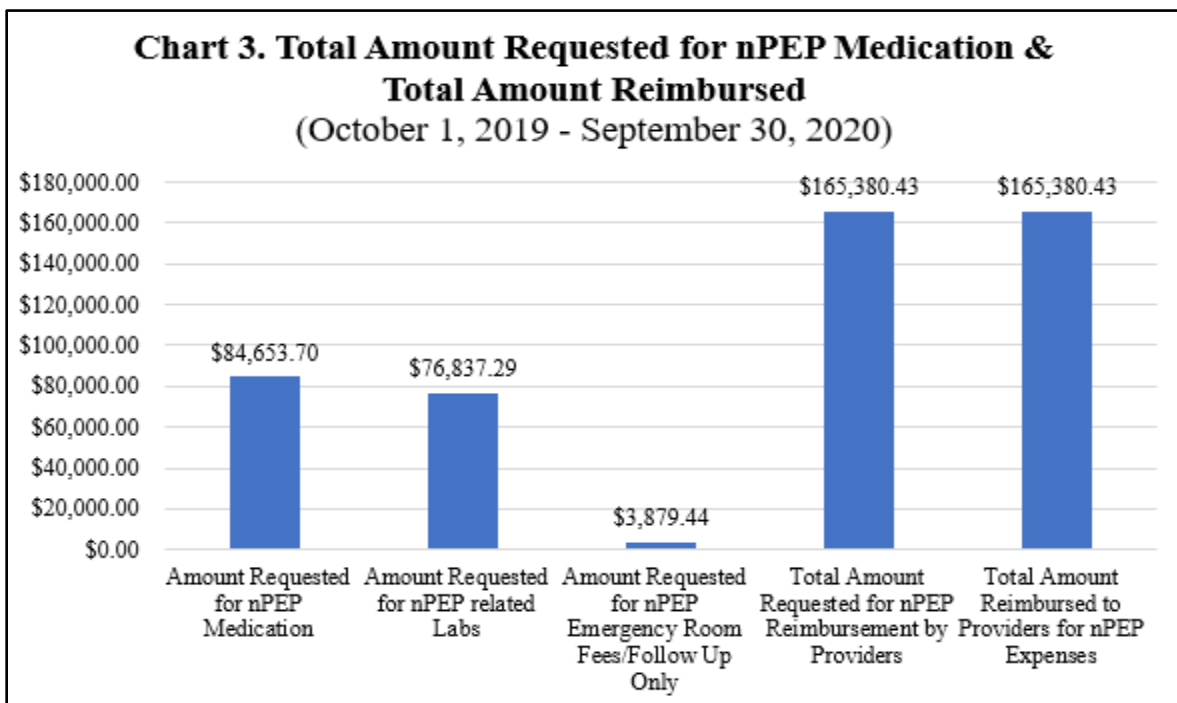
⁵⁴ The term “claim” will be used interchangeably with the term “patient.”

Chart 2. Patients Decision for nPEP Therapy



- There were 16 patients who declined nPEP.
- There were 123 claims in which it was unknown whether the patient chose to receive nPEP, as it was not billed to the SARU or stated within the claim. This means that the number of patients declining nPEP or receiving nPEP through an alternate method could be higher because it is unknown whether these 123 patients chose to receive nPEP.

Chart 3. Total Amount Requested for nPEP Medication & Total Amount Reimbursed



- Between October 1, 2019 and September 30, 2020, there were no claims that were processed as ineligible or denied.⁵⁵
- The total number of requests for reimbursement was 295.⁵⁶
- The total cost of nPEP therapy was \$84,653.70 (for 75 claims).
- The total cost for nPEP related labs was \$76,837.29 (for 254 claims).
- The total amount reimbursed to providers for nPEP related expenses was \$165,380.43.
- The SARU received 277 claims for an initial visit, and 18 claims for follow-up visits.

Throughout the year, GOCPYVS engaged in several meetings with SAEK Committee members and other stakeholders to address concerns raised in the field and better implement the program. One area of concern was the ability of hospitals to stock the full course of medication. GOCPYVS partnered with Terrapin Pharmacy to address this concern. If a hospital is not able to provide the full course of medication, the medication can be provided through Terrapin Pharmacy while the victim is receiving services during the initial emergency room visit. If this does not occur, Terrapin Pharmacy can have the medication delivered to the victim via courier or mail order to a location chosen by the victim.

In FY2021, GOCPYVS will continue to implement the Pilot Program and will work with the SAEK Committee to address the following areas which require further guidance:

- Clarification for medical providers and victim service providers regarding the implementation of certain program protocols.
- Ensuring medication is stocked at hospitals, especially during the COVID-19 pandemic.
- Delivering medication to alternate addresses (including residences and businesses) especially during the COVID-19 pandemic.

⁵⁵ Reasons for non-payment and ineligibility include the following: (1) if nPEP therapy was provided outside of the 72-hour time frame, (2) and/or if the SARU reached the \$750,000 annual threshold for nPEP related expenses.

⁵⁶ Some claims only requested reimbursement for either nPEP therapy or labs related to nPEP and some claims requested reimbursement for both nPEP therapy and the labs related to nPEP. Consequently, the total number of claims for reimbursement when adding the number of claims for nPEP therapy and the number of claims for nPEP labs will not equal 295. However, in total, there were 295 claims for reimbursement.

- Funding at every aspect of the Pilot Program.
- Awareness of the Pilot Program.

In the interim, if a victim is unable to receive nPEP screening, medication, or follow-up care, the GOCPYVS is committed to collaborating with any medical facility, pharmacy, pharmaceutical company, or other related entity to ensure that the victim receives the recommended care. Victims who need assistance accessing nPEP or related care should email saru.claims@maryland.gov.

IV. New Recommendations for FY2021

The SAEK Committee is organized into three Subcommittees: (1) Testing, Retention, Tracking, and Victim Notification Subcommittee (“Testing Subcommittee”); (2) Availability of Exams and shortage of Forensic Nurse Examiners Subcommittee (“FNE Subcommittee”); and (3) Funding Subcommittee. Throughout FY2020, the Subcommittees met several times. Since the SAEK Committee obtained SAKI grant funding and the legislature has allocated funding for many SAEK initiatives, the need for supplementary funding beyond what has already been allocated has decreased over the years. As such, the Funding Subcommittee has not developed any new recommendations. The Funding Subcommittee will play a critical role in helping the SAEK Committee apply for additional SAKI grant funding next year.

In FY2020, the Testing Subcommittee worked to complete several tasks relevant to implementing the SAKI grant including developing the aforementioned SAEK Testing Flow Chart and publishing guidance to support the implementation of new legislation—see for example, the *Guidance to Law Enforcement Agencies on Documenting a Victim’s Request to Suspend or Limit the Scope of an Investigation*.⁵⁷ The FNE Subcommittee worked to advance previous recommendations and also developed new recommendations to support victims, forensic nurse

⁵⁷ See Appendix B.

examiners (“FNEs”), and SAFE Programs. The FNE Subcommittee’s activities and new recommendations are set forth below, followed by the SAEK Committee’s overall goals for FY2021.

A. FNE Subcommittee

In FY2020, the FNE Subcommittee worked to further its previous recommendations. In the Committee’s first annual report, the FNE Subcommittee recommended that the Maryland Board of Nursing (“Board”) amend its application, license, and license renewal policies for FNEs to increase the number of FNEs in the field, ensure that they are trained according to national best practices, and improve the process of license renewal. The Board agreed to consider the Committee’s recommendation and established the Maryland Board of Nursing FNE Stakeholders Committee (“Nursing Board’s Committee”)—a collaborative group comprised of Board staff members, SAFE Program coordinators throughout the state, and FNE Subcommittee members from MCASA and MHA. The Nursing Board’s Committee established a monthly meeting schedule beginning January 2020 and is continuing to meet virtually during the pandemic. This year, the Nursing Board’s Committee worked to update the adult and pediatric training curriculum for FNEs. This work is ongoing and the FNE Subcommittee will continue to assist the Nursing Board’s Committee to finalize the curriculum in 2021.

The FNE Subcommittee also focused its efforts on drug-facilitated sexual assault (“DFSA”). The Subcommittee’s goal to address DFSA was slowed by the COVID-19 pandemic and the increased demands on the health care system. The Subcommittee developed the following areas of focus to address DFSA in FY2021:

- Reimbursement for toxicology testing and SAFE Program operations
- Forensic laboratory toxicology screening
- Storage of DFSA biological samples including blood and urine

- Collection of specimens during a sexual assault forensic exam

These topics are not meant to replace clinical best practices, but are intended to help establish statewide guidelines. As the FNE Subcommittee works to develop formal recommendations, FNEs are encouraged to follow the National Protocol for Sexual Assault Medical Forensic Examination published by the U.S. Department of Justice's, Office on Violence Against Women,⁵⁸ which is supported by the International Association of Forensic Nurse Examiners.⁵⁹ This protocol addresses the indicators of a DFSA case, collection of biological samples for toxicology testing, and sample storage.⁶⁰ DFSA remains a critical issue and the FNE Subcommittee will work with law enforcement personnel, victim advocates, crime lab personnel, attorneys, and GOCYVS to recommend statewide best practices.

In addition to addressing DFSA, several FNE Subcommittee members expressed the need to update the State's sexual assault evidence kit and the forms associated with the kit. The Maryland State Police provides free access to SAEKs and the forms FNEs use to obtain information from the victim and ultimately collect the SAEK. The FNE Subcommittee created and disseminated a survey to gather data to ensure that any proposed modification would suit the needs of those working in the field. Thirteen SAFE Programs responded to the survey. All respondents indicated that they used the state-issued SAEKs. However, less than half used the state-issued forms contained within the kits. Several programs reported creating their own forms because the state-issued forms were "outdated" and lacked adequate space to include detailed findings from

⁵⁸ See U.S. DEPT. OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN, *A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents Second Edition* 107–110 (2013), available at <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>.

⁵⁹ INTERNATIONAL ASSOCIATION OF FORENSIC NURSES, <https://www.safeta.org/page/DownloadbySection?&hhsearchterms=%22national+and+protocol%22> (last visited Dec. 29, 2020).

⁶⁰ See *supra* note 58.

the exam. In FY2021, the FNE Subcommittee will review the survey responses with MSP and recommend specific modifications to the kit and forms.

Lastly, the FNE Subcommittee reached consensus regarding two recommendations that offer guidance to the field and helps ensure widespread compliance with SAEK policies. First, the FNE Subcommittee recommends that all SAFE programs review the *Sexual Assault Forensic Exam Resource Guide for SAFE Programs* (“Resource Guide”)—a resource developed by the FNE Subcommittee—to ensure compliance with both statutory and regulatory victim notification requirements. Second, the FNE Subcommittee recommends that sexual assault practitioners use consistent language when referring to Anonymous cases.

Over the past three years, the SAEK Committee has championed legislation which has significantly changed the amount and type of information health care providers are required to provide to victims of sexual assault. To assist the field in complying with these new requirements and ensuring all victims have access to the same information, the FNE Subcommittee developed the Resource Guide, a collection of documents and resources for SAFE programs. This guide organizes the state’s statutory and regulatory requirements into a single document and provides a model informational document that can be customized by each SAFE program.

The Resource Guide includes the following documents:

- **Maryland Regulatory and Statutory Information that Health Care Providers Should Provide/Convey to Sexual Assault Victims**—This document, which was created by OAG, outlines the State’s regulatory and statutory requirements for victim notification, sexual assault forensic exams, the HIV n-PEP Pilot Program and waiver of rights forms. It was created to provide guidance to SAFE Program Coordinators and hospital legal departments. This document is attached to this report as Appendix G.
- **Model Informational Document: Understanding Your Options: An Overview of the Sexual Assault Forensic Exam Process**—This document describes each component of the sexual assault forensic exam process, reporting options for victims, HIV prophylaxis testing and treatment, HIV testing of the perpetrator, and follow-up care. This document is customizable. Hospitals are encouraged to add their logos and color schemes as

appropriate. There is also space to include contact information for the appropriate law enforcement agency. This document can be used as a guide to review the process with victims prior to beginning an exam. SAFE Programs should share this resource with sexual assault victims and those providing support to these patients. This document is attached to this report as Appendix H.

- **Your Sexual Assault Evidence Kit: Know Your Rights**—SAFE Programs should share this brochure with sexual assault victims. This document fulfills the statutory and regulatory requirements for health care providers to provide the victim with written information regarding the investigating LEAs contact, laws pertaining to kit testing, retention, and disposal, and the untested kit review process.⁶¹ MCASA will provide these free brochure inserts to SAFE Programs and other service providers, including local certified rape crisis/sexual assault programs, and law enforcement agencies. This document will be available to order, free of cost, on MCASA’s website in early 2021.⁶² This document is attached to this report as Appendix I.

Each of these resources were reviewed by the FNE Subcommittee and SAFE Program Coordinators from across the state. All SAFE Programs should review these documents and make updates to their existing policies and forms. The FNE Subcommittee encourages programs to use the customizable model information document and the “Your Sexual Assault Evidence Kit: Know Your Rights” brochure as a comprehensive means of ensuring all statutory and regulatory requirements are met. Electronic versions of the Resource Guide will be broadly disseminated to the field in early 2021.

The FNE Subcommittee also recommends that service providers including FNEs, law enforcement personnel, GOCPYVS, victim advocates, and attorneys use consistent language when referring to a sexual assault case that is not reported to law enforcement for criminal investigative purposes. Consistent language will help eliminate confusion between jurisdictions and agencies. The FNE Subcommittee recommends that all cases where a victim of sexual assault does not report the sexual assault to law enforcement for criminal investigative purposes, be referred to as

⁶¹ See MD. CODE ANN., Crim. Proc. § 11-926(b)(2) (West 2020); see also COMAR 02.08.01.03(A)(1)–(3).

⁶² To access MCASA’s online store for brochures and other documents, providers can visit www.mcasa.org and navigate to “brochures” under the “for providers” tab.

“Anonymous cases.” This will ensure uniformity and reflects terminology used by Maryland law and the SAEK Committee. This language will replace the use of terms such as:

- “delayed report”
- “VAWA report”
- “Jane/John Doe report”
- “blind report”

In FY2021, the FNE Subcommittee will encourage widespread use of the label “Anonymous cases.” The Subcommittee will also continue to develop statewide DFSA testing guidelines and address new topics like the centralized storage of Anonymous kits and police-issued case numbers.

B. SAEK Committee FY2021 Commitment

Since its inception, the SAEK Committee has led the effort to produce statewide SAEK reform in Maryland. The Committee’s advocacy has helped the State to: establish a 20-year SAEK retention requirement;⁶³ create a uniform statewide testing criteria;⁶⁴ develop a process to review law enforcement decisions not to test a kit;⁶⁵ increase a victim’s access to SAFE exams;⁶⁶ protect a victim’s privacy as medical personnel seek reimbursement for SAFEs;⁶⁷ provide victims with HIV prophylaxis free of charge;⁶⁸ secure a \$2.6 million grant to clear the “backlog” of unsubmitted kits; and promote transparency by establishing annual reporting by law enforcement.⁶⁹ The Committee is proud of the progress Maryland has made over the past three years and will work to ensure that the State is able to fully implement these SAEK advancements. As such, in FY2021, the SAEK Committee will focus on implementing prior legislative enactments throughout the State by assisting in the development of regulations and guidance documents.

⁶³ MD. CODE ANN., Crim. Proc. § 11-926(d)(2)(i) (West 2020).

⁶⁴ Crim. Proc. § 11-926(e)(1)–(4).

⁶⁵ See COMAR 02.08.03.03; see also COMAR 02.08.03.04.

⁶⁶ Crim. Proc. § 11-1007(b)–(c).

⁶⁷ Crim. Proc. § 11-1007(b)(ii).

⁶⁸ Crim. Proc. § 11-1008(c)(2)(iii)(1).

⁶⁹ COMAR 02.08.04.01(A)–(B).

The Committee will work with sexual assault practitioners to ensure that every entity including law enforcement, medical personnel, crime labs, victim advocates, agency officials, and prosecutors are not only aware of the new legislation, but are also equipped to implement the new laws. The Committee will engage each of these entities to obtain feedback and develop best practices to ensure widespread compliance. The overall goal for FY2021 is to achieve uniform implementation of the State's recent SAEK reforms.

CONCLUSION

Despite the challenges of the COVID-19 pandemic, the SAEK Committee made substantial progress to further sexual assault response reform in Maryland. In 2020, the Committee successfully advocated in support of legislation that protects the privacy of victims and allows medical personnel to collect and be reimbursed for vital evidence that could impact the outcome of sexual assault cases. The Committee also played a crucial role in advancing legislation that protects a victim's right to decide to limit or stop a sexual assault investigation or prosecution. Additionally, the Committee continued to fulfill its obligations under the SAKI grant by conducting the unsubmitted kit inventory, starting to send kits for testing, finalizing the victim notification protocol, and engaging DoIT's assistance to identify a tracking system platform. Lastly, the Committee advanced its statutory mandates and initiatives by publishing guidance documents to assist law enforcement, assisting OAG in promulgating regulations to codify the Untested Kit Review, and aiding GOCPYVS in implementing the HIV nPEP Pilot Program. In FY2021, the Committee will continue its efforts to advance the SAKI grant, keep law enforcement and sexual assault practitioners informed regarding SAEK policy changes and procedures,

establish best practices to address drug-facilitated sexual assault, and promote compliance with recent SAEK reforms.⁷⁰

⁷⁰ A list of the current members of the SAEK Committee has been attached to this report as Appendix J.

Appendix

Appendix A
Maryland Police Training and Standards Commission
Victims of Sexual Assault Investigations Best Practices

SENATE BILL 807

Article — Criminal Procedure

11-929

- (C) IF A VICTIM REQUESTS THAT THE SCOPE OF AN INVESTIGATION BE LIMITED OR THAT AN INVESTIGATION BE TEMPORARILY OR PERMANENTLY SUSPENDED, THE LAW ENFORCEMENT AGENCY SHOULD:
- (1) THOROUGHLY DOCUMENT THE REQUEST; AND
 - (2) FOLLOW UP WITH THE VICTIM IN ACCORDANCE WITH PRACTICES RECOMMENDED BY THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION.
- (D) IF A LAW ENFORCEMENT AGENCY VIOLATES THIS SECTION, AN AFFECTED VICTIM MAY BRING AN ACTION SEEKING INJUNCTIVE OR DECLARATORY RELIEF.
- (E) (1) ON OR BEFORE JANUARY 1, 2021, EACH LAW ENFORCEMENT AGENCY IN THE STATE SHOULD ADOPT A POLICY TO ENFORCE THE PROVISIONS OF THIS SECTION.
- (2) ON OR BEFORE JANUARY 15, 2021, EACH LAW ENFORCEMENT AGENCY SHOULD PROVIDE A COPY OF THE POLICY REQUIRED UNDER THIS SUBSECTION TO THE MARYLAND SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE.

Appendix A
Maryland Police Training and Standards Commission
Victims of Sexual Assault Investigations Best Practices

PTSC APPROVED PRACTICES -- (July 8, 2020)

Victims of Sexually Assaultive Behavior – Waivers of Rights – Prohibition

1. The officer/investigator should honor the confidentiality of the victim.
 - a. Officers/investigators should make efforts to provide a private and comfortable space for victims, especially when being asked to disclose details of their case.
 - b. Officers/investigators should make an effort to limit the number of disclosures that need to be made.
 - c. Officers/investigators should be aware, and advise victims if appropriate, that the details of their case can, and will, become a matter of public record and cannot be fully protected as confidential.
 - d. Victims should be advised that the services provided by certified sexual assault crisis programs are confidential.
 - e. The officer should not suggest a victim of sexually assaultive behavior sign a waiver of rights during the initial contact with the victim or during the continued investigation.
2. The officer/investigator should be aware of the potential to re-traumatize the victim when conducting follow-up contacts.
3. The officer/investigator should inform the victim that the officer, or an officer within the agency who investigates sexual assaults, will follow-up with the victim within 30 days of the initial contact to confirm the victim continues to request the suspension of the investigation and the officer/investigator will discuss how and when follow-up contact will be made.
 - a. Victims should be given the opportunity to indicate the preferred manner in which contact will be made via phone, e-mail, mail, or in-person.
 - b. If the victim would like to be contacted by phone, the officer/investigator should determine if a voicemail can be left and with what information.
 - c. The officer should document the victim's preference in the report.
4. The officer/investigator should provide the victim with the appropriate contact information for the law enforcement agency and/or assigned investigator.
 - a. Victims should be advised to contact the agency, or assigned investigator, at any time, with questions about their case; and/or
 - b. If they have decided to pursue a criminal investigation.
5. The officer/investigator should provide the victim with contact information for a certified sexual assault crisis program serving the jurisdiction at the time of the initial contact.

Appendix A
Maryland Police Training and Standards Commission
Victims of Sexual Assault Investigations Best Practices

- a. Officers/investigators should advise victims that discussions with an advocate from the certified sexual assault crisis program are confidential; and
 - b. Officers/investigators should advise victims that information discussed with the advocate will not be shared with the investigator without their express consent.
6. The officer/investigator should follow-up with the victim no later than 30 days following the initial contact. If the victim continues to request a suspension of the investigation:
- a. the officer/investigator should provide contact information for the appropriate individual or unit at the time of the follow-up;
 - b. the officer should request the victim advise the agency if a decision has been made to continue the investigation or to continue the decision to suspend the investigation.
7. The officer should advise the victim any decision to suspend an investigation will not be considered permanent and, should the victim choose to pursue a criminal investigation at a later date, the case may be re-opened for investigation.
- a. The officer/investigator should again provide contact information and should provide information for a certified sexual assault crisis program serving the jurisdiction.
 - b. The officer should notify the victim of any statute of limitations.
8. The officer should document this contact in the appropriate record.

Appendix B
Guidance to Law Enforcement Agencies on
Documenting a Victim’s Request to Suspend or Limit an Investigation



Maryland Sexual Assault Evidence Kit
Policy and Funding Committee

GUIDANCE TO LAW ENFORCEMENT AGENCIES ON DOCUMENTING A
VICTIM’S REQUEST TO SUSPEND OR LIMIT THE SCOPE
OF AN INVESTIGATION

Effective October 1, 2020, [Senate Bill 807⁷¹](#) will prohibit law enforcement agencies (“LEA”) from presenting sexual assault victims with a form purporting to:

- (1) Relieve the LEA of an obligation to the victim;
- (2) Preclude or define the scope of an investigation by the LEA into an act allegedly committed against the victim;
- (3) Prevent or limit a prosecution of an act allegedly committed against the victim; or
- (4) Limit private right of action of the victim pertaining to an act allegedly committed against the victim or the victim’s interaction with the LEA.

Further, Senate Bill 807 requires that if a victim requests that the scope of an investigation be limited or that an investigation be temporarily or permanently suspended, the LEA shall:

- (1) Thoroughly document the request; and
- (2) Follow up with the victim in accordance with practices recommended by the Maryland Police Training and Standards Commission (MPTSC).

Each law enforcement agency in the State must (1) adopt a policy to enforce the prohibition on seeking waivers from victims of sexually assaultive behavior, by January 1, 2021, and (2) provide a copy of the policy to the Maryland Sexual Assault Evidence Kit Policy and Funding Committee (the “Committee”) by January 15, 2021. The Committee developed the following guidance to assist LEAs in adopting policies and practices that thoroughly and accurately capture a victim’s decisions, consistent with State law and best practices.

BACKGROUND

It is not uncommon for sexual assault victims to express reluctance about participating in the investigation or prosecution of their alleged sexual assault. Over the years, some Maryland law enforcement agencies developed “waiver of rights forms” (or “waivers”) to document a victim’s decision to limit the scope of or suspend an investigation or prosecution.

However, the use of waivers has come under scrutiny for being coercive or potentially coercive. According to the International Association of Chiefs of Police (IACP), “Pressuring a reluctant witness to sign a form stating that they are not interested in prosecution and will not hold the agency accountable for stopping

⁷¹ SB807, Ch. 584 (2020) will be codified under MD. CODE, Crim. Proc. § 11-929 (2020).

Appendix B
Guidance to Law Enforcement Agencies on
Documenting a Victim’s Request to Suspend or Limit an Investigation

the investigation is poor practice and is potentially damaging to an agency.”⁷² Reasons a victim may hesitate to move forward with an investigation vary widely and include, but are not limited to:

- Lack of trust, or a trusting rapport, with law enforcement or other members of the criminal justice system
- Fear of public embarrassment
- Fear of not being believed
- Reluctance to relive the trauma that they have already experienced
- Intimidation and fear of retaliation from the suspect

Victims should be empowered to make informed decisions about how their case is handled. This should be accomplished in a way that allays victims’ fears and instills confidence to maximize their engagement in the criminal justice process.

BEST PRACTICES

Generally, the Committee recommends that LEAs thoroughly document a victim’s wishes regarding how to proceed with an investigation or prosecution in the same manner that they document any other element of the case. Decisions around active participation are often difficult and may change repeatedly. Every effort should be made to understand the reasoning behind a victim’s decision as it may constitute evidence of the trauma. Understanding a victim’s reasoning may also provide insight into the steps LEAs can take to develop their relationship with and properly support the victim.

It is best practice to use audio and audio-video recordings to document victim interviews. According to the *National Sexual Assault Investigation and Prosecution Best Practices Guide* issued by the National District Attorney Association, Women Prosecutors Section: “Detectives should ensure that the interview with the victim is recorded, whenever possible, to ensure that the victim does not have to re-tell the events of an extremely traumatic occurrence. This recording can be as informal as an audio recording using a smartphone if other facilities are not available, are not feasible, or would be overly intimidating to the victim.”⁷³

Additionally, LEAs should obtain the victim’s permission to audio or audio-video record. The Police Executive Research Forum’s Executive Guidebook entitled *Practical Approaches for Strengthening Law Enforcement’s Response to Sexual Assault* states:

“When possible, and in compliance with state law and agency policy, victim interviews should be audio-visually or audio recorded. A recorded victim interview is the best way to document what was stated by the victim and assists the investigator in accurately synthesizing the victim’s statement in written reports. Recording victim statements also

⁷² IACP: Sexual Assault Incident Reports, Investigative Strategies, August 8, 2018
<https://www.theiacp.org/sites/default/files/all/s/SexualAssaultGuidelines.pdf>

⁷³ National District Attorneys Association Women Prosecutors Section, White Paper: National Sexual Assault Investigations and Prosecution Best Practices Guide, January 3, 2018
<https://www.ciclt.net/ul/ndaajustice/WhitepaperFinalDraft-SA.pdf>

Appendix B
Guidance to Law Enforcement Agencies on
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conveys that their case is being taken seriously and being professionally investigated. Importantly, the interview should never be taped without the victim’s permission.”⁷⁴

Any policy on the audio or audio-video recording of sexual assault victims should explicitly state that these recordings are not to be conducted surreptitiously and only with the consent of the victim. Care should be taken to ensure that a victim's consent is informed and voluntary. Victims should be informed of the purpose of the recording and who will have access to it. Victims should also be allowed the opportunity to consult with an advocate/attorney/support person prior to making this decision, if they request to do so. An advantage of this practice is that it ensures that the victim’s wishes are thoroughly documented consistent with Senate Bill 807. Further, the nature of the conversation that led to any limitations of the scope of an investigation and/or prosecution would also be documented. This practice enhances the collection of intangible evidence such as a victim’s body language or demeanor, prevents the repeated telling of a very traumatic story, allows for a trauma-informed/forensic interviewing format with less need for interruptions and note taking, protects the victim against real/perceived LEA misconduct, protects LEAs from real/perceived complaints of misconduct, and allows for LEA self-critique and observation to improve victim interview skills.

Each agency should also conduct follow-ups with victims in accordance with the practices recommended by MPTSC. (See Attachment 1) The IACP notes that “a victim’s right to change their mind regarding moving forward with an investigation and prosecution should only be constrained by the statute of limitations.” Further, they state that “victim follow-up builds trust with victims and sends a message to the community about the seriousness with which an agency handles sexual assault crimes.”⁷⁵

Although not explicitly stated, SB 807 also implies that an LEA should not initiate the conversation about limiting the scope of investigation or prosecution unless there is a specific and articulable investigative purpose for doing so. Thus, in most instances, a conversation of this nature should only occur when a victim expresses concern about or objects to moving forward with any aspect of the investigation. Similarly, an LEA should not discuss the difficulty of proving the facts alleged or share other discouraging opinions of the case with the victim. This is particularly true when interviewing victims from vulnerable populations, including homeless people, sex workers, people with behavioral health disabilities, and LGBTQ individuals.

KEY ELEMENTS OF A MODEL POLICY

- (1) Prohibit use of a form limiting the scope of an investigation and/or prosecution.
- (2) Prohibit the LEA from initiating conversations that seek to establish an agreement between the victim and the LEA that limits the scope of an investigation and/or prosecution.
- (3) Require thorough documentation of the victim’s wishes, concerns, and cause of their concerns, if known.

⁷⁴ Police Executive Research Forum: Executive Guidebook: Practical Approaches for Strengthening Law Enforcement’s Response to Sexual Assault, May, 2018

<https://www.policeforum.org/assets/SexualAssaultResponseExecutiveGuidebook.pdf>

⁷⁵ See FN 2 above.

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- (4) Document steps taken to address any known concerns (contacted a victim advocate, introduced a different detective, accompanied victim for a protective order, etc.).
- (5) Prohibit the LEA from including any statements, or agreements, intended to limit the private right of action of the victim (i.e. no “hold-harmless” clauses).
- (6) Note that any decision made by the victim should not be considered permanent. These decisions should be allowed to change and should be incorporated into a strong victim follow-up protocol consistent with the practices identified by the MPTSC.
- (7) Note that limitations of the scope of the investigation or prosecution DO NOT change the testing requirements of a sexual assault evidence kit unless consent for analysis is knowingly, voluntarily and expressly withdrawn by the victim.

WITHDRAWAL OF CONSENT FOR KIT ANALYSIS

While SB 807 does not address the victim’s consent, or withdrawal thereof, for analysis of their sexual assault evidence kit, the Committee felt the issue should be incorporated into this guidance document. The issue of consent to have a sexual assault evidence kit tested is often addressed at the collection process as part of the provider’s informed consent document. Generally, consent for analysis is not provided unless, and until, a victim initiates a police report/investigation. The issue of continued consent versus withdrawal of consent for analysis is a distinctly different and separate decision from the decision to limit the scope of an investigation and/or prosecution.

VICTIM ADVOCATES

State law requires LEAs investigating sexual assault cases to make use of certified sexual assault crisis programs or other qualified community-based sexual assault victim service organizations that can provide services and support to survivors of sexual assault. Victim advocates are increasingly being utilized in every phase of sexual assault investigations. A community-based victim advocate can help navigate some of the tough situations that sexual assault victims experience while engaging with the criminal justice system. A victim advocate can be particularly helpful in understating and addressing victim concerns that may cause them to want to limit the scope of an investigation/prosecution. Further, a victim advocate can also help facilitate the necessary follow-ups with victims. Finally, community-based advocates are not subject to *Brady* requirements and often have greater understanding of options outside the criminal justice system.

Appendix C
SAKI Grant: Testing Order & Protocol



Maryland Sexual Assault Evidence Kit Policy and Funding Committee

SAKI Kit Testing Order

- All agencies who have less than 10 untested kits will be able to submit all of their kits for testing under the SAKI Grant. This will allow 22 law enforcement agencies (LEAs) to eliminate their backlog.
- The remaining grant funds allocated for testing will be distributed amongst the remaining agencies proportionate to the number of untested kits in their possession. All calculations will be based on the inventory data.
 - For example, an agency with 900 kits (out of 5,000 kits) would be able to send 18% of their kits for testing, which is equivalent to 162 kits.
- Each agency will submit kits for testing based on the date of the offense. The more recent kits will be tested first.
- Anonymous Kits—We will not test Anonymous kits.
 - All law enforcement agencies (LEAs) should review their kits to ensure that they are in fact active cases. Potential errors have been identified in the process for designating inactive Anonymous kits as active when using the official State of Maryland sexual assault evidence kit (SAEK).
 - Background:
 - When an Anonymous kit is collected, the kit is labeled with a fluorescent green sticker provided within the kit. The sticker is placed on the upper right corner of the exterior envelope of the kit so that it can be easily identified as an Anonymous kit. The words “Date Reported” are printed on the green sticker followed by a blank line. Nothing should be written on the green sticker at the time of collection.
 - Anonymous kits cannot be tested until the victim decides to press charges. The victim has 20 years to “report” to law enforcement their decision to press charges and therefore, activate the investigation. At that time, law enforcement should record the date on the green sticker as the “Date Reported.”
 - Once the investigation has been activated and the date written on the green sticker, the kit is submitted to the laboratory for analysis.
 - Concern and Action:
 - During the SAKI inventory, we noticed that many of the Anonymous kits had a date entered on the green sticker, indicating that the kit had been activated. However, we found that a high percentage of the dates entered on the green sticker were the same as the date that the kit was collected at the hospital. We suspect that the date field on the Anonymous sticker was

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SAKI Grant: Testing Order & Protocol

mistakenly filled out upon collecting the kit, rather than upon receiving notice from the victim to proceed with the investigation as intended. As a result, many of these kits may appear to have been activated when, in fact, they should have remained anonymous.

- It should be noted, that the potential also exists for law enforcement to mistakenly not record the kit activation date. In this instance, there is the potential that a kit will remain anonymous and untested when it should be tested. Therefore, please review all Anonymous kits before you remove them from those that will be sent for testing.
- DNA Profile already in CODIS—If the offender’s DNA is already in CODIS, testing is discretionary.
 - The LEA must determine if any charges were filed related to the case from which the SAKI kit was obtained. If charges were filed and it is determined that (1) there was only one offender involved in the case; (2) that offender was convicted and a final judgement was entered in the case; [and] (3) a DNA profile of that offender was obtained and uploaded into CODIS, then the SAKI kit is not required to be tested.
- Partially Tested Kits—Partially tested kits will not be tested in the first round of testing under the SAKI Grant. Please do not include partially tested kits within the kits that your agency outsources for SAKI Grant testing.
- Unfounded Kits Under SAKI Grant:
 - All cases previously labeled as “unfounded” should be pulled and reviewed first by the LEA.
 - If the LEA decides to change the “unfounded” designation, then the kit should be submitted for testing with all other untested kits.
 - If the LEA chooses to retain the “unfounded” designation, then the kit must be reviewed according to the review process developed by the SAEK Committee.
 - The case will first be reviewed by the local SART, if the SART includes representation from the disciplines listed below. There will be no further review if the SART unanimously agrees that the case is “unfounded.”
 - If the SART’s decision is not unanimous, then the case will be reviewed by a subset of the SAEK Committee, to include one representative from each discipline listed below.

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SAKI Grant: Testing Order & Protocol

Review Process: Kits Designated As “Unfounded”

- The review process will be a two-tiered system.
- When law enforcement decides not to test a kit, the victim, victim’s advocate, a member of the SAEK Committee, or a member of the SART where the alleged assault occurred may request a review of that determination.
- If a review is requested, the case will first be reviewed by the local SART, if the local SART includes representation from the following disciplines:
 - Forensic Nurse Examiner providing services at a local sexual assault forensic examination program, or other qualified health care provider from the local hospital;
 - Local Law Enforcement Agency;
 - Local States Attorney’s Office;
 - Local certified Rape Crisis Center;
 - Maryland Coalition Against Sexual Assault;
 - Crime Lab, if available; and
 - Crime Victim Rights Attorney, if available.
- Once the SART reviews the case and makes a recommendation, the victim, victim’s advocate, member of the SAEK Committee, or member of the local SART may request a subsequent review by the SAEK Committee.
- In jurisdictions where there is not a functioning SART, the victim or victim’s advocate, may submit a request for review directly to the Committee.
- Both the local SART and the SAEK Committee’s review and determination will serve as a recommendation. The local LEA retains authority to make “unfounded” determinations.

Testing Protocol

- (1) All SAKI kits must be separately coded and submitted to Bode in accordance with the contract terms negotiated by MSP. All non-SAKI kits may be submitted for testing in accordance with the LEAs policies.
- (2) Once testing is complete, labs will notify the appropriate LEA of the result. Each LEA must designate a SAKI Grant Liaison who will be responsible for monitoring and notifying MCASA and OAG in regular intervals (at least monthly) of the results of any kit tested under the SAKI Grant.
 - The SAKI Grant Liaison must also track and report the following information to OAG:
 - Number of kits sent for testing
 - Number of kits tested to completion
 - Number of profiles uploaded to CODIS

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- Number of CODIS hits
- Number of investigations ▪ Number of cases charged
- Number of convictions

(3) MCASA will then employ the victim notification protocol developed pursuant to the SAKI Grant (and approved by the SAEK Committee).

Have you...

- **had a sexual assault forensic exam?**
- **reported a sexual assault to the police?**



If you have questions or want updates about your sexual assault evidence kit...

A SAKI Advocate Can Help

To learn more, call the confidential information line at **833-364-0046**, or email **notification@mcasa.org**.

Our advocates are available during the COVID-19 crisis.

The Maryland Sexual Assault Kit Initiative (SAKI) is an effort to submit all sexual assault evidence kits collected prior to May 2018 for forensic testing. This project is funded by the Bureau of Justice Assistance and is a collaborative effort of state agencies.

Preparation of this document was supported by grant numbers # SAKI-2018-0002 awarded by the Governor's Office of Crime Prevention, Youth, and Victim Services. The opinions, findings, and conclusions expressed in this document are those of the author(s) and do not necessarily represent the official positions or policies of the Governor's Office of Crime Prevention, Youth, and Victim Services.

- **Te han hecho una prueba forense de abuso sexual?**
- **Has reportado un abuso sexual a la policía?**

Si tienes preguntas o quieres actualizaciones sobre tu kit de evidencia de abuso sexual...

Un asistente de víctimas de SAKI puede ayudar

Para más información llama a la línea confidencial de información al **833-364-0046** o escribe a **notification@mcasa.org**. Nuestros asistentes están disponibles durante la crisis del COVID-19.

La Iniciativa de Kits de Abuso Sexual de Maryland (SAKI) es un esfuerzo para presentar todos los kits de evidencia de abuso sexual recolectados antes de Mayo de 2018 para que se realicen las pruebas forenses. Este proyecto es auspiciado por el Bureau of Justice Assistance y es un esfuerzo colaborativo entre agencias estatales.

La preparación de este documento fue apoyada por el auspicio número # SAKI-2018-0002 otorgado por la Oficina del Gobernador para la Prevención del Crimen y para los Servicios para la Juventud y la Familia. Las opiniones, hallazgos y conclusiones expresadas en este documento son de su(s) autor(es) y no necesariamente reflejan las políticas o posturas oficiales de la Oficina del Gobernador para la Prevención del Crimen y para los Servicios para la Juventud y la Familia.



**Maryland Sexual Assault Evidence Kit
Policy and Funding Committee**

COMAR 02.08.01–.04 (2020)

FREQUENTLY ASKED QUESTIONS

The General Assembly directed the Office of the Attorney General (OAG) to adopt regulations to support the uniform statewide implementation of MD. CODE, Crim. Proc. § 11-926 *et seq.* (2020), which establishes the state’s victim notification, testing, and sexual assault evidence kit (SAEK) retention requirements.

Originally adopted in October 2018, OAG recently updated its regulations to: (1) incorporate the new statewide testing criteria which went into effect on January 1, 2020; and (2) memorialize the Sexual Assault Evidence Kit Policy and Funding Committee’s (SAEK Committee) newly established Untested Kit Review process—an independent process to review law enforcement decisions not to test a SAEK—pursuant to Sections 11-927(e)(1)(viii) and (f) of the Criminal Procedure Article.

The SAEK Committee issues the below guidance to assist law enforcement agencies (LEAs) and other stakeholders in successfully implementing the new regulations. If you have additional questions, please contact Zenita Wickham Hurley, SAEK Committee Chair at zhurley@oag.state.md.us.

1. If the victim wishes to remain anonymous, who is responsible for advising the victim of their right to file a criminal complaint at a future time pursuant to COMAR 02.08.02.02(A)?

As a best practice, health care providers, such as forensic nurse examiners, should advise victims who wish to remain anonymous of their right to file a criminal complaint at a later date. This responsibility rests with health care providers because in most instances, victims will first convey their intent to remain anonymous to the health care provider. It is then critical for the health care provider to inform the victim that they can file a complaint and activate the case at a later date.

Although this responsibility generally rests with health care providers, it in no way prevents LEAs from advising Anonymous victims of their right to file a complaint. For example, if an LEA is contacted by a victim who wishes to remain anonymous, the LEA may advise the victim of their right to activate the case.

The Governor’s Office of Crime Prevention, Youth, and Victim Services in collaboration with the Maryland Hospital Association, Maryland Coalition Against Sexual Assault, Maryland State Police, and other members of the SAEK Committee are working to develop a template form that



**Maryland Sexual Assault Evidence Kit
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will list the relevant laws and policies governing SAEKs, including an Anonymous victim’s right to file a criminal complaint. The template document will also provide the victim with a list of resources. It is intended that health care practitioners will provide this form to victims at the time of the sexual assault forensic exam. This will help ensure that victims are informed of the laws governing the handling of SAEKs in Maryland and meet the mandate of COMAR 02.08.02.02(A).

2. Should an LEA test a kit when the victim has withdrawn consent for analysis?

No, consistent with MD. CODE, Crim. Proc. §11-926(e)(3), an LEA should not submit a sexual assault evidence kit for testing if the victim does not consent to analysis. This prohibition extends to those cases where consent was originally given or implied, but later withdrawn. The key consideration is that the victim’s withdrawal of consent to test must be clearly documented in the record.

There are several ways to document a victim’s declination to have their kit tested. Effective October 1, 2020, LEAs are prohibited from presenting victim’s with “waiver of rights forms”—forms that purport to relive the agency of an obligation to the victim or define the scope of the investigation or prosecution of the alleged sexual assault.⁷⁶ Thus, LEAs may not document the victim’s withdrawal of consent to test by presenting the victim with a form indicating such. However, agencies may document a victim’s withdrawal of consent for analysis in other ways, including videotaping or otherwise recording victim interactions, as well as documenting the case file.

If the victim makes clear that they do not want their kit tested and this decision is adequately documented, then the kit should not be tested, per MD. CODE, Crim. Proc. §11-926(e)(3) (2020). Sometimes, when a victim is nonresponsive or does not wish to cooperate with the investigation, law enforcement will characterize this as a withdrawal of consent to test. However, a declination to participate in the investigation is not equivalent to a withdrawal of consent to test. Maryland does not require law enforcement to obtain a victim’s consent for testing prior to submitting a SAEK for analysis. Maryland has long operated on the presumption that if a victim obtains a sexual assault forensic exam and proceeds with filing a police report, then the victim consents to having their kit tested. In the absence of a clear statement to the contrary, the kit should be tested.

⁷⁶ S.B. 807 (2020)

Appendix F
SAEK Testing Flow Chart

SAEK Testing Flow Charts

Effective January 1, 2020, Maryland law enforcement agencies must submit all sexual assault evidence kits (SAEKs) for testing with limited exceptions. See Md. Ann. Code, Crim. Proc. § 11-926(e)(1) (2020). To assist agencies in complying with this new mandate, the SAEK Policy and Funding Committee (SAEK Committee) developed the following flows chart as a companion to the [SAEK Testing FAQs](#) and the [SAKI Grant Testing Order and Protocol](#). The flow charts may be used to evaluate any SAEK in an agency's possession, regardless of when it was collected. They also apply regardless of whether the offender is known or unknown or the suspect alleges consent as a defense.

These flow charts provide guidance to determine whether SAEKs that fall within one of the following classifications should be submitted for testing: unfounded false; unfounded baseless; cleared by arrest; cleared by exceptional means; unable to contact victim; and victim no longer wishes to participate in the investigations. Cases do not have to be formally classified before submitting the associated SAEK for testing. When SAEKs are tested, the results may include evidence to assist law enforcement agencies (LEAs) in determining whether a case falls within any of these categories. Thus, SAEKs associated with cases that do not clearly fall within any of the provided categories should be submitted for testing. Alternatively, the case may be presented to the local Sexual Assault Response Team (SART) for review in accordance with the case review process developed by the SAEK Committee and outlined in COMAR 02.08.03.01-.06. The SART case review process will help ensure that cases without clear submission guidelines are reviewed comprehensively and include consideration of the victims' wishes.

Additionally, there will be cases in which the [Victim Notification Protocol](#) must be initiated prior to making a testing decision. The use of this protocol will help ensure that a victim's wishes regarding their sexual assault evidence kit are followed. For instance, the victim notification protocol must be initiated before the kit can be submitted for testing in cases that require exclusionary or suspect samples. This will ensure that the victim does not hear about their kit being sent for testing from anyone (i.e. an ex-boyfriend) other than law enforcement or the advocacy group. Lastly, properly following the victim notification protocol will ensure that information is conveyed to the victim in a trauma-informed manner, reducing the likelihood of retraumatization.

Questions regarding SAEK testing should be directed to Zenita Wickham Hurley, SAEK Committee Chair, at zhurley@oag.state.md.us.

For questions regarding the implementation of the victim notification protocol, please contact Laura Jessick, SAKI Victim Notification Project Manager at ljessick@mcasa.org. To submit information for planning individualized victim notifications, please email support@mcasa.zendesk.com. This is a secure platform utilized by MCASA SAKI advocates that will streamline communication and reporting processes.

For questions regarding laboratory procedure or CODIS rules, please contact your respective forensic laboratory.

Appendix F SAEK Testing Flow Chart

EXPLANATION OF TERMS

- **Unable to contact victim/victim could not be located but previously consented to testing:** during the course of a criminal investigation, law enforcement was no longer able to successfully contact the reporting victim. Therefore, the investigation was suspended or closed.
- **Victim chose not to participate in investigation:** a victim's decision, expressed to law enforcement during the course of the criminal investigation, that they no longer wished to participate in the investigation. Therefore, the investigating law enforcement agency suspended the investigation or closed the case.

Note: It is assumed that a classification of "victim declined to prosecute" means that the victim chose not to participate and the prosecutor then chose not to prosecute because prosecutorial decisions are determined by the State's Attorney's Office only.

- **Victim "uncooperative":** an outdated term; *please see* "unable to contact victim/victim cannot be located," or "victim chose not to participate in the investigation."
- **"Waiver of Investigation Form":** a "waiver of investigation form," or "release waiver," is a form used by certain law enforcement agencies to document that a victim did not want to pursue a criminal investigation or prosecution. Research on this practice has shown that these forms were sometimes used inappropriately and prematurely during victim initial interviews, possibly because responding officers did not believe the victim or think the case was worth pursuing. Effective October 1, 2020, law enforcement agencies may no longer present victims of sexual assault with waiver of investigation forms (see [Senate Bill 807 \(2020\)](#)). Law enforcement agencies should review the guidance issued by the SAEK Committee regarding appropriate means of documenting a victim's request to suspend an investigation without the use of a waiver. This guidance can be found here: [Guidance to Law Enforcement Agencies on Documenting a Victim's Request to Suspend or Limit an Investigation](#).
- **Cleared by Exceptional Means:** A case that is cleared by exceptional means (i.e., cleared by exception) must meet specific criteria outlined in the Federal Bureau of Investigation's Uniform Crime Report. These requirements include the following:

Law Enforcement has...

- Identified the offender
- Gathered enough evidence to support an arrest, make a charge, and turn over the offender to the court for prosecution
- Identified the offender's exact location so that the suspect could be taken into custody immediately
- Encountered a circumstance outside the control of law enforcement that prohibits the agency from arresting, charging, and prosecuting the offender. (e.g. offender death or denial of extradition).

In these circumstances the offender has not been adjudicated.

Appendix F SAEK Testing Flow Chart

- **Cleared by Arrest:** An offense that is cleared by arrest must meet specific criteria outlined in the FBI's Uniform Crime Report. These requirements include the following:

At least one person has been:

- Arrested.
 - Charged with the commission of the offense.
 - Turned over to the court for prosecution (whether following arrest, court summons, or police notice).
- **Unfounded Case classification:** According to the FBI's Uniform Crime Report (UCR) guidelines, an offense can be cleared as unfounded when "a complaint is determined, through investigation, that no offense occurred nor was attempted." The UCR guidelines indicate that unfounded cases should include crime reports that are either false or baseless. These classifications can be further defined as follows:
 - **Unfounded, False:** a report can only be determined to be false if the evidence from the investigation establishes that the crime was not completed or attempted.
 - In order to classify a report as false there must be an investigation that factually proves that a criminal offense neither occurred nor was attempted.
 - **Unfounded, Baseless:** a reported sexual assault that does not meet the elements of a crime, felony or misdemeanor.
 - The following are examples in which a case may **NOT** be classified as false or baseless:
 - Insufficient evidence to prove sexual assault happened;
 - Identity of the suspect is known;
 - Suspect admitted to sex with the victim, but maintained that it was consensual;
 - Suspicions that a report is false;
 - Victim changes their account of events;
 - The State's Attorney's Office determined that a crime had been committed, but declined prosecution.
 - **Offender's DNA Profile in CODIS:** If the offender's DNA is already in CODIS, testing is discretionary.
 - For kits collected on or before April 30, 2018, the law enforcement agency must determine if any charges were filed related to the case from which the SAKI kit was obtained. If charges were filed and it is determined that (1) there was only one offender involved in the case; (2) that offender was convicted and a final judgement was entered in the case; [and] (3) a DNA profile of that offender was obtained and uploaded into CODIS, then the SAKI kit is not required to be tested.
 - For kits collected after April 30, 2018, the law enforcement agency must only determine that the suspect's profile was previously uploaded into CODIS as a convicted offender for a qualifying offense and the suspect pled guilty in the current sexual assault case in order to not test the kit.

Chart 1 Case Scenarios: Cleared by Exception, Cleared by Arrest or Case Unfounded: False or Baseless

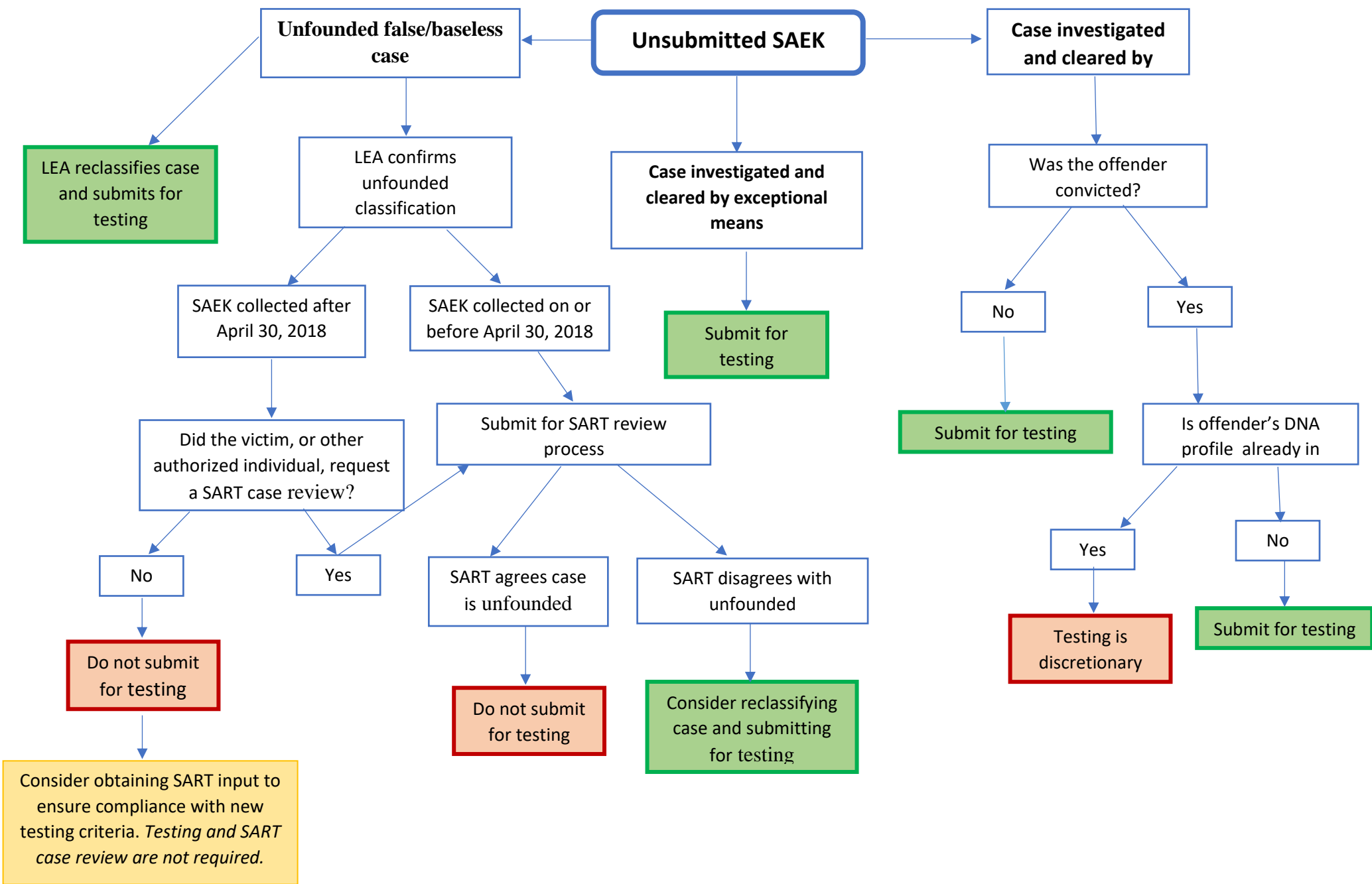
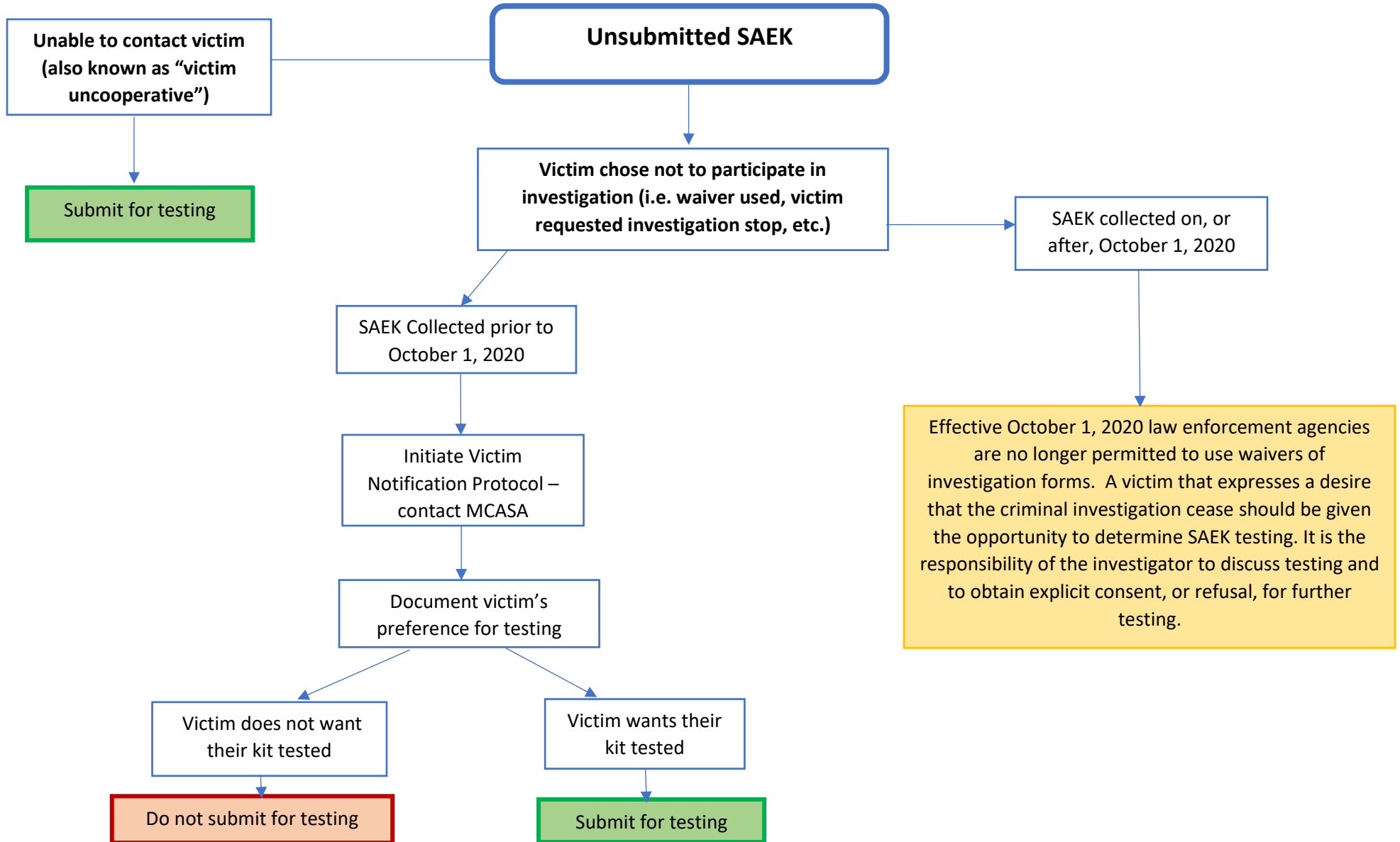


Chart 2 Case Scenarios:

Unable to contact victim, Victim no longer wishes to participate in the investigations

This flow chart applies to all cases regardless of if the offender is known or unknown



Appendix G
**Maryland Regulatory and Statutory Information that Health Care Providers Should
Provide/Convey to Sexual Assault Victims**



Maryland Sexual Assault Evidence Kit Policy and Funding Committee

**MARYLAND REGULATORY AND STATUTORY INFORMATION THAT HEALTH
CARE PROVIDERS SHOULD PROVIDE/CONVEY TO SEXUAL ASSAULT VICTIMS**

Health Care Providers—Sexual Assault Victim Notifications

Health care providers who perform sexual assault forensic exams shall provide the victim with:

- **Contact Information for Investigating Law Enforcement Agency (LEA)**
See MD. CODE ANN., Crim. Proc. § 11-926(b)(1) (West 2020); see also COMAR 02.08.01.03(A)(1).
- **Written Information Describing Sexual Assault Evidence Kit (SAEK) Laws**
See Crim. Proc. § 11-926(b)(2); see also COMAR 02.08.01.03(A)(2).
- **Notice of the Untested Kit Review Process**
COMAR 02.08.01.03(A)(3).

Contact Information for Investigating LEA
--

If known, health care providers must give the victim the contact information for the investigating LEA that the victim may contact about the status or results of the kit analysis. Crim. Proc. § 11-926(b)(1); COMAR 02.08.01.03(A)(1).

Written Information Describing SAEK Laws

Health care providers must provide the victim with written information describing the laws and policies governing the testing, preservation, and disposal of a sexual assault evidence collection kit. Crim. Proc. § 11-926(b)(2); COMAR 02.08.01.03(A)(2).

LAWS PERTAINING TO TESTING

Victim Requested Notifications: The victim may request that they be notified about:

- **Decisions on SAEK Testing**—The victim may request that the investigating LEA provide them with the LEA’s decision regarding whether to send the SAEK to a forensic laboratory for analysis. *See COMAR 02.08.01.03(B)(1)*
- **Status of SAEK Testing**—The victim may request that the investigating LEA provide them with information about the status of their analysis. Crim. Proc. § 11-926(c)(1); COMAR 02.08.01.03(B)(2).
- **Result of Kit Analysis**—The victim may request that the investigating LEA notify them of the result of the kit analysis. The LEA will provide this information if providing such would not impede or compromise an ongoing investigation. Crim. Proc. § 11-926(c)(2); COMAR 02.08.01.03(B)(3).

Appendix G
**Maryland Regulatory and Statutory Information that Health Care Providers Should
Provide/Convey to Sexual Assault Victims**

30-day Response Requirement

- An LEA must respond to all of the above stated requests within 30 days after they receive the request. Crim. Proc. § 11-926(c); COMAR 02.08.01.03(B).

SAEK Testing Criteria

- An LEA must submit all SAEKs for testing unless:
 - There is clear evidence disproving the allegation of sexual assault. Crim. Proc. § 11-926(e)(1); COMAR 02.08.02.01(A).
 - The facts alleged, if true, could not be interpreted to violate one of Maryland's sexual assault laws. Crim. Proc. § 11-926(e)(2); COMAR 02.08.02.01(B).
 - The victim declines to give consent for analysis (e.g. Anonymous kits). Crim. Proc. § 11-926(e)(3); COMAR 02.08.02.01(C).
 - The suspect's DNA profile has already been collected for entry into CODIS as a convicted offender for a qualifying offense and the suspect pled guilty in the current case. Crim. Proc. § 11-926(e)(4); COMAR 02.08.02.01(D).

Anonymous Victims

- If a victim wishes to remain anonymous and not file a criminal complaint, the victim must be informed that they may file a criminal complaint at a future time. Crim. Proc. § 11-926(f)(1); COMAR 02.08.02.02(A).

Testing Timeframes

- SAEKs must be submitted to the lab for analysis within 30 days after the LEA obtains custody of the kit and any requested associated standards. Crim. Proc. § 11-926(g)(1); COMAR 02.08.02.03(A).
- Forensic labs that receive the SAEK and all requested associated standards must determine suitability and complete screening, testing, and analysis in a timely manner. Crim. Proc. § 11-926(h)(1)(i); COMAR 02.08.02.03(B)(1).

Victim Service Organizations

- If possible, the SAEK forms should provide a list of the available certified sexual assault crisis programs or other qualified community-based sexual assault victim service organizations in the county. This will ensure that victims are aware of the organizations that are available to provide services and support. It will also assist LEAs in their mandate to make use of these Rape Crisis Centers and victim service organizations. *See* Crim. Proc. § 11-926(g)(2); *see also* COMAR 02.08.02.04.

Appendix G
**Maryland Regulatory and Statutory Information that Health Care Providers Should
Provide/Convey to Sexual Assault Victims**

LAWS PERTAINING TO PRESERVATION

20-year Retention Requirement

- Generally, an LEA must retain both (1) a SAEK and (2) any other crime scene evidence related to the sexual assault for at least 20 years after the evidence is collected. Crim. Proc. § 11-926(d)(2)(i)–(ii); COMAR 02.08.01.04(B).

Extended Retention Beyond 20 years

- The victim may request in writing that the LEA retain the kit for longer than the required 20 years. Crim. Proc. § 11-926(d)(4)(ii); COMAR 02.08.01.04(D)(2).

LAWS PERTAINING TO DISPOSAL

- An LEA may destroy the evidence prior to 20 years if (1) the case resulted in a conviction and the sentence has been completed or (2) all suspects identified after testing the SAEK are deceased. Crim. Proc. § 11-926(d)(3)(i)–(ii); COMAR 02.08.01.04(C).
- The victim may request that the LEA notify them when the kit will be destroyed. However, this request must be in writing. Crim. Proc. § 11-926(d)(4)(i); COMAR 02.08.01.04(D).
- If the victim submits a written request to be notified prior to the destruction of the evidence, the LEA must either (1) notify the victim at least 60 days before the evidence is destroyed or (2) retain the evidence for an additional 12 months or time period agreed to by the victim and the LEA. Crim. Proc. § 11-926(d)(4)(i)–(ii); COMAR 02.08.01.04(D)(2).

Notice of the Untested Kit Review Process
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Health care providers must advise the victim that they have the right to request an independent review of a law enforcement agencies decision not to test a SAEK—COMAR 02.08.01.03(A)(3)

UNTESTED KIT REVIEW PROCESS

An Untested Kit Review is an independent review by a SART or the SAEK Committee of an LEA’s decision not to test a kit. COMAR 02.08.03.02(4)

Untested Kit Review by SART

- When an LEA decides not to test a kit, the victim, the victim’s representative, a SAEK Committee member, or a member of the SART where the alleged assault occurred, may request an Untested Kit Review. COMAR 02.08.03.03(A)
- The request for an Untested Kit Review must first be submitted to the local SART where the alleged assault occurred if one exists. COMAR 02.08.03.03(B)
- If a review is requested, the case will first be reviewed by the local SART, if the local SART includes representation from the following disciplines:

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**Maryland Regulatory and Statutory Information that Health Care Providers Should
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- Forensic Nurse Examiner providing services at a local sexual assault forensic examination program, or other qualified health care provider from the local hospital;
- Local Law Enforcement Agency;
- Local States Attorney's Office;
- Local certified Rape Crisis Center;
- Maryland Coalition Against Sexual Assault;
- Crime Lab, if available; and
- Crime Victim Rights Attorney, if available

COMAR 02.08.03.02(3)

- The local SART must issue a written determination within a timely manner. COMAR 02.08.03.03(F)

Untested Kit Review by SAEK Committee

- After the SART issues its recommendation, the victim, victim's representative, or member of the SART where the alleged assault occurred may request a subsequent Untested Kit Review by the SAEK Committee. COMAR 02.08.03.04(A)
- The SAEK Committee must Issue a written determination within a timely manner. COMAR 02.08.03.04(E)
- In jurisdictions where there is not a functioning SART (as defined above), the victim or victim's advocate, may submit a request for review directly to the SAEK Committee. COMAR 02.08.03.03(H)
- Both the local SART and the SAEK Committee's review and determination will serve as a recommendation. COMAR 02.08.03.03(G) and COMAR 02.08.03.04(F)

Sexual Assault Forensic Exams

- **Treatment Provided Without Charge**—Victims of shall assault shall not be charged for certain medical services obtained as a result of the assault including:
 - A physical and sexual assault forensic examination to gather evidence when the exam is conducted within 15 days of the alleged crime or a longer period as provided by regulation;
 - Emergency hospital treatment and follow-up medical testing for up to 90 days after the initial physical examination; and
 - Up to 5 hours of professional time for a physician, qualified health care provider, hospital, mental health professional, or a multidisciplinary team to gather information and evidence of the alleged sexual abuse, an initial assessment of a victim of alleged child sexual abuse

MD. CODE ANN., Crim. Proc. § 11-1007(b)-(c) (West 2020)

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**Maryland Regulatory and Statutory Information that Health Care Providers Should
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HIV nPEP Pilot Program

- A victim of sexual assault has the right to request postexposure prophylaxis for the prevention of HIV infection. *See* MD. CODE ANN., Crim. Proc. § 11-1008(c)(1) (West 2020)
- A victim who receives HIV postexposure prophylaxis medication and treatment may “decline to provide health insurance information or submit personal information to a payment assistance program if the victim believes that providing the information would interfere with personal privacy or safety.” Crim. Proc. § 11-1008(c)(2).
- The physician, qualified health care provider, or hospital providing a victim with treatment and follow-up care for HIV postexposure prophylaxis shall inform the victim of the victim's right to decline to provide health insurance information or submit personal information to a payment assistance program. Crim. Proc. § 11-1008(c)(2)(ii).
- If a victim declines to provide health insurance information or to submit personal information to a payment assistance program the treatment and follow-up care will be provided without charge to the victim according to the parameters of the Maryland Code. Crim. Proc. § 11-1008(c)(2)(iii).

Waiver of Rights Forms

- During a sexual assault investigation, an LEA may not present the victim with a form purporting to:
 - Relieve the LEA of an obligation to the victim
 - Preclude or define the scope of an investigation by law enforcement into the alleged sexual assault
 - Prevent or limit a prosecution of an act alleged to be committed against the victim
 - Limit a private right of action of the victim against law enforcement

MD. CODE ANN, Crim. Proc. § 11-929(b) (West 2020).

- On their own volition, victims of sexual assault have the right to request that an investigation be limited or that the investigation be temporarily or permanently suspended. Crim. Proc. § 11-929(c).
- If a victim requests that the scope of an investigation be limited or that an investigation be temporarily or permanently suspended, the LEA shall:
 - Thoroughly document the request; and
 - Follow up with the victim in accordance with practices recommended by the Maryland Police Training and Standards Commission (MPTSC).

Crim. Proc. § 11-929(c).

Appendix H
Model Informational Document:
Understanding Your Options: An Overview of the Sexual Assault Forensic Exam Process

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Understanding Your Options:

An Overview of the Sexual Assault Forensic Exam Process

You have presented to a Maryland Sexual Assault Forensic Exam (SAFE) Program with concerns of sexual assault or abuse. As a patient seeking medical forensic care, you have several options which include a forensic exam and reporting the sexual assault to law enforcement.

A sexual assault forensic exam contains the component listed below. **You are not required to participate in all portions of the exam and may decline completion of any individual component. You may withdraw consent for any part of the exam at any time.**

Exam components are listed below:

- EXAM COMPONENTS:**
- Medical History
 - Assault History
 - Medical Care and Treatment
 - Toxicology Testing
 - Physical Examination
 - Photographs of Body and/or Genitals
 - Collection of Evidence

REPORTING OPTIONS:

It is important to know that in the State of Maryland some cases, such as those directly or indirectly involving a minor child, vulnerable adult, use of a lethal weapon, moving vessel, and other circumstances that meet mandatory reporting criteria, we are required to file a report with law enforcement and/or child or adult protective services. You will be informed if your care provider is mandated to report the assault or abuse and the collection of evidence and/or an exam by a licensed forensic nurse examiner (FNE) will not be collected without your express consent, regardless of your age.

The following information outlines your options for medical forensic care and reporting to law enforcement. Please review these options carefully. An informed FNE is available to answer any questions or concerns you may have.

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A. MEDICAL EXAM:

With this option, there will be no police involvement and evidence of the assault will **NOT** be collected. However, you will receive medical attention, care, and any necessary medication without reporting the assault or abuse to the police. A victim advocate will be offered to provide support and accompaniment during this process. Additional referrals for support services, such as counseling, may be made by the victim advocate.

This option includes, but is not limited to, the following:

- A complete medical exam;
- Consultation with an FNE;
- Medication to prevent pregnancy and sexually transmitted infections.

B. MEDICAL FORENSIC EXAM with REPORTING TO LAW ENFORCEMENT:

If you decide to select this option, you are choosing to report the sexual assault to law enforcement for criminal investigative purposes. You will receive a sexual assault forensic exam and medical care for injuries related to the assault free of charge.

You can expect the following events to take place:

- Police will be notified that you are reporting a sexual assault or sexual abuse
- A victim advocate will be available to provide support and accompaniment
- A complete medical exam
- Medication to prevent pregnancy and sexually transmitted infections
- A sexual assault forensic exam conducted by an FNE or physician
- Evidence will be provided to the police within the next 30 days
- Potential completion of DNA testing and analysis
- Communication with the police, victim advocate, and State's Attorney's Office.

If you choose this reporting option, your sexual assault evidence kit will be considered for DNA testing and analysis. You have the right to be informed by the investigating law enforcement agency regarding the decision to test your kit and the results of said testing. You can request this information, at any time during the investigation, by contacting the appropriate agency.

Please see MCASA document *"Your Sexual Assault Evidence Kit: Know Your Rights"* for more information on Maryland laws and policies regarding the testing, retention, and destruction of sexual assault evidence kits.

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C. MEDICAL FORENSIC EXAM with ANONYMOUS REPORTING:

The Anonymous reporting option was established to provide victims of sexual assault that may not want to file a police report immediately, but who may choose to report to the police at a later date, with the opportunity to have evidence collected.

With this option you will have the opportunity to receive all components of a sexual assault forensic exam, including the collection of evidence free of cost and without immediately reporting the sexual assault to law enforcement and your identity will remain confidential until you choose to engage the police.

If you choose this option, you can expect the following to take place:

- A victim advocate will be available to provide support and accompaniment
- A complete medical exam
- Medications to prevent pregnancy and sexually transmitted infections
- A sexual assault forensic exam conducted by an FNE or physician

After the completion of your exam and collection of evidence, the police will be notified that an **anonymous exam** was completed, and the evidence will be transferred to law enforcement for storage within 30 days of the exam. Law enforcement will not receive any of your personally identifiable information and at no point in time will you be required to speak with an officer.

Your sexual assault evidence kit will be stored by law enforcement for a minimum of 20 years, per state law, or in accordance with the legally mandated timeframe established by the jurisdiction in which the event took place, whichever is longer. If you choose to report the sexual assault during this timeframe you may contact the police at any time. It is at this time that your name and identifying information will be available to the investigating law enforcement agencies.

Making the decision to report the sexual assault to law enforcement may be difficult and complex. You should be aware that the sooner the sexual assault is reported to police, the sooner they can collect evidence from the crime scene that otherwise may be lost and speak to potential witnesses if necessary. This may assist in the prosecution of a potential criminal case. If you need support in making the decision to report to law enforcement, you can contact your local Rape Crisis Center to speak with an advocate.

If you choose not to report the sexual assault during the 20-year retention period but would like to request that your kit be stored longer, you can contact the Sexual Assault Legal Institute at 301-565-2277 to discuss your options.

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By signing below, you are consenting to the Anonymous Reporting program.

I, _____, have been counseled
(First and last name)
regarding the Anonymous Reporting program and fully understand that by not reporting the sexual assault to police at this time, crime scene evidence may be lost that may jeopardize the future investigation and prosecution. I understand that I can contact law enforcement at any time during this 20-year minimum timeframe to report the sexual assault or abuse and pursue a criminal investigation.

Signature: _____ Date: _____
(MM/DD/YYYY)

CONTACTING LAW ENFORCEMENT

The contact information for the law enforcement agency responsible for the testing, retention, and destruction of your sexual assault evidence kit is provided below. You may contact this agency for information about the testing, retention, and destruction of your sexual assault evidence kit. Upon receiving your request for the responsible law enforcement agency has 30 days to provide the requested information.

If you have chosen the “anonymous” reporting option, this agency is responsible for the storage of your sexual assault evidence kit for a minimum of 20 years. If you chose to report the sexual assault or abuse to law enforcement during this timeframe, you will need to contact the below law enforcement agency to report the sexual assault or abuse. Please use the below contact information, and case identifier, for reporting purposes.

Contact Information for Investigating Agency

Law Enforcement Agency: _____

Phone number: _____

Officer (if known): _____

Case Identifier: _____

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ADDITIONAL SERVICES

The following information outlines additional services and care that you may be eligible for.

HIV TESTING AND COUNSELING:

Today, you will be counseled on your risk of acquiring HIV and other infectious diseases as part of your Sexual Assault Forensic Exam. You have the right to receive preventative medication, known as nPEP. If you are deemed to be at risk and in need of preventative care, your healthcare provider will discuss treatment instructions and care. You are not required to provide your health insurance information or personal information to a payment assistance program in order to receive this treatment. The medication, and follow-up care, including labs, provided up to 180 days after your initial visit, is provided free of cost.

If you are reporting to police that you have been sexually abused or assaulted, you have the right to request that the reported perpetrator be tested for HIV and the results provided to you. In order for the State’s Attorney’s Office to make this request of the court, the accused person must be charged by the police department. If you are interested in making this request, the FNE working with you can make a referral to the local State’s Attorneys’ office or appropriate service provider, such as the local certified Rape Crisis Center, the local Sexual Assault Response Team, or law enforcement agency investigating the assault, to complete this process.

D. FOLLOW-UP CARE:

You have the right to have follow-up care for health-related concerns including, but not limited to, injuries related to the sexual assault up to 90 days after the initial medical forensic exam and HIV prophylaxis, follow-up care, and associated laboratory services up to 180 days after the sexual assault paid for by the Maryland Sexual Assault Reimbursement Unit.

Follow-up Appointments

I would prefer to follow-up with my primary care provider or other health care provider

I would prefer that the hospital make a referral for follow-up care:

Provider Name: _____

Phone Number: _____

Address: _____

Appointment Date/Time (if applicable): _____

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PATIENT ACKNOWLEDGMENT:

By signing below, you acknowledge that you have reviewed the above information regarding medical forensic care, reporting sexual assault or abuse to law enforcement, follow-up care, and other related services.

Signature: _____ Date: _____
(First and Last Name) (MM/DD/YYYY)

Relationship to Patient: _____
(self, guardian, authorized individual)

FOR STAFF USE ONLY:

Signature: _____ Date: _____
(staff/witness) (MM/DD/YYYY)

Copy Provided to Patient: Yes No

Your Sexual Assault Evidence Kit *Know Your Rights*

If you are a survivor of sexual assault in Maryland and had a sexual assault forensic exam (SAFE), you have rights over your sexual assault evidence kit ("kit"). These rights ensure that you are able to make informed decisions regarding your kit.

Your Body. Your Kit. Your Rights.

Testing of Your Kit

Q: What are my rights regarding the testing of my kit?

A: Law enforcement will decide if your kit will be tested or not. You have the right to request that they notify you when this decision is made. If your kit is tested, you can request to be updated about the status of testing and the testing results.

Q: When will law enforcement respond to my request regarding the testing of my kit?

A: If you request information regarding the testing of your kit, law enforcement must respond within 30 days.

Q: Will my kit be tested?

A: Generally, law enforcement must submit all kits that are eligible for testing in accordance with state law. However, you have the right to decline to have your kit sent for testing. If you do not want your kit to be tested, an advocate can assist you with the process as you will need to speak to the assigned investigator.

Q: What if law enforcement decides not to test my kit?

A: If law enforcement decides not to test your kit, you have the right to request an independent review of the decision by the local Sexual Assault Response Team. An advocate from your local Rape Crisis Center or SALI can help you make this request.

Appendix I
Your Sexual Assault Evidence Kit: Know Your Rights Brochure

Q: What if I wish to remain anonymous?

A: If you chose to have an anonymous exam, your kit will not be sent for testing. An anonymous kit will only be considered for testing if, and when, you decide to file a criminal complaint with law enforcement.

Retention of Your Kit

Q: How long will law enforcement keep my kit?

A: Generally, law enforcement must retain your kit for at least 20 years after the evidence is collected. However, you are entitled to request that law enforcement keep your kit beyond 20 years. You can do this by submitting a written request to law enforcement.

Disposal of Your Kit

Q: Will I be notified prior to the destruction of my kit?

A: You can make a written request that law enforcement notify you prior to the destruction of your kit.

Q: If I request to be notified prior to the destruction of my kit, when will I be notified?

A: Law enforcement must notify you at least 60 days before your kit is destroyed.

Q: Will law enforcement ever destroy my kit prior to the 20 years?

A: Law enforcement may destroy your kit prior to the 20 years if the case resulted in conviction and the sentence has been completed, or all suspects identified after the kit testing are deceased.

*If you have questions or would like assistance, you can contact the Sexual Assault Legal Institute (SALI) at 301-565-2277
www.mcasa.org*

MCASA
Maryland Coalition Against Sexual Assault

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Appendix J
SAEK Committee Members

SAEK COMMITTEE MEMBERS

Zenita Wickham Hurley (Chair)	Chief Counsel, Civil Rights, Office of the Attorney General	Office of the Attorney General
Daniel Katz	Director	MSP - Forensic Sciences Division
Tiffany Rexrode	Assistant Deputy Secretary	Department of Human Services
Joyce Dantzer	Chief, Center for Injury and Sexual Assault Prevention	Department of Health
Kristen Lease	Crime Lab Director	Prince George's County Police Department - Forensic Science Division
Pamela Holtzinger	Forensic Nurse Coordinator	Frederick Memorial Hospital
Ashley Young	Managing Attorney	Sexual Assault Legal Institute
Laura Jessick	SAKI Victim Notification Project Manager	Maryland Coalition Against Sexual Assault
Scott Shellenberger	State's Attorney	Baltimore County
Heather Amador	Program and Policy Administrator of Victim Services	Governor's Office of Crime Control and Prevention
Barbara Darley	Deputy Director of Victim Services	Governor's Office of Crime Control and Prevention

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SAEK Committee Members

EX-OFFICIO MEMBERS

Senator Adelaide C. Eckardt	Senator and Member, Budget and Taxation	Maryland Senate
Senator Shelly L. Hettleman	Senator and Member of Judicial Proceedings	Maryland Senate
Delegate J. Sandy Bartlett	Delegate and Member, House Judiciary	Maryland House of Delegates
Delegate Shaneka T. Henson	Delegate and Member, House Appropriations	Maryland House of Delegates

ADVISORY MEMBERS

Jennifer Witten	Vice President of Government Affairs	Maryland Hospital Association
Jane Krienke	Legislative Analyst	Maryland Hospital Association
Donna Melynda Clarke	Program Director	Domestic Violence & Sexual Assault Center, Prince George's Hospital Center
Argi Magers	Forensic Scientist Manager, Biology Section	MSP - Forensic Sciences Division
Michelle Groves	CODIS State Administrator	Maryland State Police
Lt. Brian Edwards	Commander, Special Victims Unit	Baltimore County Police Department
Jessica Volz	Clinical Director of Forensics, Forensic Medical Unit	Adventist Healthcare Shady Grove Medical Center

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SAEK Committee Members

STAFF

Carrie Williams (Former Chair)	Division Director, Criminal Appeals Division, Office of the Attorney General	Office of the Attorney General
Jessica Williams (Committee Counsel)	Assistant Attorney General, Civil Rights, Office of the Attorney General	Office of the Attorney General
Ron Levitan	Counsel, State Police, Office of the Attorney General	Office of the Attorney General

*The following membership positions are currently vacant:

- Representative from a crime lab who has expertise in sexual assault forensic evidence kit analysis
- State Board of Nursing Representative