



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

**Thursday, January 18, 2018
3:00 pm
House of Delegates Building
Room 406
Annapolis, MD 21401**

MEETING SUMMARY

In attendance: Daniel Katz, Teresa Long, Del. Shelly Hettleman, Del. Aruna Miller, Lisae Jordan, Pamela Holtzinger, Ron Levitan, Donna “Melynda” Clarke, Justice Schisler, Jennifer Witten, Brian Browne, MD, Russ Trow, Glen Wiedeck, Scott Shellenberger, Elizabeth Embry, Zenita Wickham Hurley, Franka Wilson

Committee Meeting

Welcome & Opening Comments by Elizabeth Embry, Chair

The Chair welcomed everyone and asked that all attendees introduce themselves.

Approval of 10.17.17 Meeting Summary

The Chair asked that everyone review the meeting summary for the October 17, 2017 Committee meeting. Asking for and hearing no changes or objections to the summary, the summary was approved by the Committee.

Review of Subcommittee Policy Recommendations

Testing, Retention, Tracking and Victim Notification (TRTVN) Subcommittee

The Chair led the review of the prior meetings of the Testing, Retention, Tracking and Victim Notification Subcommittee.

The TRTVN Subcommittee met on November 16, 2017 and December 11, 2017 in Towson. The Subcommittee made the following recommendations for Committee consideration:

1. Evidence Collection: All biological evidence or specimens, including urine samples for drug screening, should be collected only at a medical facility.
2. Collaborative Approach: SAFE Programs, local Rape Crisis Centers and victim advocates should participate in local Sexual Assault Resource Teams (SARTs), with prosecutors and law enforcement. Policy change. Response should be victim-centered and trauma-informed.

Policy change. Victim advocates should be involved early in the process. Advocates should be notified as soon as possible, recognizing that the point of entry for the victim may be law enforcement or the hospital. Policy change. Underserved (i.e. rural and remote communities) or vulnerable populations should be involved in the collaboration.

3. Chain of Custody/Transfer: Enact a “Notice & Demand” statute governing chain of custody and confrontation issues at trial modeled after Md. Code Ann., Cts. & Jud. Proc. Art. §§1-1001 et seq. (2013), and creates a statutory bypass that allows prosecutors to present DNA evidence without calling numerous live witnesses. Such a law would (a) allow the state to establish chain of custody by providing a chain of custody log in advance of trial, which would avoid the presentation of testimony of low-level lab technicians who may have helped process the DNA evidence, but add nothing substantive to the proceedings. The defendant can still insist on the presence of these people, but he would have to do so in writing, in advance of trial. [from the OAG Report on Untested SAEK Kits]
4. SAFE Coordination with Other Services: Health care providers should not contact law enforcement without victim consent, with the exception of mandatory reporting of child abuse, see Md Code FL 5-704, and should be informed on mandatory reporting. SAFE programs should obtain written authorization from patient to release information to non-health and non-law enforcement entities. SAFE programs must include access to advocates and FNEs. All hospitals should provide victims with info regarding local RCC and victim advocates whether SAFE performed or not.
5. Increasing Awareness of Victims’ Rights. Materials on victims’ rights should be made available to all sexual assault victims, and/or their guardian, by law enforcement and SAFE programs. LE officers should be informed of the options and rights of sexual assault victims and be able to inform victims of these rights and options. LE officers should communicate to victims of sexual assault that a SAFE may be important to investigative and apprehension efforts, but should be aware that a victim has the right to choose whether or not they receive an exam. Law enforcement training should include:
 - i. Trauma-informed response;
 - ii. Recognizing the range of responses of sexual assault;
 - iii. Instructions regarding preservation of evidence, including
 - iv. advising the victim;
 - v. Instructions regarding emergent medical needs of the victim;
 - vi. The rights and options of sexual assault victims; and
 - vii. The roles and responsibilities of other emergency responders, including forensic nurses and victim advocates.
6. Maryland should create a statewide system to track all SAEK’s. Initially, access to the system should be limited to forensic nurses and law enforcement with the goal of providing access to victims once the system is operational and all kinks have been resolved.

The Subcommittee also discussed the requirement of testing all kits prospectively within a defined time parameter unless (1) there is clear evidence that no crime has been committed, 2) the allegation, even if true, would not result in forensic evidence. The Committee discussed the pros and cons of this requirement.

Availability of Exams and Shortage of Forensic Nurse Examiners

Laura Jessick led the review of the prior meetings of the Availability of Exams and Shortage of Forensic Nurse Examiners Subcommittee.

The Subcommittee reached a consensus on the following six recommendations, and highlighted issues that required further discussion concerning these recommendations.

Several of the following recommendations were identified in Department of Health and Mental Hygiene's 2015 Report to the Governor, the Senate Finance Committee, and the House Health and Government Operations Committee Regarding Improved Access to Sexual Assault Medical Forensic Examinations in Maryland House Bill 963/Chapter 627, Section 2(g) of the Acts of 2014 (hereafter "DHMH").

Recommendation 1: Timeline for Collecting SAEK Samples and Expanded Reimbursement

The treating physician or forensic nurse examiner (FNE) should collect SAEK samples from any sexual assault victim seeking care as soon as possible and within 120 hours (five days) after the sexual assault. This reflects the current timeline set forth in Section 10.12.02.03(B) of the Code of Maryland Regulations ("COMAR"). Because there have been advances in forensic science, which allow retrieval of evidence for significantly longer time periods, reimbursement should be available for SAEK samples collected more than five days after and assault. Currently, some SAFE programs are unable to seek reimbursement when they collect evidence as soon as possible, but longer than 120 hours, post-assault. Accordingly, the regulations should be updated to provide greater flexibility and keep pace with advancements in medical and laboratory technology.

Recommendation 2: Transportation of SAEK victims (DHMH, 4)

The Maryland Institute for Emergency Medical Services Systems (MIEMSS) should list all SAFE programs in the Maryland Medical Protocols for EMS providers. This is the current practice. MIEMSS implemented training and added all SAFE programs to their protocols as of July 1, 2017.

Recommendation 3: Immediate Safety Needs and Transport for Medical Care (DHMH, 5)

With the consent of a victim of sexual assault, law enforcement should address immediate safety needs and provide immediate transport for medical care and evidence collection. This recommendation reiterates the mandate in Section 11-924(b)(1) of the Maryland Code, Criminal Procedure, which requires that "A police officer, sheriff, or deputy sheriff who receives a report of an alleged sexual assault shall offer the alleged victim the opportunity to be taken immediately to the nearest facility."

Recommendation 4: Law Enforcement Policies for Sexual Assault Reports (DHMH, 5)

Every law enforcement agency should adopt a policy and establish a protocol for responding to individuals reporting a sexual assault.

Recommendation 5: Emergent Medical Care is First Priority in Sexual Assault Response (DHMH, 5)

Recommendation 6: Increasing Awareness of SAFE Accessibility (DHMH, 6)

Funding Subcommittee

The Chair led the discussion summarizing the work of the Funding Subcommittee. The Funding Subcommittee met on November 28, 2017 in Annapolis and on December 18, 2017 in Baltimore.

1. HIV Prophylactic Treatment (nPEP) Reimbursement

The discussion on November 28th focused on Maryland Department of Health (MDH) reimbursement for nPEP, specifically whether MDH should reimburse for the cost of the full 28-day HIV prophylactic treatment versus the current practice of reimbursing for only the 7-day starter pack. This discussion continued on December 18th so that member agencies could provide additional information. After reviewing that information, the Subcommittee recommended that the State expand reimbursement to cover the full 28-day treatment.

The Subcommittee also recommended that MDH revise its eligibility criteria so that they reflect the most current medical consensus on risk of HIV transmission in the case of sexual assault. The current reimbursement eligibility criteria as described by MDH are that the sexual assault involved multiple assailants, an assailant who is a known IV drug user (or is known to be HIV positive), and/or 3) the assault involves anal penetration. These criteria do not appear to be consistent with the more recent 2016 Center for Disease Control (CDC) standards.

2. Reimbursement for Exams and Collection of Cervical Swabs up to 15 Days Post Assault

The Subcommittee also recommended that MDH expand its reimbursement of collection and submission of cervical swabs to 15 days (from 120 hours) after the assault. This would be consistent with the MSP Forensic Sciences Division 15 day testing policy, based on studies that show that DNA can be obtained using Y-STR DNA technology on cervical swabs as late as nine days after the assault and potentially up until the next menstrual cycle.

3. Statewide Tracking System

Finally, the Funding Subcommittee shared its support for the recommendation of the Testing, Retention, Tracking and Victim Notification Subcommittee that a Maryland Statewide Tracking System be created and recommended evaluating costs incurred by other states that have adopted such systems and including a request for funding in any grant application supported or undertaken by this Committee.

2018 SAEK Legislation

Zenita Hurley led the discussion on two upcoming bills related to the Committee's work: HB8 - Criminal Procedure-Sexual Assault Evidence Collection Kit – Testing Requirement (Conaway) and HB21 – Criminal Procedure- Sexual Assault Evidence Collection Kit – Reporting to CODIS (Conaway). Several Committee members expressed concern that both bills seemed to preempt topics for which Committee was charged with developing recommendations and best practices. The Chair agreed to draft a position paper expressing these concerns to the legislative committees charged with hearing the bills; this approach was supported by a consensus of the Committee.

The meeting was adjourned at approximately 5:00 pm.