



## PRESS RELEASE

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### **Office of Attorney General Releases “Statewide Accounting of Untested Sexual Assault Evidence Kits” Report *Recommends a Statewide Policy to Test Kits within Defined Parameters; Establishing Statute of Limitations for Preservation of Kits***

**BALTIMORE, MD (January 3, 2017)** – Maryland Attorney General Brian E. Frosh announced today that his office has released the “Statewide Accounting of Untested Sexual Assault Evidence Kits” report. To better protect victims of sexual assault, the Office of Attorney General recommends presumptive testing of all sexual assault kits, victim notification of test results, and retention of kits until the statute of limitations has run.

In response to a nationwide effort to address a backlog of untested kits, the Maryland General Assembly last session passed Senate Bill 498 requiring that law enforcement agencies in the State of Maryland conduct an audit of their untested kits and report the results to the Office of the Attorney General. The report details the findings of the audit and includes the Office of Attorney General’s recommendations for addressing the backlog.

“By implementing these recommendations, we can enhance our ability to bring sexual assailants to justice, and we can treat victims of sexual assault fairer and more humanely,” said Attorney General Frosh.

To comply with the General Assembly’s mandate, the Governor’s Office of Crime Control and Prevention (GOCCP), on behalf of the Office of Attorney General, surveyed 135 law enforcement agencies across the state regarding the untested sexual assault evidence kits (SAEKs) in their possession. Specifically, the survey asked each law enforcement agency to report back on: the number of untested SAEKs; the date each untested SAEK was collected; the total number of SAEKs that are Jane Doe/Anonymous; whether the agency submits Jane Doe SAEKs to a crime lab for biological analysis; and recommendations for expediting the testing of the SAEKs. Of the 135 agencies, 102 law enforcement agencies responded, revealing approximately 3,700 untested SAEKs statewide. About 60% of the kits were collected between 2009 and 2016. Five percent were collected between 1981 and 1997, and the rest collected between 1998 and 2009. Most jurisdictions reported no backlog of untested kits because the kits were deliberately not tested due to the agency’s testing policies.

According to the report, more than 90% of the untested kits were in the custody of 13 of the 102 responding agencies – many of which serve the most populated counties or cities in Maryland, including Montgomery County Police Department, Baltimore City Police Department, and the Howard County Police Department. However, the survey results do not reveal much about the

effectiveness of the SAEKs testing protocols as each jurisdiction sets its own policy for retaining untested SAEKs. The Montgomery County Police Department reports 1,082 untested kits in possession, but their policy is to retain all untested kits indefinitely. Many of the kits would have been destroyed in other jurisdictions who do not have the same retention policy. The report notes that no conclusions should be drawn about an agency's operations based solely on the number of untested kits reported.

The report instead focused on policy reasons agencies chose not to test SAEKs and the practices surrounding SAEK collection, testing and storage. Maryland law does not require law enforcement agencies to collect, store, track, or test SAEKs, and no uniform standards exist to guide law enforcement agencies.

Based on these findings, the report outlines the following recommendations:

1. Establish a statewide, uniform policy that sexual assault kits be tested within a defined time parameter;
2. Establish a fixed period of time for retaining untested kits, including anonymous kits, that is no shorter than prescribed by federal law, which requires kits to be preserved for the statute of limitations or 20 years, whichever is shorter;
3. Implement victim notification requirements that mandate investigators notify victims when a kit is sent for testing to the crime laboratory and the results of the test;
4. Develop a model policy with uniform standards for all jurisdictions and crime laboratories related to the collection, tracking, storage, testing, destroying, and reporting of the kits;
5. Create a Statewide SAEK Oversight Committee;
6. Provide funding for testing the current inventory of untested kits and designated funding for uniform standards and time mandates related to collection, tracking, storage, testing, and reporting of test results;
7. Pursue private and grant funding to provide training and education to support compliance with current and modified policies;
8. Amend the State's consent form for victims to authorize testing of the rape kit even if the victim does not wish to take any additional action, and specify that the victim's DNA profile will not be used for any other purpose; and,
9. Enact a "Notice & Demand" statute governing chain of custody and confrontation issues at trial that is 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.

The report was delivered to Maryland General Assembly today. The full report and detailed recommendations can be found [here](#).

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