



Maryland Sexual Assault Evidence Kit

Policy and Funding Committee

Meeting

Tuesday, March 10, 2020

3:00 am – 5:00 pm

House of Delegates Building

6 Bladen Street

Prince George's County Delegation Room

Annapolis, MD 21401

MEETING MINUTES

In attendance:

Argi Magers, Ashley Young, Heather Amador, Jane Krienke, Jennifer Witten, Jessica Williams, Kimberly Irvine, Laura Jessick, Lisae Jordan, Michelle Groves, Pamela Holtzinger, Steven O'Dell, and Zenita Wickham Hurley.

Committee Meeting

Opening Remarks

The Chair, Zenita Wickham Hurley, welcomed everyone and acknowledged our newest Committee member, Kimberly Irvine—Deputy Secretary of Programs with the Department of Human Services.

2020 Legislative Session Updates

- **HB425/SB406—Privacy, Reimbursement, and Notification**

The Chair led the discussion of both HB425 and SB406. These bills expand privacy protections for victims of sexual assault and ensures that health care providers are reimbursed for services provided to victims up to 15 days after a sexual assault, in accordance with current forensic medical standards.

HB425 and SB406 were heard on February 11th and 13th, respectively. Both bills received a favorable report from their assigned legislative committee. The bills have crossed over and are currently on the first reading in the opposite chamber.

- **SB807/HB1575—Wavier of Rights Prohibition**

The Chair led the discussion of SB807 and HB1575. SB807/HB1575 aim to prevent law enforcement agencies from presenting sexual assault victims with forms or otherwise seek agreements that purport to: (1) relieve the agency of its obligations to the victim; (2) limit

or stop an investigation or prosecution of the alleged sexual assault; or (3) limit the victim's civil remedies for certain violations of the victim's rights.

SB807 was heard by the Judicial Proceedings Committee (JPR) on March 5, 2020. Currently, the bill is still with JPR and a decision has not been reported. HB1575 is scheduled for a hearing before the Judiciary Committee on Tuesday, March 17th.

The SAEK Committee agreed to develop best practices for law enforcement agencies to document a victim's declination to participate in a sexual assault investigation or prosecution without presenting the victim with a Waiver of Rights Form.

- HB1096—DNA Chain of Custody (Notice & Demand)

The Chair led the discussion of HB1096. This bill seeks to enact a "Notice & Demand" statute governing the chain of custody¹ of DNA evidence. The bill creates a statutory bypass which would allow prosecutors to more readily admit DNA analyst reports as evidence at trial. The bill also permits prosecutors to introduce DNA evidence without calling numerous live witnesses, solely to establish the chain of custody. HB1097 was heard by the Judiciary Committee and the Committee has not presently made a decision.

- Opposition Bill

The Chair led the discussion of HB1248, which would allow a victim to pay for the testing of a sexual assault evidence kit (SAEK) if the kit: (1) has not been tested within 6 months of being transferred to a forensic lab or (2) falls within one of the exemptions to the testing mandated by the law.

The Committee did not support this legislation and submitted a letter of concern to the Judiciary Committee. The SAEK Committee's two major concerns regarding this legislation is that it would: (1) create a system of disparate access to justice for sexual assault victims who cannot personally afford (or do not have health insurance companies willing to cover) the costs associated with testing a SAEK and (2) expand resources on testing SAEK that would not qualify for submission into the FBI's Combined DNA Index System (CODIS) and thus could not be used to identify perpetrators and solve crimes of sexual assault.

HB1248 was heard by the Judiciary Committee on February 21st. The Judiciary Committee has not issued a decision regarding the bill.

COMAR Regulations Update

The Chair led the discussion of the proposed regulations. In its 2020 Annual Report, the Committee decided to update COMAR's SAEK regulations in response to the new testing criteria. The Committee assisted the Office of the Attorney General (OAG) in drafting regulatory language to supplement and add to Title 02 of COMAR. The updated regulations were published on February 28th in the Maryland Register. Comments will be accepted through March 30, 2020. The Testing,

¹ 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).

Retention, Tracking, and Victim Notification Subcommittee (Testing Subcommittee) will meet at the beginning of April to discuss all comments.

SAKI Grant Updates

Committee Counsel Jessica Williams provided updates regarding the SAKI Grant inventory, SAKI kit testing, and the statewide tracking system. OAG is responsible for conducting the statewide inventory. Thus far, the SAEK investigators have visited 50 law enforcement agencies and inventoried over 6,500 unsubmitted SAEKs. OAG is currently working with agencies to inventory their partially tested kits and anticipates that the inventory will be finalized within the coming months.

Since the last SAEK Committee meeting, the Testing Subcommittee met twice to discuss testing under the SAKI grant and the statewide tracking system. The Subcommittee produced two documents which outline which kits will be tested under grant: (1) bulleted list and (2) flow chart. The bulleted list of kits that should be sent for testing was provided to all law enforcement agencies who have unsubmitted SAKI kits. The flow chart, which was spearheaded by the Maryland Coalition Against Sexual Assault (MCASA) and the Maryland State Police (MSP), will be finalized and distributed shortly.

The Testing Subcommittee also met to discuss the statewide tracking system. The Subcommittee developed core requirements for the system that are currently in the draft stage. OAG also met with representatives from the Department of Information Technology (DoIT) to inquire about DoIT assisting the Committee in implementing the tracking system. DoIT and the Committee are engaging in ongoing discussions.

Laura Jessick from MCASA provided updates regarding victim notification under the SAKI grant. MCASA recently purchased a software for law enforcement to use that will allow MCASA to track the progress of SAKI grant victim notifications. MCASA also established the SAKI information hotline for victims, which will allow victims to provide their notification preferences. MCASA has created flyers and advertisements for the SAKI project to ensure that victims are aware of the project and services that are available.

HIV nPEP Pilot Program Update

Heather Amador from the Governor's Office of Crime Prevention, Youth, and Victim Services (formerly GOCCP, hereinafter Governor's Office) provided the HIV nPEP Pilot Program update. The Governor's Office has met with several entities, such as pharmacies, hospitals, and representatives from other states that have implemented a similar HIV nPEP program, in an effort to develop a standard protocol to dispense nPEP medication. The Governor's Office has updated its forms to provide for nPEP reimbursement and collect the information necessary to report to the General Assembly. The Governor's Office, MCASA, and the Maryland Hospital Association will work together to finalize the protocol and training materials for medical professions and hospitals.

Other Business and Comments

Committee members raised concern about the availability of sexual assault forensic exams and law enforcement agency compliance with the Violence Against Women's Act. The Shortage of Forensic Nurse Examiners and Availability of Exams Subcommittee agreed to further discuss this topic and develop recommendations.

Lastly, the SAEK Committee discussed creating pediatric kits and revamping general SAEKs and suspect kits.

The meeting was adjourned at approximately 5:00 PM.