

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.

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.

- **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

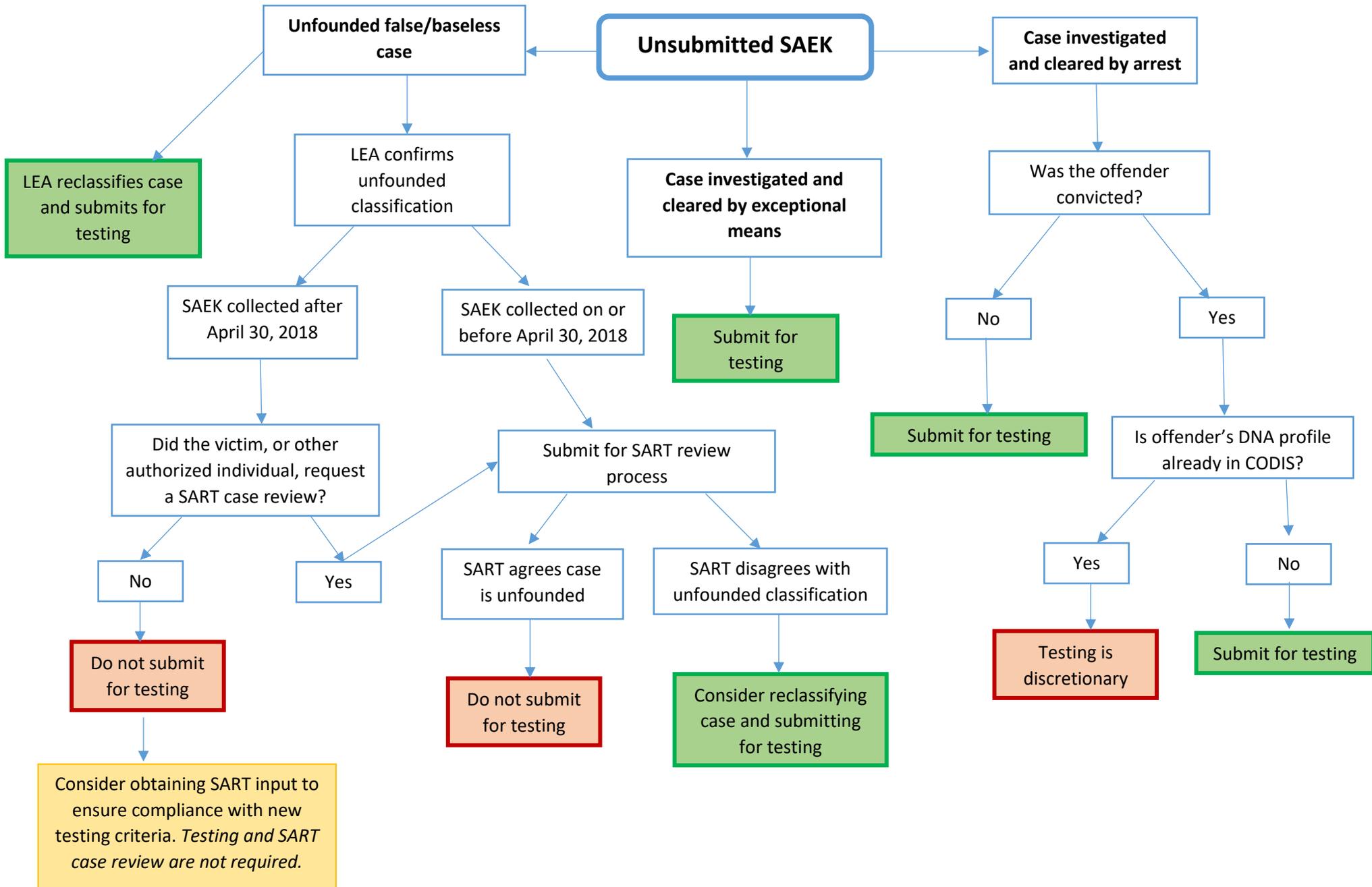


Chart 2 Case Scenarios:

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

