

MARYLAND SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE

ANNUAL REPORT

JANUARY 2025



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INTRODUCTION

In 2017, the General Assembly passed legislation creating the Maryland Sexual Assault Evidence Kit Policy and Funding Committee (“SAEK Committee” or “Committee”).¹ The Committee was established to develop and disseminate best practices information and recommendations governing sexual assault evidence kits (“SAEKs,” commonly referred to as “rape kits” or “kits”) and Maryland’s overall response to sexual assault crimes.² Each year, 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 FY2024.⁴

Fiscal Year 2024 marked the SAEK Committee’s seventh year in existence. This year the Committee: (1) closed the FY2018 and continued implementation of the FY2021 Sexual Assault Kit Initiative (“SAKI”) grants; (2) launched the statewide sexual assault evidence kit tracking system; (3) offered prosecutorial training; (4) passed legislation related to the SAEK Committee’s work and developed a work group to implement the legislative mandates; (5) facilitated law enforcement compliance with annual reporting; and (6) developed new recommendations for the Committee’s future work.

¹ See S.B. 734, Chapter 659 (2017).

² See 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 2023.

I. SAKI Grant Update

This year, the SAEK Committee continued to fulfill its obligations under the FY2018 and FY2021 SAKI grants. The Sexual Assault Kit Initiative Grant (“SAKI”) is a federal grant program administered by the U.S. Department of Justice’s Bureau of Justice Assistance (“BJA”).⁵ BJA provides funding to reduce the number of untested kits nationwide and help jurisdictions implement best practices for SAEK testing and comprehensive reform in sexual assault cases.⁶ The SAKI project also seeks to provide resources to address cold case sexual assault investigations and prosecutions and improve victim⁷ notification protocols and services.⁸

Both of Maryland’s SAKI grants are the result of a partnership between the SAEK Committee and multiple State agencies and organizations. The Governor’s Office of Crime Prevention and Policy (“GOCPP”) is administering both grants. Under the SAKI grants, the Maryland Coalition Against Sexual Assault (MCASA) is responsible for the production and implementation of a statewide victim notification and engagement protocol, the Maryland State Police Forensic Sciences Division (MSP FSD) is responsible for establishing SAEK testing contracts and overseeing law enforcement compliance for most Maryland agencies with the Combined DNA Index System (CODIS), a DNA database maintained by the Federal Bureau of Investigation (FBI), and the Office of the Attorney General (“OAG”) serves as the SAKI Site Coordinator and oversees all aspects of the grants’ implementation.

⁵ *Bureau of Justice Assistance Sexual Assault Kit Initiative*, BUREAU OF JUSTICE ASSISTANCE, <https://bja.ojp.gov/program/saki/overview> (last visited December 1, 2022).

⁶ *Id.*

⁷ 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.

⁸ *Bureau of Justice Assistance Sexual Assault Kit Initiative*, BUREAU OF JUSTICE ASSISTANCE, <https://bja.ojp.gov/program/saki/overview> (last visited December 1, 2022).

A. SAKI 2018 Grant

Maryland first applied for SAKI grant funding in 2018. GOCPP applied for SAKI grant funding on behalf of the SAEK Committee. Maryland received \$2.6 million in SAKI grant funding to: (1) conduct a statewide inventory of unsubmitted⁹ kits; (2) test a portion of the unsubmitted kits; (3) establish a statewide tracking system; and (4) provide victim notification and services. As grant administrator, GOCPP applied for and was granted three (3) no-cost extensions due to the impact of the COVID-19 pandemic and spenddown issues related to SAEK testing. The final extension was applied for in the fall of 2023 and approved for one year. The closing date for FY2018 was September 30, 2024, with all invoices to be paid within 90 days of the grant's closure.

Under the FY2018 SAKI grant, the SAEK Committee received enough funding to test approximately 1,156 kits. Recognizing that this is only a small portion of Maryland's "backlog"¹⁰ of unsubmitted and untested kits, the Committee made a commitment to seek funding until all unsubmitted kits (that require testing) are submitted for testing. This included advocacy for additional state funding sources to cover SAKI-eligible¹¹ cases, such as the expansion of SAK-T funding that was passed by the legislature in 2023 and encouraging local law enforcement-based laboratories to apply for additional funding to complete testing of their backlog.

The original SAKI inventory completed in 2022 identified over 6,000 eligible kits for testing from fifty (50) law enforcement agencies, with a testing cost of \$1000 per kit.¹² As a result, it was determined that approximately 1,000 unsubmitted SAEKs could be tested with SAKI

⁹ The terms "untested" and "unsubmitted" will be used interchangeably in this report. Untested kits are kits that have not been tested. Unsubmitted kits are kits that have not been submitted to a forensic laboratory for testing.

¹⁰ Maryland does not have a backlog of untested kits in the traditional sense. 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 previously determined should not be tested.

¹¹ SAKI-eligible cases are for kits collected prior to May 1, 2018.

¹² As of November 30, 2024, this number has increased to \$1,089.00 due to inflation

FY2018 funds. To ensure access to this funding was equitable across law enforcement agencies, the SAEK Committee developed an allocation system based on funding availability and individual agency SAEK inventory. Based on funding availability and empirical data, MSP FSD established a testing protocol that allowed for the testing and analysis of five (5) samples from within a SAEK. The five selected samples would be screened to determine the two to three (2-3) best samples for analysis for possible development of CODIS-eligible DNA profile. Developed profiles would be compared to consensual partner and suspect samples that, at the start of the grant, were collected prior to sending kits for outsource testing.

After all spending, the State of Maryland will return approximately \$600,000 in unencumbered funds to BJA.¹³ Below the Committee will outline challenges affecting SAKI grant spenddown faced by partners during the grant period, successes during the grant period, and areas where partners have identified modifications to current practice that will increase spending under the FY2021 grant.

a. Challenges to Completion of the FY2018 Grant

The grant period for the FY2018 grant began in October of 2018. Once grant funding was received, work began to conduct a statewide inventory of SAEKs. The OAG hired investigators to complete this detailed inventory of each law enforcement agency with untested and unsubmitted SAEKs in their possession. The inventory, which was divided into four phases, began in March of 2019. By April of 2020, the OAG submitted both Phase One and Phase Two for certification by BJA. However, the remaining phases of the inventory were delayed due to the onset of the COVID-19 pandemic. Nonessential workers were required to telework, and many law enforcement and

¹³ The exact amount returned will be finalized upon completion of the grant closeout process in early 2025.

laboratory workers were restricting in-office hours. In addition to pandemic delays, internal personnel matters at one local law enforcement agency pushed back the certification of Phase Four and ultimately resulted in the creation of a Phase Five. This significantly delayed completion of the remaining 3 phases of the inventory, which were submitted and certified in March 2021, November 2021, and September 2022, respectively.

Procurement of the Track-Kit system was also delayed by the COVID-19 pandemic, the extended inventory completion timeline, and staffing changes at GOCPP. As a result, a contract was not signed with Track-Kit until October of 2023. Contract execution issues ultimately resulted in funds designated for the tracking system to go unspent under the FY2018 grant. GOCPP has since requested and been granted funding for the tracking system under the FY2021 grant.

In addition to pandemic and internal staffing delays, SAKI grant partners have dealt with low law enforcement engagement in parts of the state. While many agencies can be commended for their commitment to participating in the FY2018 grant—including, but not limited to, Prince George’s, Montgomery, Baltimore County, and Charles Counties—the OAG and its partners have struggled to reach others. The reasons for lack of engagement and disengagement vary. Some want to participate, but do not have the resources or time to work on cold cases in addition to their daily workload; others may not prioritize the testing of historical sexual assault evidence kits because of outdated perceptions they may have about the strength of the related cases. OAG and its partners are utilizing FY2021 funding to better engage agencies by employing cold case investigators, which is discussed below, and are making significant progress. For agencies who do not wish to engage in the process there may be continued challenges to test the historical kits in their possession.

b. Successes During the FY2018 Grant Period

While there were challenges to completing the grant, OAG and its partners had a significant number of successes under the FY2018 award. The OAG and Maryland Coalition Against Sexual Assault (MCASA) fully utilized initial SAKI funds and both agencies received and expended additional funding during calendar year 2024 to assist with project goals.

MCASA, the agency responsible for victim notification and engagement, was able to fully spend its FY2018 allocation to: develop a victim notification protocol that has received recognition for best practices; open a survivor opt-in information line for victims of sexual assault to receive information about their SAEK; utilize advertising methods including flyers (digital and print), social media, and billboards to inform the public about the opt-in information line; and develop training materials for law enforcement personnel, advocates, and other sexual assault service providers. Critically, MCASA provided victim notification and access to a crime victims' rights attorney to hundreds of survivors affected by the backlog of untested SAEKs during the course of the FY2018 grant. More information about MCASA's successes can be found in prior SAEK Committee Annual reports and later in the report below.

At the start of the grant period, OAG was responsible for hiring and completing a statewide inventory of sexual assault evidence kits. This process began in 2019. Despite multiple hurdles, including the pandemic and internal issues at agencies that required additional time, the initial inventory was completed prior to the end of the grant and under budget. The unused funds originally allocated for inventory purposes were reallocated to SAEK testing.

The State was also able to successfully procure, customize, and launch the Track-Kit tracking system during the FY2018 grant. Once the inventory was completed and the SAKI team

understood what systems would be appropriate for Maryland based on the size of the inventory, a system was successfully procured, the first year's contract was paid out, and Track-Kit was successfully launched in May of 2024. Nearly 800 SAEKs collected between May 2024 and November 2024 have been entered into Track-Kit, allowing survivors to anonymously track their SAEK through the testing process.

While the State did not test its initially projection of 1,000 SAEKs, it did manage to test 867 SAEKs using FY2018 grant funding. This was approximately 87% of the original testing goal under the FY2018 grant.¹⁴ An informal survey of law enforcement agency reveals that several hundred additional SAEKs were also tested during this same timeframe using other federal and private grant funding and local government funds.

c. Modifications to Testing Practices for FY2021

Testing previously unsubmitted SAEKs and uploading offender DNA profiles into CODIS is one of the primary goals of the SAKI grant. In January of 2024, it became clear to partners that the current testing and screening processes were slowing down the process of sending kits for outsourced testing. MSP FSD agreed at that time that it would suspend the request for consensual partner samples for kits submitted to MSP for testing under the SAKI grant. This policy change was conveyed to local law enforcement agencies in March of 2024. This process increased the number of kits submitted for testing significantly, with the rate of kits submitted in quarter one of 2024 more than doubling previous quarterly average rates.

¹⁴ As explained in more detail below, the rate at which SAEKs are being submitted for testing has since greatly increased thanks to the flexibility of the team at MSP FSD to update their policies during calendar year 2024 to modify pre-testing standards that allow kits to be prepared for testing more quickly.

However, even as this process moved forward and the number of kits submitted increased, data trends demonstrated that Maryland would be returning some portion of its grant award to BJA at the conclusion of the FY2018 grant. The focus shifted to ensure full expenditure of the FY2021 award. For example, to facilitate expedited testing, MSP agreed to move away from its original testing scheme entirely and switch to a modified “forklift” approach. This modified forklift approach removes the pre-screening/vetting process and allows for kits to be submitted and tested more quickly.

While this process does allow for expedited testing, it moves the identification and testing of known DNA standards to the back end of the testing process. As a result, there may be delays in the entry of DNA profiles into CODIS. Additionally, kits may accidentally slip through and be tested that are not eligible for CODIS entry or qualify for a testing exception under Maryland law. However, with a looming encumbrance deadline for SAKI FY2021, it was decided that the balance of quicker testing made sense for the project. The forklift approach will ensure that the maximum number of kits get tested under FY2021 without the delays of upfront information gathering.

With the implementation of this new policy, it is critical that local law enforcement agencies review all cases with an untested SAEKs to ensure that testing is appropriate and that the case does not meet a SAEK testing exemption.¹⁵ Cases deemed to meet an exemption must also involve the required sexual assault response team untested kit case review process.¹⁶ Additionally, an increase in testing costs will occur as the testing lab, Bode Technology Group (“Bode”), will now be screening all samples available in a SAEK for the presence of DNA instead of the original

¹⁵ MD Crim. Proc. §11-926

¹⁶ COMAR 02.08.03.03. *See also* Sexual Assault Evidence Kit Policy and Funding Committee: SAKI Kit Testing Order and Protocol <https://www.marylandattorneygeneral.gov/Pages/Groups/SAKI%20Grant%20Handout%20-%20Testing%20Order%20and%20Protocol.pdf>

testing procedure which only involved testing five (5) samples. This process will identify the 2-3 samples with the most foreign NDA present. Those samples will go on for further testing and, ideally, involve the development of a CODIS eligible DNA profile. Staff will also need to be hired to handle review of all cases once testing is complete and identify the need for consensual partner samples or continued testing needed. If DNA is identified in the kit, additional testing of consensual partner and suspect samples, as appropriate, will occur at an a la carte price. This will ultimately raise the cost per SAEK to approximately \$1,500 per SAEK; DNA testing of additional samples may result in additional charges ranging from \$474 for one sample to \$594 for two samples.

Using this strategy, we estimate that we will be able to test an additional 600-700 SAEKs under the FY2021 grant. Additional SAEK testing needed after grant funding is completed will be billed to the statewide SAK-T grant, however it is important to note that additional funds will be needed in the future to complete testing and investigation of Maryland's untested SAEKs.

B. SAKI 2021 Grant

Consistent with its commitment to pursuing continued funding for testing all eligible untested SAEKs, and assisted by GOCPP, the SAEK Committee submitted an FY2021 SAKI grant application. In December 2021, Maryland was awarded another \$2.5 million in SAKI grant funding to: (1) test additional SAKI grant kits; (2) hire investigators to offer investigative support to local law enforcement agencies; (3) continue victim notification and engagement; and (4) hire a Violent Criminal Apprehension Program ("ViCAP")/CODIS Hit Coordinator for the State. In 2024, GOCPP applied for and was awarded a one-year, no-cost extension to the FY2021 grant. The funding source will now conclude on September 30, 2025. It is critical that additional funding, whether state or federal, is obtained to ensure this work continues.

For the FY2021 grant, the SAEK Committee will continue to develop SAEK policies and work with stakeholders to implement all aspects of the grant. This includes a weekly SAKI partner meeting to discuss progress on FY2021 goals that includes representatives from OAG, MCASA, GOCPP, and MSP FSD. These partners share grant spending progress, accomplishments, and impediments to spending to ensure full encumbrance of FY2021 funding. These partners are also committed to securing continued funding to test remaining untested SAEKs, provide victim notification and engagement services, and support local LEAs with investigations. As SAKI FY2021 comes to a close, the Committee will consider and pursue additional funding sources.

a. SAKI Grant Testing Update

As noted above in the FY2018 grant update, testing of SAEKs under the FY2021 grant did not begin until after the expiration of the FY2018 grant in late 2024. This means that this year's report will include a limited set of data on kits submitted and will not currently reflect any kits with testing completed.

Even with limited data, however, the change in testing approach under FY2021 identified above has yielded a dramatic uptick in kits submitted for testing. As of December 11, 2024, Bode has advised that the State of Maryland has submitted 278 kits that will be billed under the FY2021 grant. All but four of these kits were submitted between October and December of 2024, after the new testing policy was implemented and published to law enforcement agencies. This is encouraging news for the future of the grant, particularly as more agencies continue to engage with SAKI partners to submit their kits directly to Bode for testing. We are hopeful that this is an indication of successful testing outcomes under the FY2021 grant.

Testing progress for SAKI-eligible kits can be viewed on MCASA’s SAKI Impact Map which provides inventory numbers for each county and law enforcement agency and includes testing progress numbers.¹⁷ This map is updated as testing data becomes available. It should be noted that this map only reflects SAEKs tested with SAKI funding and some LEAs may have tested more SAEKs with other funding sources.

b. Cold Case Investigators & ViCAP/CODIS Hit Investigator Updates

Pursuant to the FY2021 grant funding, OAG conducted a hiring process and ultimately hired two contractual CODIS Hit/Cold Case Investigators to help law enforcement agencies conduct investigations associated with previously untested SAEKs. They joined the OAG in July of 2023. One of the investigators resigned his post to move into another division of the OAG in February of 2024. A hiring process was undertaken in March 2024 and successfully identified a candidate for the position, who began work in May of 2024. As of November 30, 2024, the investigators have met with thirty-two (32) law enforcement agencies and one (1) hospital. As a result of these meetings, the investigators have been tasked with the investigation of three hundred sixty-five (365) cases from thirteen (13) agencies. The investigators have submitted a total of fifty-eight (58) kits for testing through November 30, with more expected before the end of the calendar year. They continue to meet with law enforcement agencies and work in collaboration with the Maryland State Police (“MSP”) to identify additional law enforcement agencies that may need support.

Additionally, with support from SAEK Committee Counsel and MCASA, the investigators identified a need for assistance with SAKI-eligible kits at the Department of Public Safety and

¹⁷ Maryland Coalition Against Sexual Assault, *Maryland SAKI Impact Map*. Available at: <https://mcasa.org/stats-info/maryland-saki-impact-map>

Correctional Services (DPSCS). The agency was not originally identified in the SAEK Committee's inventory conducted during the FY2018 grant period as possessing SAEKs. Over the course of three weeks, the investigators worked on site in the DPSCS records room in Savage, Maryland to review all SAKI-eligible cases in DPSCS's possession. They were able to catalog and review one hundred forty-two (142) cases from the agency that had never been reviewed before. The next step will be to determine eligibility for testing and work with DPSCS to outsource the kits to Bode, the state's SAEK testing outsource partner.

The MSP FSD, in conjunction with several local forensic laboratories¹⁸, is facilitating the process of testing kits and uploading qualifying DNA profiles into the Combined DNA Index System ("CODIS"). In 2023, MSP hired their ViCAP/CODIS Hit Coordinator to ensure that ViCAP entries are made and CODIS hits are tracked throughout the State. The ViCAP Coordinator hired in 2023 resigned effective May 1, 2024, to join a different division of Maryland Coordination and Analysis Center (MCAC) supporting anti-trafficking work. A new hiring process was undertaken, and a new candidate was successfully hired in November of 2024. The CODIS Hit/Cold Case Investigators and ViCAP coordinator, along with representatives from MSP and OAG, are working collaboratively to ensure all CODIS hits and ViCAP entries that result from the Investigators' work are appropriately catalogued.

c. MCASA Grant Update

The Maryland Coalition Against Sexual Assault ("MCASA") developed and implemented the Victim Notification Protocol under the FY2018 grant and continued that work under the FY2021 grant. This important work will end on September 30, 2025 unless federal funding is

¹⁸ These local laboratories include: Anne Arundel, Baltimore City, Baltimore County, Montgomery County, and Prince George's County.

renewed or other funds are allocated to support victim notification. More information on MCASA's progress under the SAKI grants is included in the Victim Notification Section of this report.

II. Sexual Assault Tracking System

Under the FY2018 grant, the SAEK Committee established the necessary requirements for Maryland's SAEK tracking system, thoroughly reviewed all available tracking systems, and worked with the Maryland Department of Information Technology ("DoIT") to develop a plan of action to implement a commercial product. In August of 2023, the Board of Public Works approved the signing of a contract with InVita Healthcare Technologies ("InVita") for implementation of the Track-Kit statewide tracking system. InVita's contract was signed in October of 2023.

After the signing of the contract, DoIT, GOCYVS, OAG, and other stakeholders began conducting regular meetings with representatives from InVita to affirm that the software met all procurement requirements and to develop a rollout strategy. These meetings occurred through the fall of 2023 all the way through to the late spring of 2024. InVita additionally held trainings for law enforcement, hospital representatives, and State's Attorneys Offices on a demonstration model of the Track-Kit system. Representatives from GOCPP and the OAG attended these meetings to answer additional questions on the logistics of the system and how it would work in Maryland. A brief trial rollout occurred in early to mid-May, with hospital systems, law enforcement, and State's Attorneys Offices each launching to the system in the weeks ahead to view and practice system use. The system was implemented and went live in Maryland on May 28, 2024 and SAEKs began being entered on that date. A press conference was held on June 20, 2024 with the Governor,

the Attorney General, and representatives from the General Assembly, the Maryland State’s Attorneys Association (MSAA), MCASA, and GOCPP to share the news of the launch.

Pursuant to the mandate of SB 615¹⁹, GOCPP and OAG began conversations with InVita to finalize work plans for uploading historical kit data to the tracking system, with a contract secured and signed to make the system changes in late fall 2024. OAG and GOCPP will conduct working calls with InVita and partners through the end of 2024 and the beginning of 2025 to ensure that all data is incorporated into the final data request from law enforcement for historical kit entry. Once the system modification is complete with all data points accounted for, an information request will be sent to all law enforcement agencies in Maryland to ensure all historical kit data is completed by December 31, 2025.

GOCPP shared tracking system data current through November 30, 2024 for the report. Since the system launched on May 28, 2024, 798 SAEKs were entered into Track-Kit across all twenty-four (24) jurisdictions in Maryland in addition to kits submitted to agencies outside of Maryland’s borders. The average turn-around time for law enforcement pickup from hospital is 7.08 days. Below is a list of kits entered into Track-Kit by county during the time the system has been live.

Allegany County	7
Anne Arundel County	62
Baltimore City	161

¹⁹ Md. Crim. Proc. 11-926.1(B)(2)

Baltimore County	75
Calvert County	5
Caroline County	4
Carroll County	17
Cecil County	20
Charles County	13
Dorchester County	1
Frederick County	30
Garrett County	3
Harford County	20
Howard County	45
Kent County	4
Montgomery County	106
Prince George's County	124
Queen Anne's County	8
St. Mary's County	7

Somerset County	2
Talbot County	5
Washington County	21
Wicomico County	12
Worcester County	11
Out of State ²⁰	35

III. Prosecutorial Training

In January of 2024, Committee Counsel received information about potentially harmful prosecutorial practices in a SAKI case. Specifically, counsel was informed that a victim of sexual assault was advised that a jury would not believe her because of her race. Upon receiving this news, counsel reached out to its technical assistance advisor through BJA to determine if any prosecutorial trainings could be provided to State’s Attorney’s Offices across Maryland through the Committee. BJA identified Julianna Peterson, who is a prosecutor in Fulton County, Georgia, and a fellow SAKI grantee. Counsel contacted Ms. Peterson and worked with her to craft a training module for Maryland State’s Attorneys. The module was approved by BJA in February of 2024, and MCASA agreed to act as the webinar platform host.

²⁰ GOCPP will review the number of out of state kits in Q1 2025. This number includes any kits that are identified as not belonging to one of the 24 county jurisdictions in Maryland and may reflect cases where the assault occurred out of state but was collected in Maryland and kits collected at federal facilities in state that are not under state jurisdiction for investigation.

On March 7, 2024, the Committee hosted Ms. Peterson’s Webinar, “Victim-Centered Best Practices for Prosecutors in Sexual Assault Cases,” with more than 70 attendees registered for the event. The event received excellent feedback, with one attendee writing:

I have been doing victim work for a long time, both on the advocacy side and the prosecution side, so I was interested to see if there were new things I could use. I was so happy to not only get new info but feel refreshed to take on this issue.

Ms. Peterson has since used the training module created for Maryland to conduct SAKI trainings with programs across the United States. The Committee is also interested in pursuing additional training opportunities for State’s Attorney’s Offices in 2025.

IV. Legislative Updates

In January of 2024, the SAEK Committee, in conjunction with their legislative partners, introduced two pieces of legislation in the Maryland General Assembly: HB1047, “Consumer Protection – Self–Administered Sexual Assault Evidence Collection Kits” (“HB1047”)²¹ and HB1127/SB950, “Sexual Assault Forensic Examinations Conducted Through Telehealth - Reimbursement and Study” (“HB1127”)²². Both pieces of legislation were passed by the General Assembly and signed into law by Governor Moore.

A. HB1047

²¹ H.B. 1047, 2024 Leg., 446th Session (2024)(enacted).

²² H.B. 1127, 2024 Leg., 446th Session (2024)(enacted).

HB1047's legislation was the byproduct of the passage of HB789 in 2023, which mandated that the SAEK Committee study the viability of self-administered sexual assault evidence kits and issue a report by December 1, 2023. Based on its study and the information collected, the Committee recommended in February of 2024 that legislation be passed to ban the sale, offer for sale, or distribution of self-administered sexual assault evidence kits. The bill was cross-filed with SB949.

First, HB1047 bans the sale, offer for sale, or distribution of commercially marketed self-administered sexual assault evidence kits. The Committee, after studying the contents of the self-administered kits and discussing potential pitfalls and benefits, determined that it was in the best interest of all Marylanders to ban self-administered sexual assault kits. The group chose to highlight commercially marketed kits because of deceptive trade practices observed by the group. However, the legislation does not eliminate the possibility that the state could explore a self-administered sexual assault evidence kit in the future by including a provision that allows the Maryland Department of Health to issue a kit in the future.

Second, the legislation makes the sale, offer for sale, or distribution of self-administered sexual assault evidence kits an unfair or deceptive trade practice subject to enforcement by the Consumer Protection Division of the Office of the Attorney General. In addition, any violations can be subject to up to a \$1,000 penalty per violation, with any funds being deposited into the Forensic Nurse Examiner Training Grant Program Fund through GOCPP.

Even though the self-administered sexual assault evidence kits were banned in the state of Maryland, the Committee did not want to punish a victim who may come across a kit through another means. If a victim were to procure a kit from a family member, a friend, or while in another state, the statute allows that victim to present the self-administered kit to law

enforcement and the state's attorney as potential evidence in a criminal trial. If the kit is ultimately used in trial, evidence cannot be presented that the kit is banned in Maryland. This allows for a trier of fact to determine the validity of the evidence without consideration for its illegality.

B. HB1127/SB950

While the Committee recognized the importance of banning commercially marketed self-administered sexual assault evidence kits, it also acknowledged that there was a lack of uniform Sexual Assault Forensic Exam (SAFE) services available across the state. The Committee therefore committed to exploring other alternate options that would expand access to SAFEs.

During the process of exploring commercially marketed self-administered sexual assault evidence kits, the Committee was introduced to and became interested in the concept of forensic telehealth services as a model to alleviate access issues in historically underserved or non-served communities in the state. Forensic telehealth services allow for an experienced forensic nurse examiner (FNE) to provide technical assistance to either a Registered Nurse (RN) or inexperienced FNE during a SAFE through teleconferencing software. This innovative strategy is already utilized in states with significant rural populations, such as Texas, Arkansas, South Dakota, and Alaska.

The Committee introduced HB1127/SB950 with the intent that it would explore whether forensic telehealth was feasible in any capacity in the state of Maryland. The bill set up a forensic telehealth feasibility working group and directed the group to issue a report no later than December 1, 2024, to describe the feasibility of the project and lay out plans on how to move the project forward. Additionally, the bill created for the first time a definition of "peer-to-peer

telehealth” which allows a certified FNE to provide a qualified healthcare provider with support while conducting a SAFE through telehealth technology. Finally, the bill provided for hospital systems to be able to explore forensic telehealth on their own time and institute programs if they so choose.

After the passage of the bill, the Committee formed a working group of professionals with areas of expertise in both adult and pediatric forensic care, law enforcement, government, and victim services. The working group began meeting bimonthly in late May of 2024 and continued working group meetings through the end of November. A summary of the working group’s recommendations surrounding forensic telehealth are included as Appendix A.

V. Law Enforcement Agency Reporting

The SAEK Committee also helped to facilitate law enforcement and forensic lab compliance with annual reporting this year. Each year, law enforcement agencies (LEAs) are required to submit a report to OAG providing the following information about the SAEKs in the LEAs custody:

- (1) The number of SAEKs in their possession as of June 30th of that calendar year.
- (2) The number of untested SAEKs in their possession as of June 30th of that calendar year.
- (3) The date each SAEK in its possession was received.
- (4) The number of SAEKs tested within the prior year as of June 30th of that calendar year.
- (5) The number of SAEKs not tested pursuant to each of the exceptions outlined in the statewide testing criteria.

(6) The number of any other kits that were not tested and the reason why those kits were not tested.

(7) Information about untested kit review:

- a. The number of untested kit reviews requested during the prior year as of June 30th of that calendar year;
- b. The written recommendation resulting from each of the untested kit reviews conducted during the prior year as of June 30 of that calendar year;
- c. The number of sexual assault evidence collections kits tested at the recommendation of an untested kit review;

(8) The number of kits destroyed in the prior year as of June 30th of that calendar year.

(9) The number of written requests received from victims requesting to be notified prior to the destruction or disposal of the evidence.²³

In July and August 2024, OAG sent an email to LEAs reminding them about this reporting requirement. The OAG also sent reminder emails in September of 2024 to those agencies who had not turned in their required reporting. As of November 30, 2024, OAG has received reports from 65 agencies and 1 letter certifying that the LEA did not have any SAEKs

²³ COMAR 02.08.04.01(B)(1)-(9).

in their custody.²⁴ This represents 90.4% of the 73²⁵ agencies that investigate sexual assaults.²⁶

For a summary of the data reported, see Appendix B. For a list of agencies that did not submit a report, see Appendix C.

Our initial analysis of the data suggests that there have been both positive improvements and consistent shortcomings regarding LEA compliance with SAEK policies. For example, agencies have maintained a steady rate of reporting in FY2024 from FY2023. FY2023 saw law enforcement reporting compliance at 91% compared to FY2022, which only saw 57% of agencies reporting, and FY2021, which only saw 59% of agencies reporting. This can be contributed to several factors, including continued support from MCASA in reaching out to law enforcement agencies and providing reminders of data reporting requirements; maintaining consistent contact and fostering relationships with law enforcement through both the OAG SAEK Committee Counsel and the OAG's cold case investigation team; law enforcement

²⁴The following LEAs submitted an annual report or letter: Aberdeen Police Department, Allegany County Sheriff's Office, Annapolis City Police Department, Anne Arundel Police Department, Baltimore Police Department, Baltimore County Police Department, Belair Police Department, Berlin Police Department, Boonsboro Police Department, Brunswick Police Department, Calvert County Sheriff's Office, Cambridge Police Department, Caroline County Sheriff's Office, Carroll County Sheriff's Office, Centreville Police Department, Cecil County Sheriff's Office, Charles County Sheriff's Office, Chestertown Police Department, Cumberland Police Department, Denton Police Department, Department of Public Safety and Correctional Services, Dorchester County Sheriff's Office, Easton Police Department, Elkton Police Department, Federalsburg Police Department, Frederick County Sheriff's Office, Frederick Police Department, Frostburg City Police Department, Garrett County Sheriff's Office, Greenbelt Police Department, Hagerstown Police Department, Harford County Sheriff's Office, Havre De Grace Police Department, Howard County Police Department, Hurlock Police Department, Hyattsville City Police Department, Kent County Sheriff's Office, Maryland Capitol Police, Maryland State Police, Maryland Transit Administration Police, Maryland Transportation Authority Police, Montgomery County Police Department, New Carrollton City Police Department, Ocean City Police Department, Pocomoke City Police Department, Prince George's County Police Department, Princess Anne Police Department, Queen Anne's County Sheriff's Office, Riverdale Park Police Department, Rock Hall Police Department, Salisbury Police Department, Salisbury University Police Department, Somerset County Police Department, St. Mary's County Sheriff's Department, St. Michaels Police Department, Sykesville Police Department, Talbot County Sheriff's Office, Thurmont Police Department, Washington County Sheriff's Office, Wicomico County Sheriff's Office, Worcester County Sheriff's Office, and Westminster Police Department.

²⁵ In March of 2024, the entirety of the Ridgely Police Department was suspended and ultimately terminated. All cases with the Ridgely Police Department were transferred to Caroline County Sheriff's Office.

²⁶ Please reference the SAEK Committee's 2020 Annual Report for the complete list of agencies that investigate sexual assaults. MARYLAND SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE, ANNUAL REPORT (2020), available at https://www.marylandattorneygeneral.gov/Pages/Groups/123019_SAEK_Committee_2020_Report.pdf.

willingness to comply and understanding of the importance of the mission of the SAEK Committee; and consistent follow-up with law enforcement agencies to obtain data. We look forward to many more years of working in partnership with agencies to ensure compliance and obtain data from every agency in Maryland.

Another positive improvement is that most agencies are submitting recent kits for analysis. The agencies that submitted an annual report (or letter) reported receiving a total of 1,471 SAEKs in FY2023. Of that total, 954 kits have either been tested or submitted for testing and are awaiting results. An additional 414 kits were reported to have not been submitted for testing based on one of the four exceptions to the statewide testing criteria. Therefore, this data suggests, 92.99% of the kits collected during FY2023 were submitted for testing in accordance with the statewide testing criteria.

Although there have been improvements regarding SAEK retention and analysis, some agencies could benefit from additional training on the statewide testing criteria. Unless one of the four statutory exceptions apply, the law requires that all SAEKs be submitted for testing. The four instances when a SAEK should not be tested are: (1) there is clear evidence disproving the sexual assault; (2) the facts alleged, if true, could not be interpreted to constitute a crime of the facts alleged, if true, could not be interpreted to violate a provision of Title 3, Subtitle 2, Title 3, Subtitle 3, Title 3, Subtitle 6, or Title 11, Subtitle 3 of the Criminal Law Article; (3) the victim declined to give consent for analysis; and (4) 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 case.²⁷

²⁷ Crim. Proc. § 11-926(e)(1)-(4).

Notwithstanding this statutory requirement, some LEAs provided additional reasons for not testing a SAEK. Of the 1,471 kits collected in FY2022, 103 kits²⁸ were not submitted for testing based on a reason outside of the four testing exemptions. Some of the reasons provided were valid reasons such as: (1) the sexual assault occurred in another jurisdiction; (2) the case is pending an internal Untested Kit Review; and (3) the kit is currently pending testing. Other reasons, however, were inconsistent with the statewide testing criteria such as: “the suspect was charged with assault;” “the victim declined to cooperate;” and the “State’s Attorney declined to prosecute.” The first two reasons clearly do not constitute a valid basis not to test a SAEK. Additionally, without more information regarding the basis for the prosecutor declining to test the kit or why the victim in the case is no longer engaging with law enforcement, there is no way to determine if this basis meets one of the exemptions. For example, per SAEK Committee guidance, the inability to contact a survivor or speak to them is not a sufficient reason not to test the SAEK. Conversely, a determination by the State’s Attorney that the facts alleged do not constitute a crime would be sufficient. Overall, most of the additional reasons provided are currently²⁹ sufficient to explain why a kit collected in FY2023 has not been submitted for analysis. The SAEK Committee will hold another training on the statewide testing criteria to ensure that all kits are submitted for testing in accordance with the testing criteria.

Discouragingly, for the second time in two years, the SAEK Committee has received information that a law enforcement agency destroyed a sexual assault evidence kit before the 75-year retention period that met no other exceptions. When asked about the reason for destruction

²⁸ There were an additional 8 kits where the LEA did not provide a reason why the kit was not tested.

²⁹ The word currently is used here to mean at the time of this report. Some of the reasons LEAs provided for not submitting a SAEK for analysis will not be sufficient as time progresses. For example, if an LEA has not submitted a kit for analysis because the case is being investigated, this reasoning may not be a sufficient basis in a few months or in a year.

outside statutory exceptions, the department notified the OAG that the kit had been destroyed incorrectly and identified the destruction as “a mistake.” The agency identified that their evidence room also sought opinion on the destruction of the kit from their county State’s Attorney’s Office and that the State’s Attorney’s Office supported the destruction. OAG has contacted MCASA to navigate the case going forward regarding notification and is working with partners to develop additional law enforcement training. The destruction of the kit concerns the Committee and emphasizes the need for continuing law enforcement and prosecutorial education. The OAG will work with MCASA to release an FAQ document and informational fliers to help LEAs and State’s Attorney’s Offices determine the appropriate time to destroy a SAEK.

With the creation of the tracking system, the SAEK Committee is hopeful that LEAs will be able to prepare annual reports more easily. This should improve overall compliance, fix insufficiencies concerning the required data, and minimize the burden placed on LEAs to compile these reports. FY2025 will be the first time that law enforcement agencies will be able to provide complete data on kits collected and their status from the tracking system, as the tracking system launched near the end of FY2024.

VI. MCASA Victim Notification Reporting

Under Maryland’s Sexual Assault Kit Initiative (SAKI) grant, the State was required to establish a victim (survivor) notification program that enhances accountability and transparency by providing victims with access to information about their untested sexual assault evidence kit

(SAEK).^{30, 31} The Maryland Coalition Against Sexual Assault (MCASA), who received funding through SAKI FY20188 and FY2021 grants, leads these notification efforts in Maryland.

Upon receipt of funding, MCASA began researching notification protocols implemented by other SAKI grantees and best practices established by organizations like the Joyful Heart Foundation. This research helped shape the Maryland SAKI Survivor Notification Protocol (“notification protocol”) which was approved by the Bureau of Justice Assistance (BJA) and published by MCASA in 2020.³² This protocol provides guidance to service providers, including law enforcement personnel and advocates, on how to contact Maryland survivors affected by the backlog of untested SAEKs to foster healing and empowerment and provide access to information. The protocol is currently under revision to incorporate changes associated with new SAEK testing approaches.

The Maryland notification protocol utilizes a “notify all” approach. This means that attempts are made to notify every survivor about their previously untested SAEK regardless of the presence of foreign DNA or prosecutorial decisions. This decision was made based on survivor focus groups conducted by the Joyful Heart Foundation in which the majority of survivors expressed the belief that they deserve to know what happened to their SAEK and any testing results that were available.³³ MCASA incorporated this research, and the belief that

³⁰ National sexual Assault Kit Initiative (SAKI) Competitive Grant Announcement FY 2018, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/saki18.pdf>

³¹ National sexual Assault Kit Initiative (SAKI) Competitive Grant Announcement FY 2021, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/O-BJA-2021-94003.pdf>

³² The State of Maryland Sexual Assault Kit Initiative, Survivor Notification Protocol (2020). https://mcasa.org/assets/files/Maryland_SAKI_Notification_Protocol_-_Oct_2021_final.pdf (currently under revision).

³³ Joyful Heart Foundation. *Navigating Notification: A Guide to Re-engaging Sexual Assault Survivors Affected by the Untested Rape Kit Backlog*, Apr. 2016, https://issuu.com/thejhf/docs/navigatingnotification?utm_medium=referral&utm_source=www.endthebacklog.org

survivors of sexual assault are resilient and capable of determining what information they want to receive about their SAEK, into the foundation of the victim notification protocol.

A. Notifications

Contact with survivors can occur in two ways. The first is through MCASA's SAKI opt-in information line available by toll-free phone and confidential email.³⁴ This opt-in process allows survivors to reach out to MCASA's notification team, which consists of a program manager, victim advocates, and a dedicated historical/cold case staff attorney, to request information about their SAEK. During this opt-in process survivors are empowered to outline their contact preferences which include how, when, and why they will be contacted and by whom. Survivors are also able to indicate if they would not like to be contacted for any reason.

In cases where a survivor has not utilized MCASA's opt-in information line, an MCASA SAKI advocate will attempt to contact each survivor through an advocate-initiated notification process using available contact information. This outreach is done in a discrete, victim-centered and trauma-informed manner that acknowledges the sensitivity required to contact survivors about a traumatic event that occurred up to 46 years ago.³⁵ To be trauma-informed, and in acknowledgement that survivors may have had negative experiences with law enforcement personnel during the investigation, the protocol requires that all initial contact is made by a trained confidential community-based victim advocate. This allows survivors to express any concerns, frustrations, or disappointment about their case with a confidential advocate or crime

³⁴ Maryland Coalition Against Sexual Assault. *SAKI Information Lines Open*, Oct. 26, 2020. <https://mcasa.org/news/post/saki-information-lines-open>

³⁵ Maryland's inventory of untested SAEKs indicates at least one law enforcement agency has maintained possession of SAEKs collected in 1980. The oldest case from an opt-in request is 1979. MCASA assists law enforcement and survivors with cases more recent than 2018 as the notification protocol was built on principles that should be utilized in all cases, regardless of the year of the assault. The year of the assault does not affect MCASA's ability to provide services and support.

victims' rights attorney not associated with the criminal justice system. Professionals associated with the criminal justice system, such as law enforcement personnel, state's attorney's office representatives, or a system-based advocates should not be making initial contact with survivors and contact by these individuals should only take place with the survivors' permission and in accordance with their contact preferences.

All survivors who are contacted by the MCASA SAKI notification team, and all those that utilizes the opt-in information line, are provided with information for local support services, such as those offered by the local certified rape crisis center, population-specific advocacy organizations, and legal support options through the Sexual Assault Legal Institute (SALI). These support services are critical as notification is not always a one-time event. Some individuals have questions about their case and their legal options, or they are in need of other services like counseling, therapy, or crisis intervention. Even if a survivor is not interested in meeting with a crime victims' rights attorney or receiving support services from a rape crisis center, MCASA SAKI advocates conduct follow-up calls and check-ins with the survivor if they are interested. This demonstrates an understanding that survivors may need time to process information received during notification and that symptoms of re-traumatization may develop over time. It also assures survivors that they are not forgotten, and they will receive continued support in whatever manner is helpful to them. This is especially critical when survivors have requested time to consider how they would like to proceed with their case. MCASA SAKI advocates always follow the lead of the survivor when following-up, emphasizing that the survivor is in control of this process.

If federal SAKI funds are not awarded in 2025, notification efforts will need to be funded through other sources, otherwise, the work will stop abruptly. This would affect survivors

previously contacted under the SAKI 'FY2018 or SAKI FY2021 award that requested time to consider how they would like to proceed and would mean that thousands of survivors are unable to receive information about their untested SAEK in a trauma-informed manner that provides access to a confidential victim advocate and crime victims' rights attorney.

B. Notification Types

Efforts are made to contact every survivor about their previously untested SAEK; however, the circumstances and timing of the notifications may vary.

a. Pre-testing notification:

During the first five and a half years of the Maryland SAKI project, survivors were contacted for pre-testing notification purposes in four circumstances:

1. Consensual partner information is needed to help ensure that any foreign DNA obtained through testing does not belong to a consensual partner. Notifications were conducted prior to SAEK submission for testing.
2. A survivor's DNA sample is needed so their DNA profile is identifiable and distinguished from a consensual partner(s) or offender(s).
3. Law enforcement will be collecting a DNA sample from a suspect or documented consensual partner. MCASA strives to inform survivors of this before samples are collected for safety and privacy purposes. This eliminates a survivor learning of their untested SAEK through a current or former partner or suspect and prioritizes survivor safety.

4. The survivor signed a waiver of investigation (now prohibited in Maryland)³⁶ or otherwise requested the investigation stop and, as a result, their SAEK was not tested.

b. Consensual Partners

After testing delays and spenddown concerns, SAEK testing procedures under the Maryland SAKI project changed in October 2024. This shift, which allows all previously untested SAEKs to be submitted directly to the forensic laboratory without undergoing pre-screening requirements, means that pre-testing notifications will no longer take place for consensual partner purposes unless there is another pre-testing reason to also contact a survivor. Law enforcement agencies have instead been instructed to submit SAEKs for testing and to concurrently submit notification requests to MCASA for consensual partner information. This process prevents SAEKs from remaining in law enforcement possession until consensual partner information is obtained. Instead, MCASA can begin reaching out to survivors as appropriate after submission for testing.

Previously, MCASA advocated that notification for consensual partner information take place after testing is completed. This is because survivors contacted for consensual partner information often have a more extreme negative reaction to notification, and decreased likelihood of engagement with the project, when compared to other pre-testing notification types. MCASA SAKI advocates have found that survivors contacted for consensual partner information often expressed feelings of shame if they could not remember their consensual partner(s) from the weeks before the assault, were more fearful of reengaging with the process if their former

³⁶ MD. Code Ann., Crim. Proc. § 11-929(b)(1)-(4).

partner(s) were going to be asked to provide samples, and expressed feeling that they were never believed when they reported the assault because they were not previously asked about partners.

MCASA has expressed a belief that survivors would be more likely to engage with the SAKI project and provide consensual partner information if they were contacted once testing was completed. This way, survivors would not be asked about partners unnecessarily (e.g., no foreign DNA profile was obtained) and notification of their testing result being available might increase the likelihood of engagement in cases where a foreign DNA profile is obtained.

Although current procedures still require law enforcement to submit notification requests for consensual partner samples once a SAEK is submitted for testing, MCASA will be able to inform each survivor that is contacted that their SAEK is already at the lab for testing. This will provide reassurance that the state has taken steps to ensure the SAEK is tested and that the case is being taken seriously. MCASA will continue to evaluate this pre-testing notification process for consensual partner information in an effort to ensure contact occurs at a time that is least likely to cause retraumatization and when appropriate information is available for survivors to make informed decisions regarding their disclosure of consensual partner(s) and decide their level of engagement with the project.

c. Waivers of Investigation or Requests that an Investigation Stop

Pre-testing notification for cases involving a signed waiver of investigation or other documentation that the survivor requested that their investigation stop is required. These pre-testing notifications allow for a conversation with each survivor about the status of their SAEK, the subsequent prohibition of waivers of investigation in Maryland, and the opportunity to request that the SAEK be tested. MCASA advocates conducting these notifications have found

that many survivors who signed a waiver of investigation were unaware that their SAEK was never tested. Survivors often expressed feeling confused or betrayed as it was not explained to them that their SAEK was not tested prior to being presented with a waiver. Survivors have also noted that they made requests for investigations to stop based on their well-being at the time, but they are interested in pursuing testing today.

However, not all survivors who signed waivers or made requests for investigations to stop are interested in having their SAEK tested now. Some survivors have noted that they signed a waiver or made a request to stop the investigation knowingly and understanding that their SAEK had not been, and would not be, tested. This is why it is important for pre-testing notification in these cases. It ensures survivors are informed about their untested SAEK and gives them an opportunity to express their current wishes.

If MCASA is unable to make contact with a survivor who signed a waiver of investigation or made a request for the investigation to stop, MCASA recommends that the SAEK not be submitted for testing and be retained for a minimum of 75 years in accordance with state law.³⁷ This ensures that survivors who were not successfully contacted can still come forward at a later time should they wish to discuss SAEK testing options. With this approach, there is no violation of the survivors' original wishes while still providing survivors with opportunities to request testing in the future.

d. Testing Results Notification

If a case does not require pre-testing notification, then attempts to contact the survivor do not begin until testing is complete, and results are available. In these cases, survivors are

³⁷ MD. CODE ANN., Crim. Proc. §11-926(d)(2).

informed that their SAEK was identified through the SAKI project as untested, their SAEK has now been tested, and they are able to receive information about the testing results and their case.

During these notifications, and all notifications, survivors are not forced to engage with the project nor receive information about their SAEK. In fact, survivors are encouraged to engage as they see fit, and advocates will honor their wishes. In many cases, survivors request time to consider if they would like to receive new information about their case. Other survivors immediately decide whether they want to receive the new information or not.

Survivors who choose to receive information about their case are given options for proceeding. All survivors are offered the opportunity to meet with law enforcement to discuss their case, the testing results, and any questions they may have. Survivors can choose to have an MCASA SAKI advocate, crime victims' rights attorney, or support person present during that meeting. Some survivors meet with law enforcement independently, but MCASA always follows-up with each survivor to discuss the information received, any questions that may not have been addressed, and options for legal and support services. In some cases, survivors request to receive information about their SAEK from the MCASA SAKI advocate as they are not comfortable speaking with law enforcement. In these cases, survivors may choose to meet with law enforcement once they receive the results, while others do not engage with law enforcement at all.

C. Challenges

The Maryland SAKI project launched in 2018 and, after five and a half years, there are still significant challenges in regard to victim notification. In particular, only 35 of the 52 law enforcement agencies identified as having untested SAEKs in their possession have engaged

with MCASA for victim notification purposes. While this is an increase from last year when only 27 agencies were engaged,³⁸ MCASA aims to see engagement from all 52 agencies and for all SAKI cases. This would ensure a statewide, trauma-informed, uniform approach to victim notification that gives each survivor an opportunity to learn about their SAEK. If federal funds are not awarded in 2025 for the SAKI project, it is critical that other funding sources are identified to support the continued work of the MCASA SAKI advocates and historical/cold case staff attorney and the OAG SAKI Investigators. Otherwise, a statewide approach that provides all survivors with an opportunity to receive information about their SAEK will not be achieved, as this is dependent on engagement from all law enforcement agencies that investigate sexual assault and handle SAEKs.

Of the 35 agencies currently engaged with MCASA for notification purposes, some are only engaged under limited circumstances or for a very small percentage of their cases. For example, agencies may only utilize MCASA for pre-testing notifications but not for cases in which testing has been completed or vice versa. This means that not all survivors are being notified about their SAEK by a confidential victim advocate and with access to a crime victims' rights attorney or other support services, which is the foundation of the notification protocol. Additionally, cases requiring pre-testing notifications are either being disregarded or submitted for testing without appropriate contact with the victim. This has, unfortunately, resulted in survivors' wishes being violated and their safety being jeopardized.

Additionally, the notification protocol clearly indicates that survivors should be empowered to make the choices that are best for them and that those choices should be honored.

³⁸ This increase is largely thanks to the work of the OAG SAKI Investigators that have dedicated their time supporting local law enforcement agencies in this work.

However, some agencies are unwilling to honor a survivors' wish for advocacy support or attorney representation. Specifically, requests that information be conveyed through, or in the presence of, an MCASA SAKI advocate or attorney are not being honored by all law enforcement agencies. In some cases, this has resulted in withholding of information, while in other cases survivors have been contacted outside of their contact preferences. This has resulted in some survivors not receiving timely updates about cases that took place decades ago, and, in some cases, causing actual harm through retraumatization and systemic revictimization. In extreme cases, survivors have even given up their hope of ever getting answers and, as result, have completely disengaged from the project they initially sought to obtain answers from.

To address these challenges, encourage compliance with the notification protocol, and increase SAEK testing, MCASA, in collaboration with the OAG, MSP FSD, and GOCPP, began hosting statewide SAKI law enforcement meetings in the summer of 2024. These meetings are hosted by MCASA and held bi-monthly to address emerging issues and challenges. In September 2024, MCASA presented information on the victim notification protocol with the goal to increase engagement and address questions. MCASA will continue to provide opportunities for training and technical assistance to SAKI project partners, local law enforcement, and other service providers in an effort to increase engagement. However, if new federal funding is not awarded in 2025, these statewide law enforcement meetings will be jeopardized. Other funding sources will need to be identified to ensure law enforcement agencies continue to be adequately updated about SAEK testing and victim notification efforts.

D. Successes

Every notification, regardless of if it is advocate-initiated or through survivor use of the opt-in information line, includes an apology. This apology is not only an acknowledgement of

the pain and uncertainty every survivor with an untested SAEK experienced but is also an acknowledgement of the violation they experienced as a victim of sexual assault. It is during this part of the notification process that survivors often become emotional indicating that they never received an apology or acknowledgement of their pain before. It is during these vulnerable moments that survivors often begin to share their experiences. They tell stories of how they were violated by strangers, family members, partners, and friends. They tell stories of how the system failed them and how they have carried the emotional (and often physical) scars for years. It is not uncommon that survivors indicate that they had never received support through counseling or therapy after the assault, and sometimes the notification is the mechanism that prompts someone to seek support services and begin to truly heal.

The importance of providing survivors with information about their SAEK cannot be emphasized enough. Victim notifications involve important conversations that survivors do not have access to without the notification protocol in place. If additional federal funds are not awarded after SAKI FY2021 grant ends, other funds will be needed to support continued victim notification efforts and the MCASA opt-in information line that allows survivors to contact an advocate if they have questions about their SAEK.

E. SAEK Tracking System

In 2024, the Governor's Office of Crime Prevention and Policy launched a statewide sexual assault evidence kit tracking system, Track-Kit. This tracking system allows survivors to track their SAEK as it moves through the testing process. It provides critical insight that has never been available to survivors before. All SAEKs collected in the state of Maryland after the launch of Track-Kit are required to be entered into the system. Additionally, there are statutory requirements that all historical SAEKs be entered into the system by December 31,

2025.³⁹ MCASA and the SAEK Committee have identified the importance of providing survivors with the login information for the tracking system once their SAEK is entered. This will mean reaching out to survivors who had a SAEK collected before the tracking system was launched. MCASA intends to lead these efforts using the victim notification protocol developed for previously untested SAEKs. While the process for these notifications is still to be determined, it should be noted that funding to support this work will be needed. If federal SAKI funds are not awarded in 2025, other funding will be needed to fill the gaps and ensure that survivors will be notified and provided with information to track their SAEK.

F. Survivor Feedback Survey

MCASA has implemented a survivor feedback survey for the notification process. This survey, which was launched earlier this year, allows survivors who have been contacted about their untested SAEK to provide anonymous feedback about their experience. MCASA regularly monitors these responses to ensure the notification protocol is both effective and trauma-informed. To date, 100% of respondents indicated that they were “extremely satisfied” with the victim notification process, 100% of respondents indicated that the MCASA SAKI Advocate addressed their questions and needs, and 100% of respondents indicated that the notification process helped them feel more supported and informed. If funding is not available after SAKI FY2021 grant closes, survivors will lose access to a notification process that survey respondents indicated was beneficial to them and helped them feel more informed and thousands of survivors will continue to be left with unanswered questions about their SAEK.

³⁹ MD. Code. Ann., Crim. Proc. §11-926.1(b)(2).

MCASA will continue to give all survivors the opportunity to complete the feedback survey with a goal to increase response rates. Currently, response rates are relatively low and MCASA hopes to obtain more feedback in order to ensure the notification protocol is properly evaluated and incorporates feedback directly from survivors.

VII. Subcommittee Activities & New Recommendations for FY2023

A. Availability of Exams and Shortage of Forensic Nurse Examiners (“FNE”) Subcommittee

The SAEK Committee was created, in part, to recognize that "sexual assault evidence collection exams are unavailable at many hospitals"⁴⁰ and "there is a shortage of forensic nurse examiners qualified to perform sexual assault evidence collection."⁴¹ As a result, the FNE subcommittee has focused its efforts on increasing access to sexual assault forensic exams (SAFEs) and expanding the FNE workforce in Maryland. This work includes collaboration with partner agencies, including the Maryland Board of Nursing ("BON") and the Governor's Office of Crime Prevention and Policy ("GOCPP"), to address FNE training and certification, SAFE reimbursement policies, and access to HIV prevention medication known as non-occupational post-exposure prophylaxis ("nPEP").

In 2024, the subcommittee focused on previously issued recommendations, including drug-facilitated sexual assault (DFSA) toxicology testing, SAFE reimbursement policies and procedures, workforce issues, and survivor rights. The newly implemented statewide SAEK

⁴⁰ MD. Crim. Proc. §11-927(b)(3)

⁴¹ MD. Crim. Proc. §11-927(b)(4)

tracking system (Track-Kit), changes in SAEK retention requirements, and the development of a telehealth program for SAFEs (teleSAFEs) also received special attention.

a. Prior Recommendation Updates:

i. Drug Facilitated Sexual Assault (DFSA)

In the SAEK Committee 2019 Annual Report, the FNE subcommittee reported on a survey conducted by the Maryland Hospital Association ("MHA"). The survey revealed that no Maryland hospitals could complete toxicology screening "in-house". Ten hospitals reported independently outsourcing toxicology testing for DFSA cases.⁴² The laboratories used for toxicology screening included national reference laboratories like ARUP Laboratories and NMS Laboratories or clinical laboratories (e.g., Quest Diagnostics). The Committee also surveyed 15 law enforcement agencies ("LEAs"). None could complete toxicology testing "in-house," and two agencies reported outsourcing DFSA-related toxicology testing to another lab. These survey results revealed a gap in toxicology testing services available to survivors of sexual assault and vulnerability in pursuit of a well-informed investigation of DFSA cases in Maryland.

Since 2019, the FNE subcommittee has strived to develop recommendations to ensure a uniform statewide approach to DFSA toxicology testing. The GOCPP Sexual Assault Reimbursement Unit (SARU) provided an informal agreement to reimburse hospitals for outsourced forensic toxicology testing. However, there was no formal guidance on the reimbursement requirements. This lack of guidance meant that some hospitals were requesting reimbursement for toxicology screening but still needed to receive reimbursement. In contrast,

⁴² Sexual Assault Evidence Kit Policy and Funding Committee Annual Report: January 2019.
https://www.marylandattorneygeneral.gov/Pages/Groups/2019_SAEK_Committee_Annual_Report.pdf

others refrained from implementing a toxicology testing procedure due to a lack of guaranteed reimbursement from SARU. As a result, survivors who experience a DFSA are likely only to receive appropriate toxicology testing for their medical forensic care and subsequent investigation of the crime in a handful of Maryland jurisdictions.

This year, GOCPP collaborated with the FNE subcommittee to develop and finalize reimbursement guidance for DFSA toxicology testing. This guidance (once finalized) will reimburse toxicology screening through SARU for blood and urine samples collected within specified timeframes and submitted to a lab with a "Forensic Laboratory License issued by the Maryland Department of Health Office of Health Care Quality."⁴³

These reimbursement guidelines expand toxicology testing options for potential DFSA cases statewide. The FNE subcommittee recommends that GOCPP update the Maryland Sexual Assault Forensic Exam and Non-Occupational Post Exposure Prophylaxis (nPEP) Reimbursement Guidance Document⁴⁴ to include information on DFSA.

The FNE subcommittee remains committed to continuing education and training related to DFSA cases. In prior years, MCASA hosted training about DFSA best practices. Additional training with toxicology experts will help ensure continued education for new FNEs and detectives and identify changes in best practices and policy recommendations.

⁴³ Governor's Office of Crime Prevention and Policy, Sexual Assault Reimbursement Unit. *Drug-Facilitated Sexual Assault Testing Reimbursement Guidelines*. Retrieved from: <https://gocpp.maryland.gov/wp-content/uploads/DFSA-Guidelines.pdf>

⁴⁴ Governor's Office of Crime Prevention and Policy, Sexual Assault Reimbursement Unit. *Maryland Sexual Assault Forensic Exam and Non-Occupational Post Exposure Prophylaxis Reimbursement Guidance Document*. Retrieved from: <https://gocpp.maryland.gov/wp-content/uploads/SAFE-Guidance-Document.pdf>

ii. Sexual Assault Forensic Exam (SAFE) Reimbursement

This year, GOCPP made substantial changes to update the SARU's reimbursement forms. The FNE subcommittee recommends that GOCPP host a webinar or virtual training to inform SAFE Programs about the new forms and implementation tips and to make changes to the Maryland Sexual Assault Forensic Exam & Non-Occupational Post Exposure Prophylaxis (nPEP) Reimbursement Guidance Document.

The last SAFE reimbursement regulations update was in 2009. The FNE subcommittee recommends reviewing and updating these regulations as soon as possible.

iii. SAFE Options and SAEK Rights

In 2021, the FNE subcommittee developed a *Sexual Assault Forensic Exam Resource Guide for SAFE Programs* ("Resource Guide")⁴⁵ to assist FNEs (and qualified healthcare providers) in meeting statutory and regulatory requirements related to informing victims about SAEK laws and medical forensic care options.

The resource guide includes a model form titled "Understanding Your Options: An Overview of the Sexual Assault Forensic Exam Process." This form describes each component of the SAFE process, including reporting options for victims (including anonymous exams), HIV testing and treatment, SAEK testing, retention and destruction laws, and follow-up care options. It also has space to list the contact information for the appropriate law enforcement agency responsible for investigating the crime.

⁴⁵ Sexual Assault Evidence Kit Policy and Funding Committee Annual Report: January 2021.
https://www.marylandattorneygeneral.gov/Pages/Groups/010421_SAEK_Committee_2021_Report.pdf

In 2024, the FNE subcommittee updated this form to reflect new policies and practices, such as the new 75-year SAEK retention period. The form was also updated to include more explicit language related to SAEK testing and information on the statewide SAEK tracking system, Track-Kit. Additionally, MCASA updated the "Your Sexual Assault Evidence Kit: Know Your Rights" brochure, which explicitly outlines SAEK laws and survivor rights.

SAFE Programs that use the "Understanding Your Options: An Overview of the Sexual Assault Forensic Exam Process" form and provide survivors with MCASA's "Your Sexual Assault Evidence Kit: Know Your Rights" brochure satisfy the statutory and regulatory requirements that require health care providers to give victims specific written information regarding SAEK laws⁴⁶, the untested kit case review process,⁴⁷ and contact information for the investigating law enforcement agency.⁴⁸

In 2025 the FNE subcommittee will consider surveying all SAFE Programs to determine how each program meets these statutory and regulatory requirements to provide survivors with specific written information at the time of the SAFE. SAFE Programs are encouraged to use the model form and MCASA's "Your Sexual Assault Evidence Kit: *Know Your Rights*" brochure to adequately meet all requirements. However, the use of program developed forms is permitted. This survey will help ensure each program is meeting the minimum requirements and that all survivors have access to this critical information after receiving a SAFE.

A copy of the updated form and brochure are in Appendix E.

⁴⁶ MD. Crim. Proc. §11-926(b)(2)

⁴⁷ COMAR 02.08.01.03(A)(3)

⁴⁸ MD. Crim. Proc. §11-926(b)(1)

iv. The Maryland Board of Nursing should reconvene the FNE Stakeholder Group

Each year the FNE Subcommittee issues recommendations to improve and streamline the certification process for FNEs. Acknowledging certification delays and concerns related to outdated training requirements, the BON began hosting bi-monthly FNE Stakeholder meetings. These meetings allow SAFE Program Managers and FNEs to meet with the BON to discuss concerns, barriers, and recommendations.

Under legislation passed during the 2023 session, the Board of Nursing was moved under the leadership of the Maryland Secretary of Health and underwent other significant operational and infrastructure changes that delayed stakeholder meetings.⁴⁹ The BON has agreed to resume these meetings in 2025, and will work with MHA and MCASA to ensure that Maryland FNEs receive information about these meetings. Topics for discussion will include refresher courses available for RNs seeking to reinstate an expired FNE certification, developing a standardized form for peer reviews, and more.

b. New Recommendations:

i. SAFE programs should maintain a record of each patient's Track-Kit barcode identifier within the patient forensic record.

In May 2024, the statewide SAEK tracking system, Track-Kit, was launched. This system allows FNEs, law enforcement, crime labs, prosecutors, and survivors to track a SAEK from collection through transfer to law enforcement, testing, and transfer to long-term storage.⁵⁰ The system's design includes a barcode for kit tracking that protects a survivor's personal

⁴⁹ SB960/HB611 (2023).

⁵⁰ MD. Crim. Proc. §11-926.1

information. Patients are given this unique identifier and a temporary password during a SAFE. When survivors log into Track-Kit, a new password is required, further protecting their identity and access to kit information. They can use this information to log into Track-Kit and monitor the status of their SAEK.

The FNE subcommittee recommends that all SAFE Programs keep a record of the Track-Kit kit identifier number in patient records. Once an SAEK is entered into the system, the information is not linked to a particular person. Therefore, if log-in information is lost, it can only be retrieved by opening SAEKs and reviewing SAEK paperwork.

This recommendation will ensure that tracking information can be easily retrieved if a survivor loses their log-in information. The updated "Understanding Your Options" form for SAFE Programs now includes a space to document this information. The FNE subcommittee also recommends that law enforcement maintain the barcode information in case files and support survivors who decide to share their kit identifier with an advocate.

ii. The FNE subcommittee should develop a recommendation for medical record retention and privacy best practices

In 2023, the SAEK Committee supported legislation that extended the storage requirement for SAEKs from 20 to 75 years.⁵¹

The FNE subcommittee supported the increased SAEK retention period to 75 years; now, concern has emerged that the associated medical records might be destroyed sooner in alignment with medical record retention regulations.⁵² SAEKs tested years after collection without the medical record will have lost critical correlational assessment information. Maryland allows

⁵¹ SB789/HB758 (2023). *See also MD. Crim. Proc. §11-926(d)(2)*.

⁵² [2024 Regular Session - House Bill 149 Chapter](#)

survivors to receive an anonymous exam and pursue a criminal investigation by reporting to police during the 75-year retention period, a vastly different timeframe than medical record retention requirements. Patients who participate in this anonymous sexual assault examination process but do not report to police within the mandated medical record retention timeframe are especially at risk. The FNE subcommittee will explore issuing a recommendation regarding medical record retention in 2025.

iii. FNE certification and training regulations should be updated to align with current practice for training FNEs.

A SAFE Program identified a concern regarding conflicting regulations that negatively impact the training of FNEs. Maryland Board Of Nursing regulations prohibit an RN from performing the activities of an FNE.⁵³ However, clinical requirements published on the BON website for FNE-Adult/Adolescent⁵⁴ and FNE-Pediatric certification⁵⁵ require a trainee "to independently perform a pediatric/adult/adolescent sexual assault forensic exam observed by a Maryland Board of Nursing certified RN-FNE or other medical provider that has been deemed an expert in the field." Training requirements for pediatric certification state that FNE candidates must complete a minimum of four exams, and adult/adolescent certification requires three exams, one can utilize a gynecologic training associate (GTA).

Although training requirement documents indicate that observation of complete exams is acceptable, it is preferred that RNs in training for FNE certification conduct exams with appropriate supervision. This method allows the RN to demonstrate the integration of all didactic learning and skills before performing exams independently. Regulations should be updated to

⁵³ COMAR 10.27.21.09

⁵⁴ https://mbon.maryland.gov/Documents/fnetp_adult.pdf

⁵⁵ https://mbon.maryland.gov/Documents/fnetp_pediatric.pdf

allow for RNs training to become FNEs to conduct SAFEs and receive support through teleSAFE options.⁵⁶ Training requirements, last updated in 2009, should also be reviewed and updated to ensure alignment with regulatory and statutory requirements.

iv. FNEs pursuing certification or continued education should have access to statewide training and a clinical skills lab.

While updates to regulation and training requirements for FNE certifications are needed, the FNE subcommittee also recognizes the barriers some RNs face when seeking their initial certification or when renewing FNE certification. Nurses must observe, assist, and conduct a minimum number of exams, depending on certification type (FNE-A, FNE-P, or FNE-AP), and perform supervised vaginal speculum insertions. These barriers also affect certified FNEs seeking to renew their certification.^{57, 58, 59}

Due to the FNE workforce structure, most FNEs and RNs working to become certified work full-time jobs and only have an on-call schedule for SAFEs. This limits the nurse's opportunity to complete the requirements within the required time frames based on their on-call schedule or the volume of cases within the community.

The FNE subcommittee recommends developing a statewide training program to fill the education and training opportunity gap. This program should include using GTAs for vaginal speculum insertion requirements and exam conduction as permitted by the BON. Training

⁵⁶ MD. Crim. Proc. §11-1007(4)

⁵⁷ COMAR 10.27.21.03

⁵⁸ COMAR 10.27.21.07

⁵⁹ Training requirements based on certification type (pediatric or adult/adolescent) can be found at: Maryland Board of Nursing Forensic Nurse Examiner Training Program – Adult/Adolescent, https://mbon.maryland.gov/Documents/fnetp_adult.pdf and Maryland Board of Nursing Forensic Nurse Examiner Training Program – Pediatric. https://mbon.maryland.gov/Documents/fnetp_pediatric.pdf

related to providing expert testimony, practice, policy updates, and medical forensic care to underserved populations should also be available. The BON should consider approving the International Association of Forensic Nursing (IAFN) online Sigma courses. These courses follow the IAFN educational guidelines for FNE-A practice. The courses provide 40 hours of didactic learning which includes sessions led by subject matter experts from around the United States.⁶⁰ With the approval of these courses, Maryland RNs will have expanded options for training courses that are flexible.

v. Stakeholders and agencies responsible for FNE and SAFE Program activities, including certification, training, and reimbursement, should promptly communicate policy or practice changes and allow for field feedback.

FNE subcommittee chairs have identified inter-agency communication as a barrier to FNE workforce support and increased accessibility to SAFEs. Agencies that oversee various portions of SAFE practices (i.e., FNE certification and SAFE reimbursement) and change requirements or practices need to improve clarity and timely communication. When not provided with timely updates, the FNE workforce may use outdated information that can negatively impact SAFEs and FNE certification. To help improve lines of communication, MCASA has developed a quarterly FNE newsletter that includes information on emerging issues, training and employment opportunities, and any other updates related to medical forensic care and FNE certification. The FNE Subcommittee recommends promptly communicating information related to updates or changes in practices, policies, or procedures for FNE certification, training, SAFE reimbursement, or other related areas. This can be done through the BON, MHA, and MCASA's

⁶⁰ “Sexual Assault Forensic Exam—Online Course.” Sigma Marketplace. Last modified 2025. <https://www.sigmamarketplace.org/sexual-assault-forensic-examiner-program---online-course>

newsletter. All updates should include a feedback period and proposed effective date, ensuring that FNEs and SAFE Programs have time to issue recommendations, questions, or concerns.

vi. TeleSAFE Work Group

The FNE Subcommittee, which includes representation from almost all SAFE Programs in Maryland, strives to build the FNE workforce and increase survivor access to SAFEs. Many FNE subcommittee members have and will continue to participate in the teleSAFE work group with continued teleSAFE exploration. For more information on the teleSAFE work group, please see section IV(B).

B. Testing Subcommittee

The Testing Subcommittee continued work on its prior recommendations from 2023 and began work on new recommendations to continue its work in 2025. Updates from the subcommittee's prior work and recommendations for continued work are discussed below.

a. SAEK Transfer Timeframe – Hospital to LEA

During calendar year 2023, the Committee discussed how Maryland's 30-day time frame for transfer of SAEKs from the hospital to law enforcement setting is longer than the national standard. According to research conducted by MCASA, most jurisdictions have a statutorily mandated 72-hour transfer window for SAEKs from the hospital of origin to law enforcement. Such a window allows hospitals with limited storage capacity for SAEKs to move them into the custody of a law enforcement agency with a designated space for evidence storage. When this conversation began last year, both FNEs and law enforcement identified concerns with shortening the window from 30 days to 72 hours due to current constraints around transport of kits between jurisdictions. The group identified that it wanted to understand better the average

turnaround in Maryland for a SAEK between hospitals and law enforcement before making a decision to move forward on a policy recommendation.

The implementation of Track-Kit has provided some data on average turnaround times in the state from hospitals to law enforcement possession. With an average turnaround time of 7.08 days, it is clear that Maryland is not ready for a change from 30 days to 72 hours; however, the subcommittee will work to engage with partners to ensure that there is consensus on a path forward to lowering the average turnaround time.

b. Definition of a Fully Tested Versus Partially Tested SAEK

During calendar year 2024, one need that was identified by the subcommittee was to ensure there was a uniform definition of a fully tested SAEK versus a partially tested SAEK. This was to ensure that all laboratories in the state of Maryland could be on the same page on what constitutes a fully versus a partially tested SAEK and make decisions for additional testing based on those definitions. Additionally, this is critical to ensuring that survivors have clear and accurate information about their SAEK. In March of 2024, the subcommittee reached out to BJA to determine whether there was a federally recognized definition of a fully tested SAEK. It also sought the opinion of BJA on whether a definition existed for a partially tested SAEK.

BJA, in response, provided the following definition for a partially tested SAEK: “A SAK [sexual assault kit] that has only been subjected to serological screening, or that has previously been tested with non-CODIS-eligible DNA methodologies (e.g., RFLP or DQ Alpha). Partially tested SAKs are within the scope of the required inventory for SAKI.” However, BJA also replied that it did not have a federally recognized definition of a fully tested SAEK, and that

would be something Maryland would need to develop on its own. Conversations on the definition of a fully tested SAEK will continue in calendar year 2025.

c. **Development of Victim Information Q&As for Sexual Assault Evidence Kit Testing**

During the September 2024 quarterly meeting of the SAEK Committee, MCASA identified that several issues with waivers of investigation, testing, and/or prosecution of sexual assault cases. Specifically, MCASA reported that 1) two agencies were continuing use of written waivers of investigation and prosecution despite the SAEK Committee working with legislators to pass legislation outlawing the practice in the 2020 legislative session; and 2) another agency was contacting victims whose cases were not going to be prosecuted and offering a verbal waiver of investigation and testing of their SAEK.

The OAG began working on a Q&A document to publish on its website and provide to both law enforcement and State's Attorney's Offices outlining the law on written and oral waivers. A draft of that document was shared with subcommittee members in early December for approval and any additional concerns to be addressed that arose from document review. The final Q&A will be published on the Committee's website and distributed to impacted stakeholders in early 2025.

In addition to the Q&A document for law enforcement, concerns were raised on whether victims understood their rights surrounding the testing of their kit and outcomes that may be associated with the testing of a kit. Such outcomes include whether a victim wishes to be contacted in the future if there are probative DNA results found; if they do, how law enforcement contact should happen; and if not, what will happen to their kit and the ability for evidence from their kit to be used to assist in another investigation. MCASA's notification protocol and

associated survivor feedback will serve as a reference point for victim contact and contract preferences. The group agreed that a Q&A document should be produced by the subcommittee for approval and publication on this topic to help victims better understand the intricacies of testing their SAEK. The development of this document will begin in 2025.

d. LEA to Lab Transfer Window

An additional question raised at the September 2024 quarterly meeting was a request for interpretation of Maryland Criminal Procedure 11-926(g)(1). Specifically, this statute addresses the time frame that a law enforcement agency must transfer a SAEK from its possession into the possession of a forensic laboratory. The language of the statute currently states that the law enforcement agency shall “submit the kit and all requested associated reference standards to a forensic laboratory for analysis within 30 days of receipt of the kit and all requested associated reference standards.”⁶¹ A county SART requested interpretation because their interpretation of the statute was that the law enforcement agency’s window to submit did not begin until after both the kit and the associated samples had been collected, rather than that the law enforcement agency had 30 days overall to submit all pieces of evidence.

While Committee Counsel and MCASA met with the agency and addressed their interpretation of the issue, the agency stated that it wished for an opinion to be issued by the SAEK Committee. The transfer window issue is also included in the Q&A document cited above and a review was conducted of the original hearings that preceded the passage of the statute regarding transfer windows. The review identified that the original legislative intent was that all pieces of evidence would be conveyed to the lab within 30 days of law enforcement obtaining possession of

⁶¹ Md. Crim. Pro. 11-926(g)(1).

the SAEK. Meaning, that once law enforcement possesses a SAEK, it must be submitted to a forensic laboratory within 30 days, regardless of the status of necessary reference samples. Although LEAs should aim to collect the necessary samples within the same 30-day window. The Q&A document includes a recommendation that the law be clarified by statute or regulation to reflect the original intent and the intent of the Committee on the issue. The Committee is currently exploring the best strategy for providing this clarification.

C. Funding Subcommittee

The Funding Subcommittee continues to work on and update its projects from 2024. It also fully supports and incorporates recommendations related to its initiatives already addressed in the report, including initiatives related to the tracking system, SAKI funding, and initiatives to support FNE/SAFE program implementation and build-out, and the forensic telehealth program.

a. SAK-T Funding

During calendar year 2023, a representative from Maryland State Police (“MSP”) identified that there had been challenges related to spending down the state-issued Sexual Assault Kit – Testing (SAK-T) funding issued by the state of Maryland for the purposes of testing SAEKs in the one-year grant period. After this identification, OAG coordinated a meeting with forensic lab directors from across the state, which took place on October 20, 2023. This meeting included lab directors from Anne Arundel County and Baltimore City, both of whom elected not to take SAK-T Funding in FY2023 due to challenges spending that money in prior fiscal years. Both agencies said that they could use the money but felt restricted by the one-year time frame and prior late dispersals of that funding that prevented them from spending the money before the end of the fiscal year. Other labs articulated the same challenges and also

stated that they wished for additional flexibility in how that funding is spent so that they could expand facilities and hire more staff with the funding.

After this meeting, OAG contacted GOCPP and requested a meeting with the lab directors, OAG, and GOCPP to see how best this fund could be utilized. That meeting took place on November 15, 2023. During that meeting, GOCPP explained that SAK-T is a special non-lapsing fund that would allow for either extensions or a potential change in the grant period from one to two years to allow labs to spend that money down. GOCPP, OAG, and the labs agreed to continue meeting in the new year to address changes around the SAK-T funding pool.

OAG, GOCPP, and the laboratories met on three occasions between April and June of 2024 to further discuss SAK-T funding. In those conversations, laboratory staff and directors agreed that they would be more motivated to use SAK-T funding if it were easier to access, had a longer period of use (two years versus one year), and had an expanded area of use. Labs were particularly interested in expanding SAK-T to allow capital funding use. While the labs articulated that equipment and staffing were helpful uses, they were rapidly running out of space to make the purchase of additional equipment or the hiring of additional staff impractical. Without the addition of capital funding, the labs articulated that they were stagnant in their ability to expand services for the testing of SAEKs.

This information was presented to GOCPP as a recommendation in its efforts to amend the SAK-T legislation in the 2025 session.

b. Centralized Anonymous Kit Storage Facility

c

The subcommittee has identified the potential need for a centralized storage facility in prior annual reports. However, in those reports, no consensus had been reached regarding what

types of kits would be stored in that facility and whether that type of storage would be needed at all.

After the passage of SB789 and the increase in kit retention from 20 to 75 years, the Committee began to hear additional concerns from law enforcement agencies regarding space to store kits for this length of time. This is true both for agencies who store a significant number of kits and whose kit numbers increase by hundreds of kits every year as well as agencies who have a small amount of storage but have a steady increase of kits over multiple years.

In 2024, the subcommittee conferred with both law enforcement and prosecutorial partners on the Committee to determine what types of kits would be best suited to a centralized storage facility. Prosecutorial partners expressed concern about moving kits from law enforcement possession where an active investigation or potential appeal was associated. They expressed that it would be necessary for such a kit to be accessible to attorneys. They therefore determined that kits best suited for centralized storage would be anonymous kits.

During the summer of 2024, the Committee's legislative partner, Delegate Bartlett, shared with the subcommittee that she spoke with the State Archives as a potential option for centralized storage of anonymous SAEKs. She had also contacted the Department of General Services ("DGS") regarding facilities for the centralized storage. Committee Counsel contacted DGS and State Archives and set up a meeting with the subcommittee in August of 2024.

The subcommittee met with DGS and State Archives to discuss options for centralized storage for anonymous SAEKs. It was determined that there could be a potential partnership between all parties to identify and set up centralized storage, but that more conversations would

need to be had to understand the security and temperature specifications as well as location, access, and budget. Those meetings will begin again in 2025.

c. **Contractor Funding - Enrolling Historical Kits in Statewide Tracking System**

As noted above, the OAG, along with GOCPP, have continued work on the Track-Kit system as required by SB615 since the system's launch. A part of this process has been identifying what processes will need to be implemented to comply with SB615's mandate of enrolling all kits both before and after October 1, 2023, into the Track-Kit system. To remain in compliance with the legislation, all historical kits must be enrolled by December 31, 2025.

Over the course of the year, OAG has had conversations with GOCPP and InVita to identify potential needs for enrolling the historical kits into the system. In these conversations, InVita shared that it has previously created a spreadsheet system for historical kit upload in another jurisdiction. The spreadsheet system allows law enforcement agencies to enter multiple kits into the tracking system at a time. Once the kits are uploaded into Track-Kit, GOCPP can assign barcodes to each kit uploaded and provide barcode stickers to law enforcement agencies for application to the outside of the kit. This system will be less arduous than previously anticipated and there is no longer a need for contracted workers to upload kits into the system.

Appendix A

Summary of Report Recommendations to Legislature & Governor's Office on SB789

Summary of SAEK Committee Report: HB1127/SB950

For additional information on the below recommendations, please see the SAEK Committee's report submitted to the General Assembly.

Summary of Forensic Telehealth Feasibility Working Group Recommendations

- 1. Build an FNE training center and curriculum to allow for practice opportunities for apprentice and new FNEs as well as those who need additional training.**
- 2. Institute a forensic nursing accessibility hotline in collaboration with rape crisis centers.**
- 3. Pilot an FNE-to-FNE forensic telehealth model to provide support to apprentices, new FNEs, and FNEs who need additional guidance in providing an exam.**
- 4. In tandem with the FNE-to-FNE forensic telehealth model, develop a pilot program for FNE-to-RN forensic telehealth, prioritizing low or no access areas.**
- 5. Develop separate protocols for pediatric forensic telehealth in tandem with the adult forensic telehealth protocols to ensure delivery of appropriate services.**

**Appendix B
LEA FY2024 Annual Report Data**

Law Enforcement Agency	Total Number of SAEKs (Including Tested & Untested)	Date Range for SAEKs in Agency's Custody	Total Number of Kits Collected between July 1, 2023 - June 30, 2024	Total Number of FY2024 Kits Tested July 1, 2023 - June 30, 2024	Total Number of Kits Tested in FY2024	Total Number of FY2024 SAEKs Not Tested between July 1, 2023 - June 30, 2024 Pursuant to an Exception Under the Statewide Testing Criteria	Total Number of FY2024 SAEKs Not Tested between July 1, 2023 - June 30, 2024 for Other Reasons	Total Number of SAEKs Destroyed between July 1, 2023 - June 30, 2024 Not in Accordance with the Law	Total Number of FY2024 SAEKs Pending Testing⁶² at end of June 30, 2024
Aberdeen Police Department	64	2001 - 2024	8	5	8	1	1	0	1
Allegany County Sheriff's Office	Additional Data Needed		8	4	11	4	0	0	0
Annapolis Police Department	Additional Data Needed	2000 – 2024	15	15	15	0	0	0	0
Anne Arundel Police Department	2048	1999 – 2024	94	32	92	24	1	0	37
Baltimore City Police Department	Additional Data Needed	1995 – 2024	370	229	723	89	7	0	45
Baltimore County Police Department	1697	1992 - 2023	164	5	873	47	1	0	111
Belair Police Department	22	2014 - 2024	2	2	0	0	0	0	0
Berlin Police Department	27	2009-2020	0	0	0	0	0	0	
Boonsboro Police Department	Additional Data Needed		0	0	0	0	0	0	0
Brunswick Police Department	25	2009 – 2023	0	0	0	0	0	0	0
Calvert County Sheriff's Office	40	2018-2024	5	0	0	5	0	0	0
Cambridge Police Department	Additional Data Needed	1998 – 2024	8	5	5	1	2	0	0
Caroline County Sheriff's Office	Additional Data Needed	-2023	7	3	3	3	1	0	0
Carroll County Sherriff's Office	219	2012 - 2024	28	9	12	14	5	0	0
Centreville Police Department	Additional Data Needed	-2024	1	0	0	1	0	0	0

⁶² Pending testing means that the law enforcement agency submitted the SAEK to the lab for testing and is waiting for the analysis to be completed.

**Appendix B
LEA FY2024 Annual Report Data**

Cecil County Sheriff's Office	100	2010 - 2024	9	7	7	1	1	0	0
Law Enforcement Agency	Total Number of SAEKs (Including Tested & Untested)	Date Range for SAEKs in Agency's Custody	Total Number of Kits Collected between July 1, 2023 - June 30, 2024	Total Number of FY2023 Kits Tested July 1, 2023 - June 30, 2024	Total Number of Kits Tested in FY2024	Total Number of FY2024 SAEKs Not Tested between July 1, 2023 - June 30, 2024 Pursuant to an Exception Under the Statewide Testing Criteria	Total Number of FY2024 SAEKs Not Tested between July 1, 2023 - June 30, 2024 for Other Reasons	Total Number of SAEKs Destroyed between July 1, 2023 - June 30, 2024 Not in Accordance with the Law	Total Number of FY2024 SAEKs Pending Testing⁶³ at end of June 30, 2024
Cumberland Police Department	93	2012 – 2024	11	5	5	6	0	0	0
Denton Police Department	26	2003 – 2024	3	1	1	2	0	0	0
Department of Public Safety and Correctional Services	Additional Data Needed		24	10	10	2	11	0	1
Dorchester County Sheriff's Office	9	2009 – 2024	3	2	2	1	0	0	0
Easton Police Department	Additional Data Needed	-2024	3	2	5	0	1	0	0
Elkton Police Department	55	2002 – 2024	4	1	1	0	3	0	0
Federalsburg Police Department	0	N/A	0	0	0	0	0	0	0
Frederick County Sheriff's Department		– 2024	22	4	4	7	11	0	0
Frederick Police Department	420	1990-2024	26	10	26	10	6	0	0
Frostburg City Police Department	25	2007-2023	1	0	0	1	0	0	0
Fruitland Police Department	14	2010 – 2023	0	0	0	0	0	0	0
Garrett County Sheriff's Office	24	2013-2023	2	0	1	0	2	0	0
Greenbelt Police Department	Additional Data Needed	-2024	7	2	2	4	1	0	0
Hagerstown Police Department	119	2018 – 2023	23	8	8	4	8	0	3
Harford County Sheriff's Office	Additional Data Needed	1983 – 2024	22	4	5	16	2	0	0
Havre De Grace Police Department	51	2001-2023	0	0	0	0	0	0	0
Howard County Police Department	1144	1989-2024	59	24	28	13	13		9

⁶³ Pending testing means that the law enforcement agency submitted the SAEK to the lab for testing and is waiting for the analysis to be completed.

**Appendix B
LEA FY2024 Annual Report Data**

Law Enforcement Agency	Total Number of SAEKs (Including Tested & Untested)	Date Range for SAEKs in Agency's Custody	Total Number of Kits Collected between July 1, 2023 - June 30, 2024	Total Number of FY2024 Kits Tested July 1, 2023 - June 30, 2024	Total Number of Kits Tested in FY2024	Total Number of FY2024 SAEKs Not Tested between July 1, 2023 - June 30, 2024 Pursuant to an Exception Under the Statewide Testing Criteria	Total Number of FY2024 SAEKs Not Tested between July 1, 2023 - June 30, 2024 for Other Reasons	Total Number of SAEKs Destroyed between July 1, 2023 - June 30, 2024 Not in Accordance with the Law	Total Number of FY2024 SAEKs Pending Testing⁶⁴ at end of June 30, 2024
Hurlock Police Department	8	2015-2023	0	0	0	0	0	0	0
Hyattsville City Police Department	74	1999-2024	5	2	2	1	2	0	0
Kent County Sheriff's Office	Additional Data Needed	-2024	2	1	1	0	0	0	0
Maryland Capitol Police	Additional Data Needed	-	0	0	0	0	0	0	0
Maryland State Police	329	1996 – 2024	38	13	13	17	0	0	8
Maryland Transit Administration Police	Additional Data Needed		0	0	0	0	0	0	0
Maryland Transportation Authority Police	Additional Data Needed	-2024	1		0	1	0	0	0
Montgomery County Police Department	3153	1979-2024	195	49	85	54	3	0	89
Ocean City Police Department	Additional Data Needed	2008 - 2024	10	4	4	6	0	0	0
Ocean Pines Police Department	7	2007-2022	0	0	0	0	0	0	0
Pocomoke City Police Department	4	2016 – 2022	0	0	0	0	0	0	0
Prince George's County Police Dept.	4894	1981 - 2024	191	22	596	49	0	0	120
Princess Anne Police Department	Additional Data Needed	-2024	1	0	0	1	0	0	0
Queen Anne's County Sheriff's Office	Additional Data Needed	2009 - 2024	7	3	3	0	2	0	2
Riverdale Police Department	0	n/a	0	0	0	0	0	0	0

⁶⁴ Pending testing means that the law enforcement agency submitted the SAEK to the lab for testing and is waiting for the analysis to be completed.

**Appendix B
LEA FY2024 Annual Report Data**

Law Enforcement Agency	Total Number of SAEKs (Including Tested & Untested)	Date Range for SAEKs in Agency's Custody	Total Number of Kits Collected between July 1, 2023 - June 30, 2024	Total Number of FY2023 Kits Tested July 1, 2023 - June 30, 2024	Total Number of Kits Tested in FY2024	Total Number of FY2024 SAEKs Not Tested between July 1, 2023 - June 30, 2024 Pursuant to an Exception Under the Statewide Testing Criteria	Total Number of FY2024 SAEKs Not Tested between July 1, 2023 - June 30, 2024 for Other Reasons	Total Number of SAEKs Destroyed between July 1, 2023 - June 30, 2024 Not in Accordance with the Law	Total Number of FY2024 SAEKs Pending Testing⁶⁵ at end of June 30, 2024
Rock Hall Police Department	Additional Data Needed	Additional Data Needed	0	0	0	0	0	0	0
Salisbury Police Department	400	1987 - 2024	16	8	8	5	1	1	2
Salisbury University Police Department	4	2012 – 2019	0	0	0	0	0	0	0
Somerset County Sheriff's Office	7	2016 - 2024	1	1	0	0	0	0	0
St. Mary's County Sheriff's Office	203	2006 - 2024	19	12	12	7	0	0	0
St. Michaels Police Department	6	2011 - 2022	0	0	0	0	0	0	0
Takoma Park Police Department	Additional Data Needed	2007 – 2023	0	0	0	0	0	0	0
Talbot County Sheriff's Office	27	2001 - 2022	2	2	2	0	0	0	0
Thurmont Police Department	9	2013 - 2022	4	4	4	0	0	0	0
University of MD Eastern Shore Dept. of Public Safety	13	2008 - 2022	0	0	0	0	0	0	0
Washington County Sheriff's Office	85	2006 - 2022	16	11	11	2	3	0	0
Westminster Police Department	17	2001 - 2022	6	3	3	1	2	0	0
Wicomico County Sheriff's Office	134	1988 – 2023	20	1	1	11	8	0	0
Worcester Sheriff's Office	35	1991 - 2023	7	1	1	4	2	0	0
Total	N/A	N/A	1471	526	2124	414	103	1	428

⁶⁵ Pending testing means that the law enforcement agency submitted the SAEK to the lab for testing and is waiting for the analysis to be completed.

Appendix B
LEA FY2024 Annual Report Data

Additional Data Needed	LEA only provided data for FY2022. Therefore, additional data is needed.
-	Entire Report Provided Insufficient Data

Appendix C

List of Agencies Who Investigate Sexual Assaults and Did Not Submit an Annual Report

LEAs That Did Not Submit an FY2023 Annual Report

List of law enforcement agencies that did not submit an Annual Report for FY2022 but advised in 2020 that their agency investigates sexual assaults.

1	Crisfield Police Department
2	Eastern Shore Hospital Center Police Department
3	Fruitland Police Department
4	Havre de Grace Police Department
5	Takoma Park Police Department
6	University of Maryland Eastern Shore Department of Public Safety

Appendix D MCASA

Victim Notification Data

Victim notification Data⁶⁶	2020	2021	2022	2023	2024⁶⁷	Total
Number of successful notifications	0	21	91	146	76	334
Number of closed cases ⁶⁸	0	25	102	193	150	470
Number of requests from law enforcement for pre-testing purposes	32	335	72	14	39	492
Number of requests from law enforcement for testing results	0	101	116	115	118	450
Number of requests from law enforcement for other reasons ⁶⁹	0	2	7	1	4	14
Number of requests from law enforcement for cases more recent than April 30, 2018 ⁷⁰	0	3	3	3	29	38
Total number of requests from law enforcement	32	441	198	133	190	994
Number of Notification Attempts	0	150	660	960	414	2184

Of the 52 law enforcement agencies that were identified as having untested SAEKs in their possession, 35 had engaged with MCASA for victim notification as of September 30, 2024. Most of this increased engagement is thanks to the work of the OAG SAKI Project Investigators and the support they provide to local law enforcement agencies.

Law Enforcement Agency	Number of Notification Requests Submitted from October 1, 2023 – September 30, 2024⁷¹	Number of notification requests Submitted in total⁷²
Aberdeen Police Department	0	5
Allegany County Sheriff's Office	2	2
Annapolis City Police Department	0	4
Anne Arundel Police Department	2	47

⁶⁶ Data presented in this table may differ slightly from data published in previous SAEK Committee Annual Reports. This is because cases are constantly reevaluated and reclassified as needed. These reclassifications may be due to conversations with law enforcement to obtain case information and clarify notification reasons. Examples include cases previously submitted for consensual partner information, later determined to incorporate a signed waiver of investigation or vice versa, report date corrections, “testing results pending” cases that complete testing, and more.

⁶⁷ Data calculated for 2024 is from January 1, 2024, through September 30, 2024.

⁶⁸ Some cases may be closed without a successful notification. Examples include when notification is deemed unnecessary (e.g., survivor is now deceased or after 4 unsuccessful notification attempts were made). In cases where 4 unsuccessful notifications are made, notifications may resume at a later date or if the survivor contacts MCASA through the opt-in lines.

⁶⁹ Cases that are classified as “other” include cases where a pre-testing notification was submitted but upon review of the case it was determined that it was not necessary to contact the survivor before testing (“testing results pending”) or when a SAEK was destroyed prior to the SAEK retention requirements of 75 years, or the SAEK was lost and unable to be located. These numbers may not match case numbers presented in previous SAEK Committee Annual reports as cases initially classified as “testing results pending” were reclassified once results were available.

⁷⁰ While the SAKI grant provides funding to test untested SAEKs from cases older than May 1, 2018, MCASA can provide conduct victim notification in cases with SAEKs collected on May 1, 2018, through present day in order to support efforts to prevent a future backlog from accruing and ensuring all eligible SAEKs are tested in accordance with Maryland’s SAEK testing criteria.

⁷¹ Some agencies stopped engaging with MCASA for notification purposes as they sent the allotted number of kits they were provided for testing or because they have no remaining kits that require notification (e.g., Salisbury University Police Department).

⁷² Data only calculated through September 30, 2024.

Appendix D MCASA

Victim Notification Data

Baltimore City Police Department	10	10
Baltimore County Police Department	0	194
Cambridge Police Department	3	3
Carroll County Sheriff's Office	27	47
Cecil County Sheriff's Office	10	10
Charles County Sheriff's Office	3	171
Chestertown Police Department	3	3
Cumberland City Police Department	4	13
Department of Public Safety and Correctional Services ⁷³	0	0
Easton Police Department	1	7
Elkton Police Department	1	3
Frederick Police Department	13	36
Federick County Sheriff's Office	1	3
Hagerstown Police Department	1	2
Harford County Sheriff's Office	0	8
Howard County Police Department	37	197
Maryland State Police	0	31
Montgomery County Police Department	3	4
Ocean City Police Department	5	11
Prince George's County Police Department	38	105
Queen Anne's County Sheriff's Office	0	6
Salisbury Police Department	0	2
Salisbury University Police Department	0	1
St. Mary's County Sheriff's Office	14	24
Talbot County Sheriff's Office	0	9
UMBC Police Department	0	2
UM College Park Police	0	2

⁷³ Department of Public Safety and Correctional Services, with the support of the OAG SAKI Investigators, began submitting notification requests to MCASA in November 2024. They are listed here to acknowledge their engagement despite not submitting requests prior to September 30, 2024.

Appendix D MCASA

Victim Notification Data

UM Eastern Shore Police	6	6
Washington County Sheriff's Office	0	5
Wicomico County Sheriff's Office	5	20
Worcester County Sheriff's Office	1	1
Total	240	1046

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: 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 having 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: Will I be informed about the testing of my kit?

A: You have the right to request that law enforcement notify you when they decide whether your kit will be tested. 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: 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.

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 75 years after the evidence is collected. However, you are entitled to request that law enforcement keep your kit beyond 75 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 75 years?

A: Law enforcement may destroy your kit prior to the 75 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*



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Appendix E MCASA

“Your Sexual Assault Evidence Kit: *Know Your Rights*” brochure

Appendix F

“Understanding Your Options – An Overview of the Sexual Assault Forensic Exam Process” Form

Appendix F

“Understanding Your Options – An Overview of the Sexual Assault Forensic Exam Process” Form

Patient label

Insert your hospital logo here

Understanding Your Options:

An Overview of the Sexual Assault Forensic Exam Process

As a patient seeking care after a sexual assault, you have options for care.

A sexual assault forensic exam has many parts. **You can participate or decline all or any part of the exam. You can stop the exam at any time.**

PARTS OF THE EXAM:

Medical History
Assault History
Medical Care and Treatment
Toxicology Testing
Physical Examination
Photographs of Body and/or Genitals
Collection of Evidence

REPORTING OPTIONS:

In Maryland, health care workers have to report violence to police or child protective services. The law says violence that has to be reported includes, “...those directly or indirectly involving a minor child, vulnerable adult, use of a lethal weapon, moving vessel, and other circumstances...” Even if a mandatory report is made, you are not required to allow evidence to be collected.

OPTIONS FOR CARE:

A. MEDICAL EXAM:

With this option, you will receive medical care, treatment (emergency pregnancy prevention and treatment for sexually transmitted infections) and referrals without reporting to police. You will be offered a victim advocate for free. You, or your insurance, may be charged for the medical care. Police will not be involved and evidence will not be collected.

B. MEDICAL FORENSIC EXAM with REPORTING TO POLICE:

If you select this option, you will receive medical care, treatment, referrals, and a sexual medical forensic exam free of charge **and** you are choosing to report the sexual assault to police for investigation.

You can expect:

- A medical exam
- Medicine to prevent pregnancy and sexually transmitted infections
- A sexual assault forensic exam
- Police to be notified that you are reporting a sexual assault or sexual abuse
- To be offered a victim advocate to provide support

Appendix F

“Understanding Your Options – An Overview of the Sexual Assault Forensic Exam Process” Form

- Evidence collected to be sent to police within 30 days for storage
- Police to consider DNA testing your evidence kit
- Communication with the police, victim advocate, and State’s Attorney’s Office.

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

C. MEDICAL FORENSIC EXAM: WITHOUT REPORTING TO POLICE:

This “Anonymous” option gives patients who have been sexually assaulted and are unsure about reporting to police the opportunity to have evidence collected.

With this option you can receive all parts of a sexual assault forensic exam, including medical care and the collection of evidence free without reporting to police. Your identity will remain confidential unless you choose to make a police report.

If you choose this option, you can expect:

- A medical exam
- Medicine to prevent pregnancy and sexually transmitted infections
- A sexual assault forensic exam
- A victim advocate will be available to provide support
- Police to be notified that you are reporting a sexual assault or sexual abuse
- To be offered a victim advocate to provide support
- Evidence collected to be sent to police within 30 days for storage

When the exam is over and evidence has been collected, the evidence kit will be transferred to police for storage within 30 days. The police will not know who you are, talk to you, test the kit for DNA or know who the kit belongs to.

The police will store the kit for at least 75 years in Maryland or according to local policy. If you change your mind and want to report the sexual assault to police, you can contact the police at any time.⁷⁴

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.

When you sign below, you are agreeing to the Anonymous Exam program.

I, _____, have been educated
(First and last name)

about the Anonymous Exam program and understand that because I am not reporting the sexual assault to police now, crime scene evidence useful to investigators and prosecutors might be lost. I understand that I can contact police at any time to report and that my kit will be kept for 75 years in Maryland.

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

CONTACTING POLICE

In the box below, you can find the contact information for the police who are responsible for testing, storing, and destroying the kit (after the allotted time). You can track where your kit is by logging in to the tracking system. If you lose your login information for the tracking system, contact the SAFE Program or the police agency responsible for investigating your case.

⁷⁴ MD Crim. Proc. §11-926(d)(2)

Appendix F

“Understanding Your Options – An Overview of the Sexual Assault Forensic Exam Process” Form

Contact Information for Investigating Agency	
Police Agency:	_____
Phone number:	_____
Officer (if known):	_____
Case Identifier:	_____

ADDITIONAL SERVICES

HIV TESTING AND COUNSELING:

Today, you will be provided education about your risk of HIV and other sexually transmitted infections. If you are at risk your healthcare provider will talk to you about prevention and treatment options. Your health insurance and personal information is not needed to get this treatment. The medicine and follow-up medical care (including labs) are free for up to 180 days after your first visit.

If you report the sexual assault to police and the person is charged with that crime, you can request the person be tested for HIV and the results provided to you

FOLLOW-UP CARE:

If you had a medical forensic exam, medical follow-up care related to the sexual assault within 90 days after your first visit is paid for by the Maryland Sexual Assault Reimbursement Unit. If you received a medical only exam, you or your insurance may be billed for follow-up care.

Follow-up Appointments

Follow-up Information:

Provider Name: _____

Phone Number: _____

Address: _____

Appointment Date/Time (if applicable): _____

PATIENT ACKNOWLEDGMENT:

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

Signature: _____
(First and Last Name)

Date: _____
(MM/DD/YYYY)

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

FOR STAFF USE ONLY:

Signature: _____
(staff/witness)

Date: _____
(MM/DD/YYYY)

Copy Provided to Patient: Yes No

Appendix F

“Understanding Your Options – An Overview of the Sexual Assault Forensic Exam Process” Form

FOR TRACKING SYSTEM USE:

KIT IDENTIFICATION NUMBER:

SYSTEM PASSWORD:

Note: the survivor will be prompted to re-set their password when they first log in. Password resets can be initiated by nurses. This login information will remain with the patient's file.

Appendix F

SAK-T Grant Data

The Sexual Assault Kit Testing (SAKT) Grant Data

The Sexual Assault Kit Testing (SAKT) grant fund provides up to \$3.5 million in grant funding to the Maryland State Police and local law enforcement agencies to pay for the testing of sexual assault evidence collection kits (SAEKs) by forensic laboratories. In 2023, funding was unrestricted and may be used on SAEKs collected at any time. The funding can be utilized for staffing needs, laboratory supplies, outsourcing costs, equipment upgrades, and other relevant items.

The following data was collected for the FY2023 grant cycle and provided by the Governor’s Office of Crime Prevention and Policy (GOCPP).

Law Enforcement Agency	Total Award	Total Requested	Funds Remaining	Number of kits tested from 1/1/20- 6/30/23	Total DNA profiles entered into CODIS	Number of CODIS Hits	Number of cases forwarded for Prosecution
Baltimore County Police Department	\$118,550.00	\$118,550.00	\$0.00	174	43	11	3
Maryland State Police	\$656,012.00	\$656,012.00	\$113,937.00	189	102	6	0
Montgomery County Police Department	\$354,000.00	\$354,000.00	\$0.00	497	194	61	0
Total	\$1,128,562.00	\$1,128,562.00	\$113,937.00	1658	339	78	3

GOCPP is currently reviewing applications to make new awards to eligible programs. Additionally, GOCPP is working with the Maryland State Police to modify and define data collection measures to more clearly represent the scope of the funding.

Appendix G

FAQ Document



Maryland Sexual Assault Evidence Kit Policy and Funding Committee

FREQUENTLY ASKED QUESTIONS

VERBAL AND WRITTEN WAIVERS OF TESTING, INVESTIGATION, AND PROSECUTION & INTERPRETATION OF THE 30-DAY KIT TESTING REQUIREMENTS

The Sexual Assault Evidence Kit Policy and Funding Committee (“SAEK Committee”) issues the below guidance to assist law enforcement agencies (“LEAs”), State’s Attorneys Offices, and other stakeholders in implementing the law prohibiting the use of waivers of investigation and submitting sexual assault evidence kits (“SAEKs”) to a crime lab for forensic testing. If you have additional questions, please contact Carisa Hatfield, SAEK Committee Counsel at chatfield@oag.state.md.us.

1) When, if ever, may a law enforcement agency present a sexual assault victim with a written form waiving the agency’s responsibility for investigation, testing, or prosecution?

For several years, some Maryland law enforcement agencies (“LEAs”) 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.⁷⁵ In these forms, victims would waive their right to have their assault investigated and, often, the right to file a civil suit against the LEA for failing to complete an investigation.⁷⁶ Additionally, many survivors were presented these forms without information regarding the status of their kit or without being informed that signing the waiver meant that their SAEK would not be tested.

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 (IACP) 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.”⁷⁷ Individuals who experience sexual violence may struggle with decision-making due to the effects of trauma.⁷⁸ 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 encourages the victim to stop reporting the assault.⁷⁹ In addition, seeking the victim’s signature on such documents can send the message that law enforcement simply wants to close the case without pursuing justice for the victim.⁸⁰

⁷⁵ 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>.

⁷⁶ *Id.*

⁷⁷ 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>.

⁷⁸ 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.

⁷⁹ See *supra* note 14.

⁸⁰ *Id.*

Appendix G

FAQ Document

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 a 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.⁸¹

The legislation articulates the appropriate circumstances where an investigation may be suspended with written documentation: “if a victim requests that the scope of an investigation be limited or that an investigation be temporarily or permanently suspended.”⁸² It is only at this time that a law enforcement may document in writing the victim's decision to suspend an investigation. Consistent with Chapter 584 and the best practices guidance issued by the Maryland Police Training and Standards Commission, a law enforcement agency may document the victim's decision with audiovisual recording and in the investigative report.⁸³ At the time a victim asks that an investigation be suspended, the law enforcement agency should provide information to the victim about their rights, including the fact that the decision to suspend the investigation is not permanent and the victim may change their mind at any time, and follow up with the victim thirty (30) days after a decision to suspend the investigation in accordance with standards set by the Maryland Police Training and Standards Commission. Additionally, based on best practices articulated by the Maryland Coalition Against Sexual Assault (MCASA), a law enforcement officer should ask a victim what they would like to happen to their kit, even if they do not proceed with the investigation. Law enforcement should tell the victim at the time of a suspended investigation that their kit will be tested unless the survivor explicitly states they do not wish for their kit to be tested. However, at no time may a law enforcement agency present a victim of sexual assault with a written waiver form. Written waivers of investigation, testing, and prosecution are in contravention of Maryland Criminal Procedure §11-929.

2) If a victim was presented with a written waiver form after Chapter 584 took effect on October 1, 2020, what should happen now?

In congruence with the law, all local law enforcement agencies and prosecutor's office shall immediately cease use of written waiver forms. The Committee also recommends that law enforcement agencies collaborate with a victim's advocate or crime victim's rights attorney to contact all victims who signed these forms after October 1, 2020—the effective date of this legislation—to advise them that use of the form was unlawful and ask them to confirm how they would like their case, including the testing of their SAEK, to proceed. A crime victim's rights advocate or attorney can discuss all options with the survivor and ensure that they receive referrals to appropriate support services. The SAEK Committee recommends that post October 1, 2020 forms be destroyed and replaced with a note to file documenting the victim's wishes consistent with the Maryland Police Standards and Training Commission guidance.⁸⁴

For information on contacting survivors who signed a waiver, please see the Maryland Survivor Notification Protocol implemented in 2020 as part of the Maryland Sexual Assault Kit Initiative (SAKI) project. This protocol outlines notification procedures for cases involving a signed waiver. This protocol should be implemented for all waiver cases.

⁸¹ S.B. 807, Chapter 584 (2020); Crim. Proc. § 11-929(b)(1)–(4). A copy of the final legislation is attached to this memorandum as Attachment A.

⁸² *Id.*

⁸³ See PTSC Approved Practices—July 8, 2020, Maryland Police and Correctional Training Commissions (updated 2024), [Victims of Sexual Assault Best Practices.pdf](#). A copy of the recommendations is attached to this memorandum as Attachment B.

⁸⁴ *See id.*

Appendix G

FAQ Document

3) Does Maryland law prohibit a law enforcement agency from verbally requesting that a sexual assault victim waive the agency's responsibility for investigation, testing, and/or prosecution?

Although verbal waivers are not expressly addressed in the statute, the SAEK Committee strongly discourages the use of verbal waivers where a law enforcement agency or prosecutor's office approaches a victim to discuss whether their case should continue, as that behavior is inconsistent with the intent of Chapter 584. As described above, Chapter 584's prohibition on the use of waiver forms is intended to ensure that victims are not coerced, retraumatized, or revictimized by a law enforcement agency or a State's Attorney's Office asking them to sign a form indicating that they decline to proceed with further investigation of their case. Although this threat is exacerbated when the request is presented in writing, a verbal request holds the same risks. This is particularly true of a victim who is informed by a law enforcement officer that their case will not be prosecuted or when a victim is not also informed about the benefits of testing their kit, the right to change their mind, or the right to consult with a victim's advocate or be represented by a victim's right's attorney about their case. Failing to provide this information, or access to a victim advocate, may pressure the victim to make a decision without all the information regarding their rights and that they would not otherwise make. This is inconsistent with the best practices guidance issued by the Maryland Police Training and Standards Commission.⁸⁵ The intent of the law is that only a victim may initiate the discussion with a law enforcement agency regarding their desire to continue or end the investigation of their case, not law enforcement or a State's Attorney's Office—regardless of whether a waiver form is ultimately presented.

4) What is the time frame for law enforcement agencies to transfer a SAEK in their possession to a forensic laboratory for testing under Maryland law?

Pursuant to Maryland Criminal Procedure 11-926(g)(1), the time frame for conveying a SAEK from a law enforcement agency to the forensic laboratory for testing is as follows:

(g) Except as provided in subsection (e) of this section, an investigating law enforcement agency that receives a sexual assault evidence collection kit shall:

(1) submit the kit and all requested associated reference standards to a forensic laboratory for analysis within 30 days of receipt of the kit and all requested associated reference standards.

Md. Crim. Pro. 11-926(g)(1). The SAEK Committee has been asked to interpret whether the 30-day time frame in the statute is triggered from the date of receipt of the SAEK from the hospital or the date that the kit AND all requested associated reference standards are collected.

Maryland Criminal Procedure 11-926(g)(1) was enacted in 2019 under cross-filed bills SB767 and HB1096. Both bills were signed into law on April 18, 2019 with an effective date of January 1, 2020. According to its legislative history, the bills' intent was to provide consistent State policy by requiring all law enforcement agencies to submit the kit for testing within 30 days of receipt—meaning the intent was that the 30-day time frame begin from the date the SAEK was received by the law enforcement agency, not from the time any requested associated references are collected.⁸⁶

In consideration of the above, the SAEK Committee recommends that all law enforcement agencies endeavor to complete collection of the kit and all associated reference samples within thirty days of collection of the kit. However, if all associated samples cannot be collected after a good faith effort to obtain them, the

⁸⁵ *See id.*

⁸⁶ Committee Media, *Judiciary Hearing 3/10/2019*, Maryland General Assembly, March 10, 2019.

https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=jud&ys=2019RS&clip=JUD_3_6_2019_meeting_1&billNumber=hb1096

Appendix G

FAQ Document

SAEK Committee recommends that agencies submit SAEKs to the forensic lab no later than 30 days after receipt of the SAEK and act with diligence to complete collection of associated reference samples while the kit is in the queue for testing.

The SAEK Committee, in the meantime, will work with stakeholders to propose either legislation or regulation in 2025 that brings the plain meaning and legislative intent in sync. Counsel will confer with the SAEK Committee to address plans for this legislation or regulation in the immediate future.

Appendix G

SAEK Committee Membership

SAEK COMMITTEE MEMBERS

Katherine Dorian (Chair)	Chief, Criminal Division, Office of the Attorney General	Office of the Attorney General
Daniel Katz	Director	MSP - Forensic Sciences Division
Lisa Horne	Nursing Program Consultant	Department of Human Services
Kristen Lease	Crime Lab Director	Prince George's County Police Department - Forensic Science Division
Jessica Volz ⁸⁷	Forensic Nurse Coordinator	Adventist Healthcare Shady Grove Medical Center
Laura Jessick	SART/SAKI Program Manager	Maryland Coalition Against Sexual Assault
Scott Shellenberger	State's Attorney	Baltimore County
Heather Amador	Director of Victim Services Policy and Programs	Governor's Office of Crime Prevention, Youth, and Victim Services
Barbara Darley	Director of Victim Compensation and Direct Services	Governor's Office of Crime Prevention, Youth, and Victim Services
Sarah Chenoweth	DNA Technical Leader	Anne Arundel County Crime Laboratory

⁸⁷ Dr. Volz was appointed as a replacement for Dr. Pamela Holtzinger, who left her position with Frederick Memorial on November 17, 2023. Dr. Volz's appointment will be effective through June 30, 2027.

Appendix G

SAEK Committee Membership

Carolyn Bailey	Director of Licensure	Maryland Board of Nursing
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EX-OFFICIO MEMBERS

Senator Shelly L. Hettleman	Senator and Member, Budget and Taxation	Maryland Senate
Open Seat ⁸⁸	Senator and Member of Judicial Proceedings	Maryland Senate
Delegate J. Sandy Bartlett	Delegate and Member, House Judiciary	Maryland House of Delegates
Open Seat ⁸⁹	Delegate and Member, House Appropriations	Maryland House of Delegates

ADVISORY MEMBERS

Argi Magers	Forensic Scientist Manager, Biology Section	MSP - Forensic Sciences Division
Detective Sergeant Jason Bahm	Sexual Assault Unit	Montgomery County Police Department
Jane Krienke	Legislative Analyst	Maryland Hospital Association

⁸⁸ Senator Ariana Kelly was appointed by Governor Moore as the Executive Director of the Maryland Commission for Women after the 2024 legislative session. The seat remains open and waiting an appointee from the Maryland Senate’s Judicial Proceedings Committee.

⁸⁹ Delegate Shaneka Henson is no longer on the SAEK Committee. This seat remains open and waiting an appointee from the House of Delegates’ House Appropriations Committee.

Appendix G

SAEK Committee Membership

Kaitlyn Huber	Sexual Assault Response Team (SART) Coordinator	Rape Crisis Intervention Service of Carroll County
Michelle Groves	CODIS State Administrator	Maryland State Police
Lindsey O'Neill	Senior Attorney	Sexual Assault Legal Institute

STAFF

Rhea Harris (Former Chair)	Deputy Chief of Legislative Affairs, Office of the Attorney General	Office of the Attorney General
Carisa Hatfield (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