

**MARYLAND SEXUAL ASSAULT  
EVIDENCE KIT POLICY AND FUNDING  
COMMITTEE**

**SUPPLEMENTAL REPORT ON HB758/SB789:  
“SEXUAL ASSAULT EVIDENCE KITS –  
PRESERVATION AND STORAGE”**

**February 7, 2024**

## INTRODUCTION

The Sexual Assault Evidence Kit Policy and Funding (“SAEK”) Committee was created by statute in the 2017 session of the Maryland General Assembly. The SAEK Committee was instructed to develop and disseminate best practices and information on a variety of topics including the testing and retention of sexual assault evidence kits, increasing the availability of sexual assault forensic exams (SAFEs) for victims<sup>1</sup> of sexual assault, reducing the shortage of forensic nurse examiners, and increasing the availability of information to sexual assault victims regarding prosecutions, civil law remedies, sexual assault evidence kits, and victim rights.<sup>2</sup>

In furtherance of this goal, the General Assembly in the 2023 session passed HB758/SB789, “Sexual Assault Evidence Kits – Preservation and Storage.” Among its directives was a request for a report regarding historic evidence transfer and the future of self-administered sexual assault kits in Maryland, to be provided to the Governor and the General Assembly by December 1, 2023. The General Assembly requested three components to this report: (1) guidance on the transfer of sexual assault evidence kits to law enforcement collected before January 1, 2000; (2) recommendations regarding the use of self-administered sexual assault kits in Maryland; and (3) a plan to educate consumers about self-administered SAEKs collaboratively developed with the Office of the Attorney General’s (“OAG”) Consumer Protection Division (“CPD”).

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<sup>1</sup> The term “victim” is used here as it is how the statute refers to those impacted by sexual assault. It is not reflective of how the Committee views those individuals. The Committee and its partners recognize that not all people who have been victimized use this term to describe themselves.

<sup>2</sup> S.B. 734, Chapter 659 (2017).

That initial report, which was timely filed by December 1, 2023<sup>3</sup>, advised that the subcommittee would need additional time to continue research and discussion on the issue of recommendations regarding the availability and use of self-administered sexual assault evidence kits in Maryland. The subcommittee has taken that opportunity, and based on its research and the opportunity to explore further options for victims in Maryland, makes the following recommendations.

### **RECOMMENDATIONS**

***1. Maryland should ban the sale, offer for sale, or distribution of self-administered sexual assault kits in the State unless they are state-issued.***

The Committee continued the review of its prior research and the information provided by all sources noted in the original report. Upon continued discussion of this research and the evidentiary implications of allowing self-administered sexual assault kits to be sold and distributed by commercial companies, it has become clear to the Committee that the kits should be banned.

The Committee's decision is not taken lightly, nor is it taken without precedent. As noted in the December 1 report, two states—Washington and New Hampshire—have successfully enacted legislation to ban the sale of these kits.<sup>4</sup> Utah also considered similar legislation in 2021.<sup>5</sup> In addition, the Attorneys General of eight states issued either cease-and-desist or warning letters to

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<sup>3</sup> Please see published copy of the December 1, 2023 report at [https://dlslibrary.state.md.us/publications/AG/SB789Ch703HB758Ch702\(3\)\(2023\).pdf](https://dlslibrary.state.md.us/publications/AG/SB789Ch703HB758Ch702(3)(2023).pdf).

<sup>4</sup> House Bill 1564 passed the Washington State Senate on April 13, 2023 and had an effective date of July 23, 2023. <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/House/1564.SL.pdf?q=20231018113822>; House Bill 705, Signed by Governor Sununu on July 20, 2020, included a provision banning the sale of “over the counter” rape kits in New Hampshire. [https://legiscan.com/NH/text/HB705/id/2194274/New\\_Hampshire-2020-HB705-Amended.html](https://legiscan.com/NH/text/HB705/id/2194274/New_Hampshire-2020-HB705-Amended.html).

<sup>5</sup> <https://le.utah.gov/~2021/bills/static/HB0168.html>.

manufacturers of self-administered sexual assault kits.<sup>6</sup> Moreover, as previously noted, the Committee continues to have significant concerns regarding the admissibility of these kits, the privacy of both victims and alleged perpetrators, and the ability of victims to access all the advocacy and medical care, including follow-up care, needed after an incident of sexual assault.

One of the justifications for self-administered kits is the lack of access to Sexual Assault Forensic Exams (SAFEs). While a SAFE system is in place statewide, it is under-staffed and requires that survivors of sexual assault go only to specific hospitals to get an exam. To address this, the Committee has considered how the State can improve access to SAFEs and appropriate medical care from a Forensic Nurse Examiner (“FNE”). To that end, the Committee is supporting legislation to explore the feasibility of a telehealth SAFE Program in Maryland that would provide care where an FNE may not be either consistently available or available at all for a victim of sexual assault. This legislation will explore telehealth alternatives to self-administered sexual assault kits in addressing the gaps in SAFE availability across the State for those who wish to receive an exam but live in a historically underserved area for forensic medical services.

Due to the challenges some victims face in accessing SAFEs, the Committee proposes that any legislation banning the sale and distribution of self-administered kits leave open the possibility that the State may wish to create self-administered kits in the future. While these

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<sup>6</sup> “Consumer Alert: Attorney General James Orders Sexual Assault Evidence Kit Companies To Cease And Desist Operations.” Published September 12, 2019. <https://ag.ny.gov/press-release/2019/attorney-general-james-orders-sexual-assault-evidence-kit-companies-cease-and>; “Attorney General Hunter Issues Consumer Alert, Cease & Desist Letters to At-Home Rape Kit Companies.” <https://oag.ok.gov/articles/attorney-general-hunter-issues-consumer-alert-cease-desist-letters-home-rape-kit-companies>; “Notice of Intended Action Dated August 29, 2019.” [https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2019/August/Notice\\_of\\_Intended\\_Action\\_to\\_MeToo\\_Kits\\_Company\\_08-29-19\\_664596\\_7.pdf?rev=467467d7282c44a68b5ba316172bec91&hash=67B8E5F1F6939D939350CF213B6B3059](https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2019/August/Notice_of_Intended_Action_to_MeToo_Kits_Company_08-29-19_664596_7.pdf?rev=467467d7282c44a68b5ba316172bec91&hash=67B8E5F1F6939D939350CF213B6B3059); “Herring Issues Warning About Self-Administered Sexual Assault Evidence Kits.” Published September 10, 2019.

solutions are not immediate, the Committee is committed to doing the work to move these ideas forward and believes these options will help to close the service gap in Maryland and serve victims for years to come.

**2. *Any person who sells, offers for sale, or distributes non-state issued kits should be subject to an enforcement action by the Consumer Protection Division and/or a civil fine.***

The Committee further recommends that the sale, offer for sale, or distribution of a non-state issued self-administered sexual assault kits constitutes an unfair, abusive or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article, and be subject to the enforcement and penalty provisions contained in Title 13 of the Commercial Law Article.

When considering penalty options, the Committee reviewed the legislative language of both the Washington state and New Hampshire laws. Washington state's law provides that "A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act."<sup>7</sup> New Hampshire, on the other hand, instituted a civil fine for the sale of these kits in the state, set at \$1,000 per offense.<sup>8</sup> Ultimately, the Committee agreed that it was interested in pursuing both options as penalties for selling these kits in Maryland. Monies collected as fines under the statute would be allocated into a special fund dedicated to providing additional educational tools, including FNE course materials, training registration fees, and more, to FNEs across the state.

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<sup>7</sup> House Bill 1564 passed the Washington State Senate on April 13, 2023 and had an effective date of July 23, 2023. <https://lawfilesexternal.wa.gov/biennium/202324/Pdf/Bills/Session%20Laws/House/1564.SL.pdf?q=20231018113822>.

<sup>8</sup> House Bill 705, Signed by Governor Sununu on July 20, 2020. [https://legiscan.com/NH/text/HB705/id/2194274/New\\_Hampshire-2020-HB705-Amended.html](https://legiscan.com/NH/text/HB705/id/2194274/New_Hampshire-2020-HB705-Amended.html).

The Committee's intent is that these penalties are enforced against those in the commercial chain, not individual consumers. The Committee understands that an individual victim may come into possession of one of these kits in a multitude of ways, including from another person in their life who is concerned about the victim or by obtaining the kit from another state where they are not banned and returning to Maryland with the kit in their possession. Whatever their intention, the Committee urges that such activity not be considered "distribution" of the kits and subject to enforcement action under the law.

The Committee will work with the Maryland Coalition Against Sexual Assault (MCASA) to create informational documents available to victims about this legislation, if passed. These documents will include critical information related to the legislation and recommendations on how to access forensic medical and advocacy services in Maryland. Education materials for law enforcement and prosecutorial staff addressing this legislation, including admissibility of a kit obtained and used by a victim and presented to law enforcement as evidence of a sexual assault, which is addressed in more detail below, will also be developed.

***3. Kits should not be excluded from use in criminal prosecution if they are brought to law enforcement or prosecutors by a victim.***

The Committee also discussed what would happen to a kit should it come into the possession of a victim who chooses to then present this evidence to law enforcement or a prosecutor. While the Committee agrees that these kits should not be offered for sale or distribution in Maryland, it does not believe that should this kit come into the possession of a victim that it should be prevented from being presented as potential evidence in a criminal proceeding. A victim should have the opportunity to have their voice heard in a criminal legal proceeding about evidence in their possession. Additionally, a victim should face no legal consequences for presenting such a kit to law enforcement or a prosecutor. Any evidence that a victim presents to those individuals

investigating and prosecuting their case, including a self-administered sexual assault kit, should be thoroughly reviewed, vetted, and/or tested to determine if it is appropriate for investigation or prosecution. If determined to be appropriate evidence in a criminal trial, a self-administered sexual assault kit should not be excluded from evidence simply because it is illegal for the product to be sold or distributed in the state and information regarding the illegality of the sale and distribution of these kits should be prohibited from consideration by the factfinder.

However, it should also be made clear to victims that just because this evidence may be provided to law enforcement and prosecutors, it does not mean that the kit itself is guaranteed admission in a court of law. The legislation should include language requiring that a kit obtained and collected in this manner be evaluated by a court based on its evidentiary value if presented in a trial setting.

### **CONCLUSION**

After continued review of the research compiled and further discussion, the Committee has made the above recommendations regarding the use of self-administered sexual assault kits in the State of Maryland. The Committee has requested a bill be drafted inclusive of the above recommendations (currently LR 3168), and will provide testimony as to the above when a bill hearing date is set.