



**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.¹ 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.² 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.”³ Individuals who experience sexual violence may struggle with decision-making due to the effects of

¹ 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>.

² *Id.*

³ 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>.



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trauma.⁴ 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.⁵ 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.⁶

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.⁷

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.”⁸ 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.⁹ 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

⁴ 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.

⁵ See *supra* note 14.

⁶ *Id.*

⁷ 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.

⁸ *Id.*

⁹ 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.



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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.¹⁰

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.

¹⁰ *See id.*



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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.¹¹ 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.

¹¹ See *id.*



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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.¹²

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 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.

¹² 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