



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 406
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February 13, 2020

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI)m which provides direct legal services for survivors across Maryland. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 406.

Senate Bill 406 – Sexual Assault Evidence Kits – Privacy & Reimbursement

Current law requires the Criminal Injuries Compensation Fund to provide health care providers with reimbursement for performing a sexual assault forensic examination (SAFE).

Reimbursement is regulated by COMAR, including provisions regarding which SAFEs qualify for reimbursement and the information which must be provided. Senate Bill 406 addresses two issues: first, it prohibits the State from requiring graphic details of a victim's sexual assault or copies of photographs obtained during the exam. This is to protect victim privacy. Second, it exams the time period to conduct a SAFE exam to reflect current science.

Privacy – Privacy is consistently one of the chief concerns of victims of sexual assault. Privacy has been described as being “like oxygen” for survivors and protecting privacy is woven through state and federal policies addressing sexual assault response. In Maryland, survivors are provided with sexual assault forensic exams and emergency treatment without charge and without accessing insurance in part to ensure privacy and restore a survivor's sense of control. SAFE records are maintained separately and not a part of a patient's other health care records to protect privacy.

It is incomprehensible that Maryland state officials request and require details of a survivor's rape prior to providing reimbursement to a health care provider. We gather this is a misguided attempt to confirm that a crime occurred. Payments from the Criminal Injuries Compensation Fund (CICF) require that a crime occurred in order to pay for an expense. However, this can be accomplished through use of a medical diagnostic code (for example: T74.21XA Adult sexual abuse, confirmed, initial encounter). CICF is used as a source of reimbursement for SAFEs in many states and details of the assault are not required. We also question whether the Governor's

Office of Crime Control and Prevention, the entity currently administering the CICF, has appropriate procedures in place to comply with HIPAA's Privacy Rule. In event, statutory guidance is needed to make it clear that details of a survivor's rape should not be shared unnecessarily.

Reimbursement – Window for Exam

There are 1400-1500 SAFE's performed annually. Current regulations require that an adult sexual assault forensic exam be performed within 120 hours of an assault. Forensic science is continuing to develop and the Maryland State Police now follow the policy that they will test cervical swabs collected up to 15 days post assault. The MSP lab based this decision on research conducted by Dr. Jack Ballantyne of the University of Central Florida, National Center for Forensic Sciences (*Best Practices for the National Response to Sexual Assault Investigations, The recovery of DNA profiles from the semen donor in extended interval post coital samples*, National Institute of Justice, March 2015).

While the state lab will test swabs up to 15 days post-assault and the evidence can be used in court, the State will not *reimburse* hospitals for collecting the evidence. As a result, the evidence is not being collected we are losing valuable information that could help convict sex offenders and provide some measure of justice to survivors and their communities. Senate Bill 406 expands the window for forensic exams to reflect current science and authorizing further expansion by regulation should science continue to progress. Maryland should, of course, gather evidence that could help identify who is (or is not) a sex offender.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 406**