



**Maryland Sexual Assault Evidence Kit
Policy and Funding Committee**

February 13, 2019

TO: The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee

FROM: The Maryland Sexual Assault Evidence Kit Policy and Funding Committee,
together with the Office of the Attorney General

RE: Senate Bill 406: Criminal Procedure - Sexual Assault Evidence Kits – Privacy,
Reimbursement, and Notification (SUPPORT)

The Sexual Assault Evidence Kit Policy and Funding Committee (SAEK Committee) submits this position paper in support of Senate Bill 406, which expands privacy protections for victims of sexual assault and ensures that health care providers are reimbursed for services provided to victims up to 15 days after the sexual assault, in accordance with current forensic medical standards.

The SAEK Committee, created by statute in 2017, is chaired by the Office of the Attorney General and consists of a broad cross-section of stakeholders including law enforcement, medical professionals, crime victim rights attorneys, victim advocates, prosecutors, agency officials and legislators. The Committee was established to develop and disseminate best practices information regarding the collection, testing, and retention of medical forensic evidence in sexual assault cases.¹ Relevant to the proposed legislation, the Committee is specifically mandated to develop recommendations concerning “payment for sexual assault evidence collection kits”² and “increasing the availability of sexual assault evidence collection exams for alleged victims of sexual assault.”³

¹ See generally MD. CODE ANN., Crim. Pro. § 11-927(e)(1) (West 2020).

² Crim. Pro. § 11-927(e)(1)(iii).

³ Crim. Pro. § 11-927(e)(1)(iv).

Senate Bill 406 seeks to extend the timeframe within which a healthcare provider will be reimbursed for collecting SAEK samples. Currently, Section 10.12.02.03(B)(1)(a) of the Code of Maryland Regulations (“COMAR”) provides that a “sexual assault forensic examination shall be performed...within 120 hours [five days] of the alleged sexual offense.” Based on this provision, medical personnel are only reimbursed for SAEK samples collected within five days of the sexual assault. This five-day collection requirement is based on outdated research and should be revised.

Recent advancements in forensic science have extended the window that DNA can be collected from a victim’s cervix to at least nine days after the assault and potentially up until the victim’s next menstrual cycle.⁴ Based on this research, in both its April 2018 Preliminary Recommendations and its 2019 Annual Report, the SAEK Committee recommended that the Governor’s Office of Crime, Control and Prevention (GOCCP) amend its regulations to allow health care providers to be reimbursed for cervical swabs collected within 15 days of the sexual assault. This extension would ensure that GOCCP’s reimbursement policy reflects current forensic advancements.

As discussed in the SAEK Committee’s 2019 Annual Report, GOCCP has communicated a reluctance to extend the timeframe for reimbursement due to the difficulties in determining the costs required to implement this new policy.⁵ Despite the Committee’s best efforts (led by members of the Maryland Hospital Association), the lack of available data makes it difficult to develop an accurate statewide cost estimate. Moreover, the SAEK Committee does not believe that the lack of a clear fiscal impact precludes adoption of the extended reimbursement timeframe. The research is clear that DNA from the perpetrator of a sexual assault can be obtained from the victim’s cervix for many days beyond the current five day window for reimbursement. Failure to revise the policy in light of scientific developments would result in key evidence that could identify perpetrators of sexual assault and be admissible in criminal prosecutions going uncollected. This undermines victims’ access to justice.

In addition to extending the reimbursement timeframe, Senate Bill 406 also seeks to protect the privacy of victims by narrowing the scope of information that health care providers are required to provide in order to be reimbursed for the sexual assault forensic exam. The bill would prevent health care providers from including a narrative of the sexual assault and any pictures of the victim

⁴ PATRICIA SPECK & JACK BALLANTYNE, POST-COITAL DNA RECOVERY STUDY 77–80 (2015), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/248682.pdf>.

⁵ SAEK Committee Annual Report (January 2019) at p.9.

in the request to obtain reimbursement for the exam. During its quarterly meetings, the Committee received testimony regarding the traumatic impact of sexual assault and the effects this trauma can have on a victim. It is critical that victims of sexual assault not be further traumatized by having unnecessary details of the alleged offense or photographs of the victim transmitted by health care professionals while seeking reimbursement for services provided. For these reasons, the SAEK Committee supports the privacy protections set forth in Senate Bill 406.

For the aforementioned reasons, we ask the Honorable Chairman Smith and members of the Senate Judicial Proceedings Committee to favorably report Senate Bill 406.