



Maryland Sexual Assault Evidence Kit Policy and Funding Committee

March 5, 2020

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

FROM: Maryland Sexual Assault Evidence Kit Policy and Funding Committee

RE: Senate Bill 807: Criminal Procedure – Victims of Sexually Assaultive Behavior –
Waivers of Rights – Prohibition (SUPPORT)

The Maryland Sexual Assault Evidence Kit Policy and Funding Committee (“SAEK Committee”) submits this position paper in support of Senate Bill 807, which aims to prevent law enforcement agencies from presenting sexual assault victims with forms or otherwise seek agreements that purport to: (1) relieve the agency of its obligations to the victim; (2) limit or stop an investigation or prosecution of the alleged sexual assault; or (3) limit the victim’s civil remedies for certain violations of the victim’s rights.

There are various reasons why victims decline to participate in the criminal justice process. Sexual assault victims in particular, may be reluctant to follow through with the prosecution due to personal circumstances, shame, fear of retaliation, or experiences of secondary victimization by criminal justice authorities.¹ Over the years, some Maryland law enforcement agencies have 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.² In these forms, victims would

¹ MELISSA S. MORABITO, LINDA M. WILLIAMS, APRIL PATTAVINA, DECISION MAKING IN SEXUAL ASSAULT CASES: REPLICATION RESEARCH ON SEXUAL VIOLENCE CASE ATTRITION IN THE U.S, 7 (2019), *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/252689.pdf>.

² 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>.

waive their right to have their claims investigated and the right to file a civil suit against the law enforcement agency for failing to complete an investigation.³

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 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."⁴ Individuals who experience sexual violence may struggle with decision-making due to the effects of trauma.⁵ As such, having to make such crucial decisions concerning the assault may be premature and could re-traumatize the victim.

Use of the Waivers of Rights forms are problematic even after the initial stages of the investigation. Some forms may contain coercive language.⁶ In addition, seeking the victim's signature on such documents can send the message that law enforcement simply wants to close the case without providing justice for the victim.⁷

Agencies have justified using the Waivers of Rights forms as the best way to document the victim's intent not to participate.⁸ However, there are other ways for law enforcement agencies to document a victim's decision to opt out of an investigation, such as recording the victim's interview and noting the declination to proceed in the case file.

³ *Id.*

⁴ 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>.

⁵ 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.

⁶ See *supra* note 2.

⁷ *Id.*

⁸ *Id.*

Senate Bill 807 seeks to prohibit law enforcement agencies from utilizing Waivers of Rights forms for victims in sexual assault cases. The bill also prohibits law enforcement from affirmatively seeking a verbal agreement from the victim indicating that they no longer wish to proceed with the investigation or prosecution. As amended by the sponsor, the legislation does however, allow the victim to initiate the discussion to limit or suspend an investigation and mandates that law enforcement document the victim's decision and follow up with the victim in accordance with specific standards.

The SAEK Committee, which was 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.⁹ The Committee was established to develop uniform statewide policies regarding the collection, testing, and retention of medical forensic evidence in sexual assault cases and increase access to justice for sexual assault victims.¹⁰ The Committee strongly supports this legislation as it would protect the rights of victims and encourage the continuation of sexual assault investigations and prosecutions.

Recent media attention and a culture change aimed at protecting the rights of victims has caused many agencies to outlaw the use of waiver forms.¹¹ Because a few agencies still use these forms today,¹² it is critical that we outlaw this practice to protect the rights of all victims and create uniformity among the law enforcement agencies in Maryland.

⁹ See generally MD. CODE ANN., Crim. Pro. § 11-927(e)(1) (West 2020).

¹⁰ *Id.*

¹¹ Alison Knezevich, *Hundreds of Maryland sexual assault survivors signed waivers from police. Now lawmakers want to ban the forms*, BALTIMORE SUN, Feb. 24, 2020, <http://www.baltimoresun.com/politics/bs-md-pol-waiver-legislation-20200224-kylssatbm5brbktxj7ogknnax4-story.html>.

¹² *Id.*

For these reasons, we ask that the members of the Juridical Proceedings Committee favorably report Senate Bill 807.