

# **Women\_Caucus\_fav\_SB807**

Uploaded by: hill, catherine

Position: FAV



## WOMEN'S LEGISLATIVE CAUCUS MARYLAND GENERAL ASSEMBLY

**To:** Senator William C. Smith, Jr. , Chair  
Senator Jeff Waldstreicher, Vice Chair  
Members of the Judicial Proceedings Committee

**From:** Delegate Trent Kittleman, President  
Women's Caucus, Maryland General Assembly

**Date:** 3/3/2020

**Re:** SB807 Criminal Procedure - Victims of Sexually Assaultive Behavior - Waivers of Rights - Prohibition

The Women's Legislative Caucus respectfully submits its support for SB807 Criminal Procedure - Victims of Sexually Assaultive Behavior - Waivers of Rights – Prohibition.

This legislation prohibits a criminal justice unit from presenting certain victims of sexually assaultive behavior with forms or verbal agreements purporting to limit the obligations of the criminal justice unit to the victim or limit the rights of the victim; prohibiting evidence of certain forms or agreements from being introduced in certain court proceedings; authorizes victims affected by a violation of the Act to bring an action for injunctive or declaratory relief; applies the Act retroactively; etc.

As you may know, the Maryland Women's Legislative Caucus is a bipartisan group of 73 women legislators and 8 associate male legislators who are currently serving in the Maryland General Assembly. The Caucus supports legislation that directly affect women and has bi-partisan support. On February 5th of this year, the members of the Caucus voted unanimously to support SB807/HB1575.

The Caucus respectfully requests a positive action on this legislation.

# **MCASA\_FAV\_SB807**

Uploaded by: Jordan, Lisae

Position: FAV



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## Working to end sexual violence in Maryland

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### **Testimony Supporting Senate Bill 807 with Sponsor Amendments** **Lisae C. Jordan, Executive Director & Counsel** March 5, 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), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 807 with Sponsor Amendments.

#### **Senate Bill 807 – Prohibiting Victim Rights Waivers in Sexual Assault Investigations**

This bill would prohibit law enforcement from asking sexual assault survivors to waive their rights to further investigation. Survivors would be able to sue for injunctive or declaratory relief if law enforcement violates these provisions.

**Using rights waivers sends the wrong message to sexual assault survivors.** The use of “waivers of investigation” forms inherently present a message to victims that when reporting a crime of sexual assault, the investigation is “all or nothing” and “now or never”. In fact, the underlying message is from law enforcement is: “Tell me everything this minute, or never call us again”. End Violence Against Women International (EVAWI), *Reporting Methods for Sexual Assault Cases*, (2014). Maryland, like all states, has a history of poor responses to sexual assault and is trying to improve its systemic response to survivors. Eliminating the use of waivers is one more step towards this goal.

**Waivers do not protect victims, they protect the law enforcement agency responsible for the investigation of the crime.** Evidence shows that waivers of investigations are used prematurely, often during initial interviews with the victim. Waivers force victims to make a decision regarding the prosecution of the alleged crime. The signing of such waiver sidesteps the responsibility of a law enforcement agency to conduct a thorough investigation. End Violence Against Women International explains: “**It is clear that the purpose is to protect the agency from later claims that they did not pursue an investigation of a sexual assault report when they should have**”. EVAWI. Frequently Asked Questions – Release Waivers. (2020).

**Waivers create a tool that can be used by defense counsel to undermine a case and reduce the chances of successful prosecution.** Many survivors choose to pursue prosecution only after a period of recovery. Waivers work to cut off an investigation and create an unnecessary barrier for victims who later change their mind. They also are a gift to the defense, making it easy to mislead a jury into thinking that if a survivor had doubts about pursuing a case, they should too.

**Sponsor Amendments.** Sponsor amendments are necessary to provide survivors with needed control over the scope of an investigation. Frequently survivors ask for some limits on investigations (for example, please do not tell my parents). These changes also make it clear that law enforcement should follow-up with survivors in appropriate cases. A second sponsor amendment limits the inadmissibility of evidence of a waiver to civil and administrative matters in order to respond to concerns about defendants' rights.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on Senate Bill 807 with Sponsor Amendments**

# House of Ruth\_FAV\_SB 807

Uploaded by: Lennig, Dorothy

Position: FAV



Marjorie Cook Foundation  
Domestic Violence Legal Clinic

2201 Argonne Dr • Baltimore, Maryland 21218 • 410-554-8463 • dlennig@hruthmd.org.

**TESTIMONY IN SUPPORT OF SENATE BILL 807**

March 5, 2020

**DOROTHY J. LENNIG, LEGAL CLINIC DIRECTOR**

The House of Ruth is a non-profit organization providing shelter, counseling and legal services to victims of domestic violence throughout the State of Maryland. Senate Bill 807 prohibits a criminal justice unit from asking a sexual assault victim to sign a waiver preventing or limiting the investigation or prosecution of the sexual assault. **We urge the Senate Judicial Proceedings Committee to favorably report on Senate Bill 807.**

According to the Baltimore Sun, police departments throughout the country offer victims of sexual assault the chance to start “putting it all behind them” by signing a waiver that lets police off the hook for pursuing the perpetrator. Such forms have been used hundreds of times in Maryland. This bill would eliminate that practice.

Rape is a highly traumatic experience. Many rape victims, if asked to decide whether law enforcement should investigate or whether prosecutors should proceed with the case, will waive further investigation or prosecutions simply to put an end to the process and to avoid further trauma by having to relive the rape. One of the key differences between the criminal and civil justice systems is that our criminal justice system serves to protect our State’s citizens from harm, even if the victim of the crime does not wish the case to go forward. Perpetrators of rape are extremely dangerous and, if not held responsible, likely to rape other victims in the future. The State has an obligation to protect both individual victims of specific acts and potential future victims. As such, decisions about whether to investigate and prosecute acts of rape should be made by law enforcement and prosecutors, not victims.

**The House of Ruth urges the Senate Judicial Proceedings Committee to issue a favorable report on SB 807.**

**MD\_NARAL\_FAV-SB0807**

Uploaded by: philip, diana

Position: FAV





## SB0807 - Criminal Procedure – Victims of Sexually Assaultive Behavior – Waiver of Rights - Prohibition

Presented to the Hon. Will Smith and Members of Senate Judicial Proceedings Committee

March 5, 2020 12:00 p.m.

### POSITION: SUPPORT

NARAL Pro-Choice Maryland urges the Senate Judicial Proceedings Committee to issue a **favorable report on SB0807 Criminal Procedure – Victims of Sexually Assaultive Behavior – Waiver of Rights - Prohibition**, sponsored by Senators Shelly Hettleman and Sarah Elfreth.

Our organization is an advocate for reproductive health, rights, and justice. Those who have experienced sexual assault—typically termed ‘survivors’ of sexual assault—deserve opportunities to regain their physical, mental, and emotional wellbeing, as well as retribution and justice against those who have perpetrated harm against them. To achieve true reproductive justice, we must support survivors—those who have had their bodily autonomy, safety, power, and control taken away from them during an assault. Depending on the agency’s ability to holistically support survivors, a survivor’s healing can be bolstered or undermined by various justice procedures. For some, reporting an assault to law enforcement can prevent a situation from escalating further and aid in the investigative process. [Among female survivors who reported to law enforcement between 2005 and 2010](#), 28% were hoping to protect themselves and their household from future crimes by the offender, 25% wanted to stop the incident or prevent escalation, and 21% felt they should report to improve police surveillance of sexual violence.<sup>i</sup> However, reporting to law enforcement does not appear to be a direct solution for all: among female survivors who did not report their assault during this time period, 13% believed the police would not do anything to help and another 20% were afraid of retaliation due to their assault report.<sup>i</sup> Ultimately, survivors who blame themselves for their assaults, feel afraid for their safety, and worry about lack of action being taken must *also* feel supported if they choose to pursue justice against their perpetrator. Support offered by a variety of resources in a survivor’s community, including support from law enforcement throughout a criminal investigation, is undoubtedly essential.

According to a 2000 study, the lifetime prevalence of sexual assault is 39%—meaning that 39% of people will be assaulted over their lifetime.<sup>ii</sup> According to estimates by the Rape Abuse and Incest National Network (RAINN), out of every 1000 sexual assaults, 995 perpetrators will not be incarcerated for their crimes.<sup>iii</sup> Looking at Figure 1, only 23% of sexual assaults are reported to police. Of those reported,

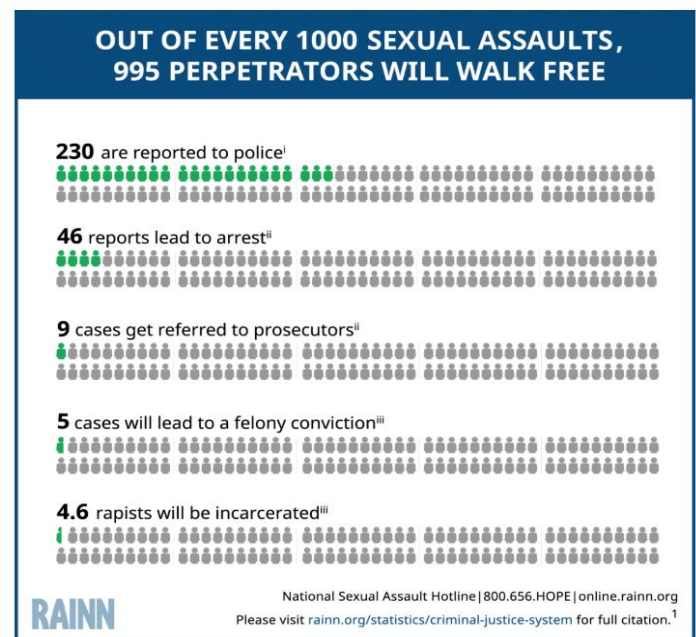


Figure 1: Retrieved from the [Rape Abuse and Incest National Network](#)

only 20% will lead to arrest. Thus, 80% of the cases brought to law enforcement agencies do not lead to arrest of a perpetrator, either due to no investigation taking place or unsuccessful attempts at investigation. The 23% of survivors who report to law enforcement *must* be taken seriously, supported, and listened to by law enforcement agencies.

In 2017, Maryland counties saw 1,773 reported rape cases (Fig. 2).<sup>iv</sup> Within the statewide landscape of inconsistent crime data, sexual assault is consistently underreported and, thus, under-acknowledged. A [January 2020 article in the Carroll County Times](#) found inconsistencies across Maryland rape statistics at the county, state, and national levels, particularly in Prince George’s County.<sup>v</sup> Despite these inconsistencies, the number of rape cases have generally been consistent or increasing between 2016 and 2017.<sup>iv</sup> Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Charles County, Frederick County, Harford County, Howard County, Washington County, Wicomico County, and Worcester County all experienced increases in reported rapes. According to the [Maryland Coalition Against Sexual Assault](#), these numbers do not necessarily mean that more sexual assaults have occurred, but could highlight increased levels of reporting these events.<sup>iv</sup>

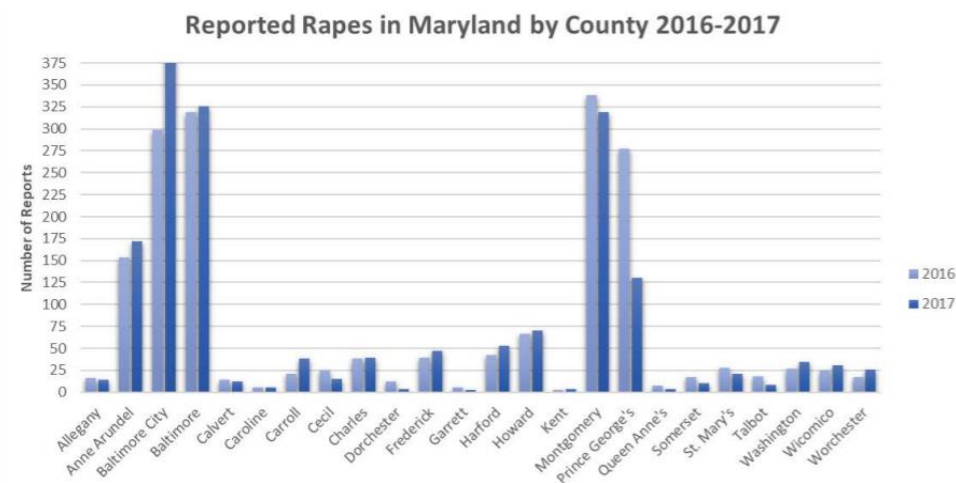


Figure 2: Retrieved from the [Maryland Coalition Against Sexual Assault](#), using data from the [Maryland Statistical Analysis Center](#).

In a country where more than 75% of sexual assaults are unreported,<sup>iii</sup> there must be continued trust in law enforcement to handle the numbers of cases already reported. To highlight capacity to support survivors who report to law enforcement, Maryland law enforcement agencies must clarify their policies and procedures. According to statewide guidelines for reporting a rape or sexual assault, the sensitization of the

criminal justice system has been a continued priority, since law enforcement agencies are expected to use specially trained investigators who are “sensitive to the needs and concerns of a sexual assault victim.”<sup>vi</sup> However, in light of recent concerns involving [the alleged concealing of rape cases in Baltimore County](#)—including unnecessary dismissal of cases, ignorance of evidence, and victim deception—it is undeniable that Maryland law enforcement needs clear guidance surrounding the rights of survivors to criminal investigations.<sup>vii</sup>

A 2015 report by the [Michigan Domestic and Sexual Violence Prevention and Treatment Board](#) noted best practices for law enforcement responding to sexual assault. These include not asking a survivor if they wish to pursue prosecution, avoiding subjecting a survivor to a “lengthy or detailed interview, nor...’test[ing]’ for credibility,” and not making judgments about the survivor’s credibility based on their demeanor, narrative, or presence.<sup>viii</sup>(pg 6) Ultimately, the board noted that “it is neither reasonable nor realistic to expect the victim to be able to make an informed decision about their future involvement in the criminal justice” at an early investigative stage.<sup>viii</sup>(pg 5) Similar best practices for law enforcement are reflected by the International Association of Chiefs of Police (IACP). In their [2018 report on sexual assault investigative strategies](#), the IACP

proclaimed that “a victim’s reluctance to participate [for various reasons] is neither indicative of a false report nor reason to forego a strong, evidence-based investigation.”<sup>ix</sup>(pg 2) IACP further established that the survivor’s right to accept or decline services from law enforcement should not prevent a thorough investigation from being conducted.

Importantly, IACP established that “**pressuring a reluctant victim to sign a form stating that they are not interested in prosecution and will not hold the agency accountable for stopping the investigation is poor practice and is potentially damaging to an agency**” (emphasis added).<sup>ix</sup>(pg 6) SB0807 prevents this very practice from occurring, since the “private right of action” of the victim is central for every agency. The knowledge that perpetrators could be prosecuted often encourages survivors to report their assaults.<sup>x</sup> Increased trust and transparency of investigative and criminal justice processes allows for a survivor a restored sense of control.<sup>ix</sup>

Ultimately, law enforcement agencies *must* treat survivors with dignity, respect, and sensitivity throughout their interactions with the criminal justice system.<sup>xi</sup> SB0807 undoubtedly establishes the foundation for tangible support for survivors within law enforcement agencies, and retroactive application will serve to right the wrongs done to survivors who have unknowingly limited their right to action. For these reasons, NARAL Pro-Choice Maryland **urges a favorable committee report on SB0807**. Thank you for your time and consideration.

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<sup>i</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *Female Victims of Sexual Violence, 1994-2010*. Michael Planty, Lynn Langton, Christopher Krebs, Marcus Berzofsky, and Hope Smiley-McDonald. NCH 240655. Washington DC: Bureau of Justice Statistics, 2016. Online, <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf> (Accessed March 3, 2020).

<sup>ii</sup> Feldhaus KM, Houry D, Kaminsky R. “Lifetime sexual assault prevalence rates and reporting practices in an emergency department population.” *Annals Emergency Medicine* 36, no. 1 (2000). Quoted in Read, KM, Kufera, JA, Jackson, C, Dischinger, PC. “Population-based study of police-reported sexual assault in Baltimore, Maryland.” *American Journal of Emergency Medicine* 23 (2005): 273-278. Accessed March 3, 2020. [https://www.ajemjournal.com/article/S0735-6757\(05\)00080-X/fulltext](https://www.ajemjournal.com/article/S0735-6757(05)00080-X/fulltext)

<sup>iii</sup> “The Criminal Justice System: Statistics”, rainn.org, Rape Abuse and Incest National Network, 2020, accessed March 3, 2020, <https://www.rainn.org/statistics/criminal-justice-system>

<sup>iv</sup> “Reported Rapes in Maryland by County 2016-2017,” mcasa.org, Maryland Coalition Against Sexual Assault, last revised in February 2020, accessed March 3, 2020, [https://mcasa.org/assets/files/Reported\\_Cases\\_of\\_Rapes\\_by\\_Counties\\_2016-2017\\_Fact\\_Sheet\\_2.24.2020.pdf](https://mcasa.org/assets/files/Reported_Cases_of_Rapes_by_Counties_2016-2017_Fact_Sheet_2.24.2020.pdf). Data sourced from “Violent Crime and Property Crime by County: 1975 to Present,” opendata.maryland.gov, Maryland Council on Open Data, last revised January 2020, accessed March 3, 2020, <https://opendata.maryland.gov/Public-Safety/Violent-Crime-Property-Crime-by-County-1975-to-Pre/jwfa-fdxs/data>

<sup>v</sup> Davis, Elliott. “Maryland crime data highlights inconsistent statistics; recent assault data for Carroll County differs with FBI, MSP.” *Carroll County Times*, January 4, 2020. Accessed March 3, 2020. <https://www.baltimoresun.com/maryland/carroll/news/cc-cns-crime-data-20200105-kffkcv6z5hdzpzpsyz7arzhta-story.html>

<sup>vi</sup> “Reporting a Rape or Sexual Assault” Annapolis.gov, Maryland Sexual Assault and Rape Prevention Program, accessed March 3, 2020, <https://www.annapolis.gov/669/Reporting-a-Rape-or-Sexual-Assault>

<sup>vii</sup> Moyer, Justin. “Students protest after Maryland lawsuit alleges ‘shameless corruption’ in concealing rape cases.” *The Washington Post*, September 18, 2018. Accessed March 3, 2020. <https://www.washingtonpost.com/dc-md-va/2018/09/18/students-protest-after-maryland-lawsuit-alleges-shameless-corruption-concealing-rape-cases/>

<sup>viii</sup> Michigan Domestic and Sexual Violence Prevention and Treatment Board. *Michigan Model Policy: The Law Enforcement Response to Sexual Assault: Adults and Young Adults*. Published with funding from the Office on Violence Against Women, US Department of Justice, April 2015. Accessed March 3, 2020. [https://www.michigan.gov/documents/mdhhs/Michigan\\_Model\\_Policy\\_550586\\_7.pdf](https://www.michigan.gov/documents/mdhhs/Michigan_Model_Policy_550586_7.pdf)

<sup>ix</sup> International Association of Police Chiefs. *Sexual Assault Incident Reports: Investigative Strategies*. Published with funding from the Office on Violence Against Women, US Department of Justice, 2005. Accessed March 3, 2020. <https://www.theiacp.org/sites/default/files/all/s/SexualAssaultGuidelines.pdf>

<sup>x</sup> Read, KM, Kufera, JA, Jackson, C, Dischinger, PC. “Population-based study of police-reported sexual assault in Baltimore, Maryland.” *American Journal of Emergency Medicine* 23 (2005): 273-278. Accessed March 3, 2020. [https://www.ajemjournal.com/article/S0735-6757\(05\)00080-X/fulltext](https://www.ajemjournal.com/article/S0735-6757(05)00080-X/fulltext)

<sup>xi</sup> Maryland Crime Victims Resource Center. “Your Rights as a Victim in District Court.” Mdcimevictims.org, MCVRC, 2020. Accessed March 3, 2020, <https://www.mdcimevictims.org/victim-services/legal-rights-in-the-criminal-justice-system/your-rights-as-a-victim-in-district-court/>

## **Hettleman\_FAV\_SB807**

Uploaded by: Senator Hettleman, Senator Hettleman

Position: FAV



*The Senate of Maryland*  
ANNAPOLIS, MARYLAND 21401

TESTIMONY OF SENATOR SHELLY HETTLEMAN  
SB 807 – CRIMINAL PROCEDURE – VICTIMS OF SEXUALLY ASSAULTIVE BEHAVIOR –  
WAIVERS OF RIGHTS – PROHIBITION

Just one year ago I learned about the practice among some law enforcement agencies to require sexual assault survivors to sign a document waiving their rights if they choose not to participate in the investigation of a sexual assault.

Over 2017 and 2018, police departments used these forms 223 times, according to a Baltimore Sun survey and report. My own county was the worst offender of those that were surveyed, with 172 individuals having signed these documents. Police departments in Anne Arundel County, Harford County and Prince George’s County also used them. But, there could be many more that use them – we just don’t know.

Historically, waivers have been used as a means of protecting the police department if they didn’t pursue an investigation so that later on, if a survivor decided they wanted to cooperate with the police, they wouldn’t be held accountable if they were blamed for not having investigated. They have been used to avoid responsibility.

They’ve also been used as a way to intimidate victims, a way of pressing them to back off. In one such case, a 21-year old college student – who was legally intoxicated - was asked to sign a waiver as she was in the hospital awaiting a rape kit forensic exam. In part, the waiver said, “I release from responsibility and hold harmless Baltimore County and any of its employees from any and all liability concerning my decision to cease the investigation. I make the request to terminate the investigation into this incident voluntarily, and of my own free will. My decision is the not the result of any threats, promises or inducements....”

Fortunately, many police departments have ceased the practice. In fact, Baltimore County stopped over a year ago and has experienced a significant increase in the number of survivors who stay engaged with the Special Victims Unit, attributable to the cessation of this practice, according to a lieutenant in the force.

We already know that sexual assault is a notoriously underreported crime for a variety of reasons, top among them that victims did not believe that the police would help. Even though many law enforcement agencies have ceased this practice, they could begin again at any time. Waivers are against the International Association of Chiefs of Police best practices and, I believe, should be ended once and for all. This bill would do just that. I respectfully ask for your support of SB 807. Thank you.

**SAEK\_FAV\_SB807**

Uploaded by: Williams, Carrie

Position: FAV



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## 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)

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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.<sup>1</sup> 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.<sup>2</sup> In these forms, victims would

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<sup>1</sup> 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>.

<sup>2</sup> 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.<sup>3</sup>

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."<sup>4</sup> Individuals who experience sexual violence may struggle with decision-making due to the effects of trauma.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

Agencies have justified using the Waivers of Rights forms as the best way to document the victim's intent not to participate.<sup>8</sup> 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.

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<sup>3</sup> *Id.*

<sup>4</sup> 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>.

<sup>5</sup> 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](https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf).

<sup>6</sup> See *supra* note 2.

<sup>7</sup> *Id.*

<sup>8</sup> *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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> Because a few agencies still use these forms today,<sup>12</sup> 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.

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

<sup>10</sup> *Id.*

<sup>11</sup> 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>.

<sup>12</sup> *Id.*

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

# **MDJudiciary\_UNF\_SB807**

Uploaded by: Jones, Tyler

Position: UNF

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Mary Ellen Barbera  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 807  
Criminal Procedure – Victims of Sexually Assaultive Behavior –  
Waivers of Rights - Prohibition  
**DATE:** February 26, 2020  
(3/5)  
**POSITION:** Oppose as drafted

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The Maryland Judiciary opposes Senate Bill 807 as drafted. This bill prohibits a criminal justice unit from presenting certain victims of sexually assaultive behavior with forms or verbal agreements purporting to limit the obligations of the criminal justice unit to the victim or limit the rights of the victim.

This bill incorporates by reference the definition of “criminal justice unit” from Criminal Procedure Article § 10-201 which, at subsection (f)(2)(iv), explicitly includes: the Administrative Office of the Courts, the Court of Appeals, the Court of Special Appeals, the circuit courts, the District Court of Maryland, and the offices of the clerks of these courts in the definition when they are exercising jurisdiction over criminal matters. The Judiciary opposes the inclusion of this definition of criminal justice unit as this provision would allow individuals to file declaratory judgment actions against judges.

Among other requirements, the bill states that each “criminal justice unit” shall adopt a policy to enforce prohibitions on seeking waivers from sexual assault victims and to provide a copy of the policy to the Maryland Sexual Assault Evidence Kit Policy Funding Committee, but the Judiciary does not seek such waivers from victims, nor is it in a position to do so, so it is not clear how the Judiciary could comply with this requirement.

cc. Hon. Shelly Hettleman  
Judicial Council  
Legislative Committee  
Kelley O’Connor

# **SHELLENBERGER\_UNF\_SB807**

Uploaded by: Shellenberger, Scott

Position: UNF

Bill Number: SB807  
Scott D. Shellenberger, State's Attorney for Baltimore County  
Support with Amendments

**WRITTEN TESTIMONY OF SCOTT SHELLENBERGER,**  
**STATE'S ATTORNEY FOR BALTIMORE COUNTY, IN**  
**OPPOSITION TO SENATE BILL 807,**  
**CRIMINAL PROCEDURE**  
**VICTIMS OF SEXUALLY ASSAULTIVE BEHAVIOR**  
**WAIVERS OF RIGHTS – PROHIBITION**

I write in opposition of Senate Bill 807 which would outlaw a written waiver of rights from being presented to victims of sexual assault.

It unfortunately has been a common practice among law enforcement for years that if the victim of a sexual assault did not want to go forward with charges, they would be asked to sign a waiver form documenting that fact.

Unfortunately, until last year, Baltimore County followed that procedure. Baltimore County stopped that policy and I support Senate Bill 807 prohibiting such written forms. However, as written I oppose this bill.

I believe there would need to be two amendments made to this bill for it to be appropriate.

First, I believe subsection (e) may be unconstitutional. It states: “ a form or verbal agreement identified under subsections (b) and (c) of this section which is signed or agreed to by a victim may not be enforced or used as evidence in a criminal, civil, or administrative proceeding.

If a victim had previously said she did not want to go forward with charges and later changes her mind and the case goes forward, the Court would permit the fact that she did not want to go forward as admissible in cross examination or through another means of admissibility. Prohibiting it would be a violation of the Confrontation Clause.

I believe at a minimum the word criminal needs to come out of section (e).

I am concerned about (c) that prohibits a “verbal agreement” which would be like the form. Often a victim will tell the police they do not want to go forward with a charge or even have the offense investigated. The Detective will often write that fact in the police report. There is a strong argument that this an agreement prohibited by the bill. Doing so would possibly be a violation of the Violence Against Women Act which gives victims control over their investigation and prosecution. We need to document it because if the victim changes her mind we don't want accusations of why nothing was done. Also sometimes close family and friends may be some type of witness and the

victim may ask that they not be contacted. If the police agree (which they usually do) that could also be a problem.

I think we need to add that documenting the victim wishes does not constitute an agreement or something to that effect.

I look forward to working with the committee on some amendments.