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TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: Zenita Hurley
Chief, Office of Equity, Policy, and Engagement, Office of the Attorney
General
Chair, Maryland Sexual Assault Evidence Kit Policy and Funding Committee

RE: HB758- Sexual Assault Evidence Collection Kits - Preservation and Storage
(**Support w/Sponsor Amendments**)

The Office of the Attorney General (OAG), on behalf of the Maryland Sexual Assault Evidence Kit Policy and Funding Committee, urges a favorable report of House Bill 758 which, as amended by the sponsor, makes three critical improvements to the State's handling of sexual assault evidence kits (SAEKs):

- (1) defines the term "sexual assault evidence collection kit";
- (2) extends the SAEK retention period from 25 to 75 years; and
- (3) includes uncodified language that specifically prohibits rape kit evidence that predated modern SAEKs from being destroyed and requires them to be transferred to an LEA within 30 days or as directed by the SAEK Policy and Funding Committee.

The bill as amended would also include uncodified language directing the SAEK Committee to issue guidelines establishing the process by which sexual assault evidence kits collected prior to January 1, 2000 should be transferred to law enforcement agencies for testing; guidance regarding the use of do-it-yourself, at-home, and self-administered sexual assault evidence collection kits; and in consultation with the consumer protection division of the office of the attorney general, recommendations for educating consumers about the effects of using do-it-yourself, at-home, and self-administered sexual assault evidence collection kits, including information regarding the kits' admissibility in a criminal prosecution, and identifying other resources for victims of sexual assault.

By way of background, the SAEK Policy and Funding Committee was created by the General Assembly in 2017 to create effective 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. Each year, the Committee is also required to submit an annual report on its activities during the prior fiscal year to the Governor and the General Assembly. Earlier this year, the Committee issued its [fifth annual report](#) detailing its activities which included managing \$2.1 million in federal Sexual Assault Kit Initiative funding, implementing recent SAEK reforms, providing guidance and training to stakeholders on State laws and policies governing SAEKs, and developing new recommendations for improving Maryland's handling of SAEKs and its support of victims.

House Bill 758 seeks to address two “new” types of SAEKs that were recently brought to the attention of the SAEK Committee: glass slides containing evidence collected from patients alleging sexual assault that were collected between 1975 and 1997 and stored at the Greater Baltimore Medical Center (the “GBMC slides”); and at-home or do-it-yourself rape kits that have recently become available for purchase directly by consumers online.

Before the creation of modern-day SAEKs, a physician at GBMC had the foresight to preserve forensic samples from over 2,000 examinations of patients who alleged that they had been sexually assaulted. The GBMC slides, collected by Dr. Rudiger Breitenecker over a 20-year period until his retirement in 1997, have been known to the Baltimore County Police Department (BCPD) for many years. In fact, BCPD has already subpoenaed more than a hundred of the GBMC slides and worked with the prosecutor's office to secure convictions in several dozen cases. And while it is important to acknowledge the work of GBMC in preserving the slides and Baltimore County in using them to seek justice for victims, all of these efforts have occurred outside of the oversight that the General Assembly established for SAEKs. Moving forward, the GBMC slides should be identified as SAEKs and treated accordingly. To this end, House Bill 758 as amended adds a definition of SAEK that is consistent with that used by the Department of Justice's Bureau of Justice Assistance in its [SAKI grant program](#). It also includes uncodified language that allows for the SAEK Committee to develop guidelines on when and how the GBMC slides—and any other SAEKs that predate January 1, 2000—should be transferred to law enforcement for testing.

It bears noting that had GBMC simply retained the slides consistent with the State's current 25-year retention mandate, many of them would have been destroyed by now, depriving victims in older cases of the chance of obtaining justice. House Bill 758 ensures this protection exists for other SAEKs, regardless of when they were collected or where they are stored, by extending the SAEK retention requirement to 75 years. In Maryland, crimes of sexual assault have no statute of limitations. It is critical then that we protect evidence of sexual assault far beyond the current 25 year required retention.

House Bill 758 also seeks to address at-home and do-it yourself kits, which have seen some increased availability in recent years despite the strenuous objections of most health practitioners and victim advocacy groups. See e.g., the statement of the National Alliance to End Sexual Violence on At-Home-Kits available at <https://njcasa.org/wp-content/uploads/2019/08/NAESV-statement-on-at-home-rape-kits.pdf>. If the goal is to collect evidence that could be used in a criminal prosecution, these kits face numerous hurdles, including challenges proving the date and time of collection, protecting against tampering, and other chain-of-custody issues that render them virtually useless. On the other hand, it is very possible that the evidence collected via an at-home kit is the only evidence of sexual assault that exists in a particular case. In that instance, most SAEK Committee members agreed (after significant debate and not unanimously) that the kit should be retained so that the credibility of that evidence could be evaluated by a prosecutor for its possible use in trial, however unlikely. House Bill 758 balances all these competing concerns by ensuring that an at-home kit used by a victim be retained without mandating that it be tested or tracked like other SAEKs. The bill would also require the SAEK Committee, in consultation with the Consumer Protection Division of the Office of the Attorney General, to develop recommendations for educating the public on the various pitfalls of using at-home kits.

The recent discovery of older SAEKs and the introduction of do-it-yourself kits into the marketplace each represents distinct challenges, both of which necessitate a response. House Bill 758 as amended represents the consensus of the SAEK Committee and provides a thoughtful and balanced approach to regulating SAEKs as they previously existed and as they continue to evolve. For all these reasons, we urge a favorable report.

cc: Committee Members