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To: Senator William C. Smith, Jr., Chair  
Senate Judicial Proceedings Committee

Fr: Heather Forsyth, Deputy Director, Health Education and Advocacy Unit  
Consumer Protection Division

Re: SB 949 – Consumer Protection – Self-Administered Sexual Assault Evidence  
Collection Kits

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The Consumer Protection Division writes in support of SB 949. The Sexual Assault Evidence Kit Policy and Funding (SAEK) Committee, created in 2017 by the General Assembly, was directed during the 2023 session (HB758/SB789) to, among other things, issue a report making recommendations for guidance on the use of self-administered sexual assault evidence collection kits in Maryland and, in consultation with the Consumer Protection Division, educate consumers about their use, including information regarding the kits' admissibility in a criminal prosecution and identifying other resources for victims of sexual assault.

The CPD met with committee members multiple times over several months to provide input on consumer protection concerns. These concerns included (1) the commercial sale and distribution of these kits purport to provide victims with the ability to "collect evidence," without evidence that any material self-collected is admissible in Maryland courts; (2) consumers who provide physical material to purveyors of such kits lose privacy control over their genetic information; and (3) reliance on these kits means the user does not have access to all the advocacy and medical care needed after a sexual assault. As with most commercial products in the State, the CPD works to ensure consumers are not misled or otherwise deceived when making a purchase, particularly for a product such as this one with potentially significant ramifications for patient health, safety, and privacy in its use.

The CPD in Maryland is not alone in its concerns. The Attorneys General of eight states have issued cease and desist or warning letters, and the sale of so-called “over the counter” kits have been completely banned in New Hampshire and Washington.

Commercial kits are presented as if to offer an easy, do-it-yourself substitute for legal and medical intervention after an assault when such a claim is neither warranted nor supported. The CPD is aware there is a lack of access to forensic nurse examiners and other resources, particularly in rural areas, and that not all victims have comfortable relationships with law enforcement or medical establishments. However, offering do-it-yourself kits and making victims responsible for collecting evidence of a crime on their own bodies -- “evidence” that likely will not be admissible in court -- then losing all control over their private genetic information, is not an appropriate solution to the lack of forensic nurses or an effective strategy to overcome the fear marginalized communities may have to traditional legal and medical resources. The state cannot “DIY” its way out of committing necessary resources to ensure that any victim of a sexual assault, regardless of where they live or their prior interaction with law enforcement, has access to a safe, free exam by a trained health care provider, with appropriate referrals and follow-up care. Offering a DIY solution is a solution with no value, and has the potential to inflict even more harm on community members who are most vulnerable.

For these reasons, we recommend the Committee’s support of SB949 and request a favorable report.