

Bill Number: SB 949
Scott D. Shellenberger, State's Attorney for Baltimore County
Support

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 949
SELF ADMINISTERED EVIDENCE KITS

I am here today not only as the State's Attorney in Baltimore County, but also as a member of the Maryland Sexual Assault Evidence Kit (SAEK) Policy and Funding Committee. I write in support of Senate Bill 949 that will ban Self Administer Sexual Assault Evidence Kits. Self administered evidence kits are sold and marketed to victims of sexual assault. The sale of these kits makes victims of sexual assault believe the results derived from the kits will be admissible evidence in court. Nothing could be further from the truth.

I think it is highly probable that evidence collected by a self administered kit will never be admissible in court. This is particularly true in criminal cases. It will be a very rare circumstance where the results from such a kit will be admissible.

It is also highly unlikely that the results will be entered into CODIS which is the FBI's national database for finding suspects. Currently SAEK kits are used by a specially trained nurse who must collect the evidence in a very precise way. The kits are then turned over to a police agency, stored in secure evidence rooms and forwarded to specialty forensic labs and analyzed by experts in DNA.

Self administered kits do not provide a reliable chain of custody like I outlined above. Even the makers of the kit often acknowledge in fine print that self administered kits are not a replacement for collection by medical personnel.

To date there have been no known cases in the entire country of evidence from a self administered kit being admitted into evidence. While I acknowledge there is a lack of enough SAEK programs around the state the Bill also establishes a Forensic Nurse Examiner Training Grant Program. This will ensure more trained nurses are available making the need for self administered kits unnecessary. In addition, privacy is also a concern. Regular SAEK kits are considered medical records and are governed by HIPPA regulations. That does not apply to self administered kits, and therefore privacy is a concern.

Finally, the Bill adds that the fact that physical evidence in the case was obtained using a self administered test and is not admissible in court. This is to protect the trial so that the fact finder is not wondering where the results are and hold it against the victim.

The sale of self administered kits amounts to manufacturers taking advantage of a very vulnerable population. Do we want to lead sexual assault victims to report a crime only to find out that the evidence they collected will not be admissible in court?

I urge a favorable report.