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Testimony Supporting House Bill 491
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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 Kit Initiative Victim Notification Project, a statewide project to support survivors with untested rape kits. MCASA represents the unified voice and combined energy of all its members working to eliminate sexual violence. We urge the Judiciary Committee to report favorably on House Bill 491.

House Bill 491 – Sexual Assault Survivors
Prohibiting Law Enforcement Verbal Requests to Waive Rights

Current law prohibits law enforcement from requesting that sexual assault survivors waive certain rights in writing, and provides procedures for law enforcement to follow when survivors choose not to pursue criminal justice. This bill extends the law to include requests for verbal waivers of rights.

Using rights waivers sends the wrong message to sexual assault survivors. The use of “waivers of investigation” inherently presents a message to victims that when reporting a crime of sexual assault, the investigation is “all or nothing” and “now or never”. Waivers send the message from law enforcement that survivors must: “Tell me everything this minute, or never call us again”. End Violence Against Women International (EVAWI), *Reporting Methods for Sexual Assault Cases*, (2014). As a result, there is national consensus that waivers are inappropriate in sexual assault cases.

In 2020, after many years of trying to discourage waivers voluntarily, the General Assembly enacted legislation prohibiting the use of written waivers. This important legislation also established a process for law enforcement to use when a survivor wishes to limit or discontinue an investigation. Unfortunately, some agencies have chosen to comply with the letter of the law by avoiding written waivers, and are instead asking survivors for verbal waivers.

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. Waivers sidestep the responsibility of a law enforcement agency to conduct a thorough investigation, whether the request is verbal or written. 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).

Requests for verbal waivers encourage sexual assault survivors to disengage from the criminal justice system and withdraw consent for rape kit testing. These interactions often occur without the presence of an advocate, exploiting survivors’ limited knowledge of their rights and leveraging law enforcement authority in a manipulative and coercive manner. In cases where the survivor has had a forensic exam, this practice also devalues the investigative role of rape kit testing, which can corroborate survivors’ accounts, refute offender claims, and identify serial offenders. In fact, nationally, rape kit testing has generated thousands of DNA profile matches to serial sexual and violent offenders.¹ This protects survivors and our communities.

Sexual assault is underreported due in part to the retraumatizing nature of the criminal justice process, with many survivors indicating that they would not have reported the crime if they had known how they would be treated.² Without the clear legal obligation that HB491 will create, survivors will continue to face disbelief and inadequate investigations will prevent offender accountability.

**The Maryland Coalition Against Sexual Assault
urges the Judiciary Committee to
report favorably on House Bill 491**

¹ Sexual Assault Kit Initiative. SAKItta.org

² Lorenz K, Kirkner A, Ullman SE. A Qualitative Study Of Sexual Assault Survivors' Post-Assault Legal System Experiences. J Trauma Dissociation. 2019 May-Jun;20(3):263-287.