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February 10, 2026

TO: The Honorable Sandy Bartlett  
Chair, Judiciary Committee

FROM: Carisa A. Hatfield, Esq.  
Assistant Attorney General  
Counsel, Maryland Sexual Assault Evidence Kit Policy and Funding  
Committee

RE: HB491 - Criminal Procedure - Victims of Sexually Assaultive  
Behavior - Request for Verbal Acknowledgement (Verbal  
Waiver Transparency Act)

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The Office of the Attorney General (OAG), on behalf of the Maryland Sexual Assault Evidence Kit (SAEK) Policy and Funding Committee, urges a favorable report of House Bill 491.

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. This includes developing and disseminating best practices information and recommendations governing sexual assault evidence kits ("SAEKs," commonly referred to as "rape kits" or "kits") and Maryland's overall response to sexual assault crimes.

House Bill 491 is an amendment to a bill passed by the General Assembly in the 2020

Legislative Session. [Senate Bill 807](#)<sup>1</sup> prohibited law enforcement agencies (“LEA”) from presenting sexual assault victims with a written form purporting to:

- (1) Relieve the LEA of an obligation to the victim;
- (2) Preclude or define the scope of an investigation by the LEA into an act allegedly committed against the victim;
- (3) Prevent or limit a prosecution of an act allegedly committed against the victim; or
- (4) Limit private right of action of the victim pertaining to an act allegedly committed against the victim of the victim’s interaction with the LEA.

Further, Senate Bill 807 required that if a victim requests that the scope of an investigation be limited or that an investigation be temporarily or permanently suspended, the LEA shall:

- (1) Thoroughly document the request; and
- (2) Follow up with the victim in accordance with practices recommended by the Maryland Police Training and Standards Commission.

Each law enforcement agency in the State was also required to submit a policy to the SAEK Committee that would enforce the prohibition on seeking waivers from victims of sexually assaultive behavior by January 15, 2021. The bill was signed into law and was codified under Maryland Criminal Procedure §11-929.

For several years, some Maryland law enforcement agencies (“LEAs”) 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 waive their right to have their assault investigated and, often, the right to file a civil suit against the LEA for failing to complete an investigation.<sup>3</sup> Additionally, many survivors were presented these forms without information regarding the status of their kit or without being informed that signing the waiver meant that their SAEK would not be tested.

However, the use of waivers now long been under scrutiny for being coercive or potentially coercive. According to the International Association of Chief of Police, “pressuring a reluctant witness 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.”<sup>4</sup> Reasons a victim may hesitate to move forward with an investigation vary widely and include, but are not limited to:

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<sup>1</sup> SB807, Ch. 584 (2020) is codified under MD. CODE, Crim. Proc. § 11-929 (2020).

<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>.

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

<sup>4</sup> IACP: Sexual Assault Incident Reports, Investigative Strategies, August 8, 2018 <https://www.theiacp.org/sites/default/files/all/s/SexualAssaultGuidelines.pdf>

- Lack of trust, or a trusting rapport, with law enforcement or other members of the criminal justice system
- Fear of public embarrassment
- Fear of not being believed
- Reluctance to relive the trauma that they have already been experienced
- Intimidation and fear of retaliation from the suspect

In addition to the passage of the statute, the Maryland Police Standards and Training Commission (MPSTC) published best practice guidelines for law enforcement agencies that affirmed that “the officer should not suggest a victim of sexually assaultive behavior sign a waiver of rights during the initial contact with the victim or during the continued investigation.”<sup>5</sup> The legislation and the MPSTC standards articulate the appropriate circumstances where an investigation may be suspended with written documentation: “if a victim requests that the scope of an investigation be limited or that an investigation be temporarily or permanently suspended.”<sup>6</sup>

In the fall of 2024, the SAEK Committee received an inquiry from at least one local law enforcement agency requesting clarification on the policy surrounding verbal waivers of prosecution and investigation. SAEK Committee counsel and the Maryland Coalition Against Sexual Assault (MCASA) met with agency at their next Sexual Assault Response Team (SART) meeting to discuss the issue. Counsel sought clarity on the process being undertaken by the agency. The agency advised that they were approaching victims of sexual assault whose cases the State’s Attorney did not intend to prosecute and asking them whether they wanted to continue the investigation and prosecution of their case. As a result of that conversation, and broader concern that the issue may impact more than one law enforcement agency, the SAEK Committee published guidance in January of 2025.<sup>7</sup> That guidance, while helpful, did not guarantee that agencies would abide by said guidance or that the issue would not become more widespread. In September of 2025, the Committee agreed that it would be best to introduce legislation expressly prohibiting verbal waivers of investigation.

As a rule, the SAEK Committee strongly discourages the use of waivers of any type where a law enforcement agency or prosecutor’s office approaches a victim to discuss whether their case should continue, as that behavior is inconsistent with the intent of the 2020 statute. As described above, the statute’s prohibition on the use of waiver forms is intended to ensure that victims are not coerced, retraumatized, or revictimized by a law enforcement

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<sup>5</sup> [https://mpctc.dpscs.maryland.gov/pdf/Victims\\_of\\_Sexual\\_Assault\\_Best\\_Practices.pdf](https://mpctc.dpscs.maryland.gov/pdf/Victims_of_Sexual_Assault_Best_Practices.pdf)

<sup>6</sup> *Id.*

<sup>7</sup> [https://oag.maryland.gov/our-office/Documents/pdfs/SAEK\\_Committee\\_FAQ\\_Document\\_010725.pdf](https://oag.maryland.gov/our-office/Documents/pdfs/SAEK_Committee_FAQ_Document_010725.pdf)

agency or a State's Attorney's Office asking them to sign a form indicating that they decline to proceed with further investigation of their case. Although this threat is exacerbated when the request is presented in writing, a verbal request holds the same risks. This is particularly true of a victim who is informed by a law enforcement officer that their case will not be prosecuted or when a victim is not also informed about the benefits of testing their kit, the right to change their mind, or the right to consult with a victim's advocate or be represented by a victim's right's attorney about their case. Failing to provide this information, or access to a victim advocate, may pressure the victim to make a decision without all the information regarding their rights and that they would not otherwise make. This is inconsistent with the best practices guidance issued by the Maryland Police Training and Standards Commission.<sup>8</sup> The intent of the law is that only a victim may initiate the discussion with a law enforcement agency regarding their desire to continue or end the investigation of their case, not law enforcement or a State's Attorney's Office—regardless of whether a waiver form is ultimately presented.

In consideration of the above, the SAEK Committee requests a favorable report on HB491.

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or [sbrantley@oag.state.md.us](mailto:sbrantley@oag.state.md.us).

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<sup>8</sup> See *id.*