

Law Enforcement Guide to
**Sexual Assault
Response**

MCASA
Maryland Coalition Against Sexual Assault



2021

This Guide offers a victim-centered approach toward sexual assault crime response and does not afford a criminal defendant any additional rights or procedural protections beyond those that exist by law. The Guide only contains general operating guidelines that can be referenced quickly and easily. This Guide does not replace the need for on-going training and utilization of departmental policies and protocols. This Guide does not constitute legal advice.

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Introduction

In recent years, public and private attitudes regarding crimes of sexual assault have changed. Laws and legal procedures have been modified by the evolution and acceptance of rape recovery and victim-centered concepts. Knowledgeable and empathetic law enforcement, along with an informed and concerned public, are some of the most effective defenses against sexual predators in our communities.

Definitions

TERM	DEFINITION
"Victim"	shall mean a person who has reported a sexual assault. For the purposes of this Guide, we have chosen to use the word "victim" rather than "survivor" or "victim/survivor" because it is the term used by Maryland law and within the criminal justice system. We acknowledge that some people who have experienced sexual assault prefer "survivor" and we encourage law enforcement, and other responders, to respect those choices and use the term the individual prefers.
"SAFE"	shall mean a Sexual Assault Forensic Exam. Please note that depending on the jurisdiction, SAFEs may sometimes be referred to simply as a forensic or medical exam. For purposes of this Guide, we will be using the acronym SAFE.
"SAEK"	shall mean a Sexual Assault Evidence Kit. Please note that, depending on the jurisdiction, SAEKs may be referred to as "kits" or "PERKs." For purposes of this Guide, we will be using the acronym SAEK.
"Victim-Centered"	A victim-centered approach seeks to minimize re-traumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their assailant(s) brought to justice. ¹
"Trauma-Informed"	A program, organization, or system that is trauma-informed realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in victims, families, staff, and others involved with the system; responds by fully integrating knowledge about trauma into standard operating procedures, policies, and practices; and seeks to actively resist re-traumatization. ²

¹ Human Trafficking Task Force e-Guide: Strengthening Collaborative Responses, Office for Victims of Crime Training and Technical Assistance Center. Available at <https://www.ovcttac.gov/taskforceguide/eguide>.

² SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach, Substance Abuse and Mental Health Services Administration (July, 2014). HHS Publication No. (SMA) 14-4884. Available at: https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf

TERM	DEFINITION
“Offender Focused Investigation”	An investigation that focuses on the actions and behaviors of the offender rather than those of the victim. This approach should be maintained during the investigation and prosecution to ensure the victim’s actions and behaviors do not become a diversion from the accountability of the offender. Utilizing an offender-focused approach also reduces the likelihood of statements or actions by investigators that may be perceived as victim-blaming. ³
“Local Rape Crisis Center”	Local programs, sometimes referred to as a sexual assault crisis programs or rape crisis centers, that provide confidential services such as crisis intervention, counseling, and victim accompaniment to hospitals, police interviews, and court proceedings. The Maryland Coalition Against Sexual Assault works with these programs in each county to provide these services to adult and child victims, as well as their families, partners, and loved ones.

Trauma-Informed Response: Tips for First Responders

When responding to an initial report of sexual assault the responding officers have the chance to set the tone of the investigation. The use of trauma-informed practices and interactions are essential in creating a positive and trusting rapport with the victim.

When interacting with a victim of sexual assault, first responders should ensure that the following steps are always taken:

- Ensure the victim feels safe and supported.
 - Determine if the victim has any individualized needs.
 - **Example:** If an interpreter is needed, follow protocol for obtaining services.
 - **Do not** let a friend or family member interpret unless it is absolutely necessary. **Do not** depend on a friend or family member for long-term interpretation assistance.
 - Ask if the victim would like you to contact anyone for support.
 - Honor their requests as much as possible.
 - Inform the victim that you will be contacting the local Rape Crisis Center.
 - If the victim does not want the local Rape Crisis Center to be contacted, the SAFE Program at the hospital will discuss advocacy services with the victim again.
- Attend to the victim.
 - Begin by acknowledging the difficulty of the situation and explaining your role.
 - **Example:** “I know this situation is very difficult for you and I want you to know that I am here to help you and to gather some initial information. You will also be able to contact us with any questions or concerns about your report in the future.” Provide the victim with the appropriate contact information for your agency and sexual assault investigations unit.
 - Personal space is important to the victim. Be aware that body language speaks volumes.
 - Do not stand over the victim.
 - Do not lean toward or over the victim.
 - **NOTE:** If an injury requires immediate attention, inform the victim that you need to touch them to provide medical help before touching them whenever possible.

³ National Sexual Violence Resource Center: Sexual Assault Response Team Toolkit. Available at: <https://www.nsvrc.org/sarts/toolkit/2-2>

- The victim's physical and medical state is the top priority – call for an ambulance if their condition requires emergency medical services.
- Contact your local Rape Crisis Center for advocacy services (see Appendix A)
 - Pursuant to Section 11-926(g)(2) of the Criminal Procedure Article of the Maryland Code, law enforcement agencies investigating sexual assault crime should make use of the certified local rape crisis center, or other qualified community-based sexual assault victim service organizations that can provide services and support to victims of sexual assault. These services include the presence of a sexual assault victim advocate during all stages of the investigation, including during the SAFE, law enforcement conducted interviews, and court proceedings.⁴
 - Services should be explained and offered to all victims of sexual assault. If a victim is not interested in receiving services at the time, law enforcement officers should be prepared to provide information regarding the local services available and instructions on how to obtain said services.⁵ This information should be provided in writing to ensure a victim can review the content at a later date.
 - The Maryland Coalition Against Sexual Assault provides a list of all local rape crisis centers on our website, and a list has also been included here as Appendix A. Law enforcement agencies are also welcome to order brochures, free of cost, from MCASA's website to provide to victims.⁶
 - Your local Rape Crisis Center may have an advocate available for services, including crisis intervention and SAFE accompaniment, through a 24/7 hotline. If this is the case in your community, an advocate should be able to meet the victim at the hospital in order to provide advocacy services during the SAFE and to explain the services offered by the Rape Crisis Center and within the community.
 - If 24/7 advocacy services are not available at your local Rape Crisis Center, or through the hospital, it is recommended by the Maryland Sexual Assault Evidence Kit Policy and Funding Committee (the "SAEK Committee"), in accordance with national protocol recommendations, that the Rape Crisis Center be

immediately notified of the SAFE upon opening.⁷ If the victim prefers to move forward with a SAFE without the advocate physically present the victim should be given the opportunity to speak to an advocate via phone, if available, prior to the forensic exam.

- Your local SAFE Program may offer advocacy accompaniment for SAFEs directly. In these circumstances, the responding officer should provide the victim with the contact information for the local Rape Crisis Center for follow-up counseling and advocacy services.
 - It is essential that both law enforcement officers and SAFE program staff work to ensure that the victim feels empowered to dictate who is in the exam room during the SAFE process. All medical, advocacy, and investigative staff should honor the victim's requests when possible.
 - A victim who declines to have a SAFE must be provided with information regarding the local SAFE Programs available in the community should they choose to receive an exam at a later time.
- Preserve evidence on the victim – Sexual Assault Forensic Exams (SAFE)
 - SAFEs are invasive physical examinations that are conducted by a Forensic Nurse Examiner, or other qualified health care professional, to collect potential evidence of a crime and to address physical and medical needs.
 - In Maryland, a hospital can now be reimbursed for a SAFE if conducted up to 15 days after a sexual assault.⁸ This extended timeframe allows for the reimbursement of evidence collection services and medical care and was implemented to align Maryland medical forensic practices with emerging research that highlights the potential for obtaining DNA evidence within this extended timeframe. A SAFE should never be discouraged solely based on the elapsed time since the assault. If you are unsure if a SAFE can be conducted, have the victim report to the nearest SAFE Program and allow the Forensic Nurse Examiner, or other qualified medical professional, to make that determination.
 - The victim's medical care is of utmost importance. If a victim requests to be seen by a medical professional, regardless of the timeframe or information provided during an initial interview, that request must be honored.
 - A victim of sexual assault should have access to a SAFE

⁴ Sexual Assault Incident Reports: Investigative Strategies, International Association of the Chiefs of Police, (August 2018) (hereinafter, "IACP Report"), pg. 4, available at:

<https://www.theiacp.org/sites/default/files/all/s/SexualAssaultGuidelines.pdf>.

⁵ Md. Code, Crim. Proc. §11-926(f)(1); see also SAEK Committee Preliminary Recommendations at 5(a)-(b), available at:

https://www.marylandattorneygeneral.gov/Pages/Groups/SAEK_Committee_Preliminary_Recommendations_April_2018.pdf

⁶ Brochures are available at www.mcasa.org under "For Providers"

⁷ See SAEK Committee Annual Report: January 2019, pg. 24. available at: https://www.marylandattorneygeneral.gov/Pages/Groups/2019_SAEK_Committee_Annual_Report.pdf

⁸ Md. Code, Crim. Proc. § 11-1007 (2020).

prior to any interviews with law enforcement. With limited exceptions, there should be no delay in medical forensic exams. However, this advice does not preclude law enforcement from soliciting general information from the victim, if the victim desires, while waiting for the availability of a forensic nurse examiner, when the suspect is at large and is a threat to the community, there is knowledge of where the suspect will be and law enforcement has limited time to apprehend them, there is an immediate need to preserve evidence at a crime scene, or investigative responsibility has yet to be determined. Any delays to medical forensic care should be made on a case-by-case basis.

- In keeping with the requirements of the Violence Against Women Act of 1994,⁹ all individuals reporting a sexual assault or rape have the right to a SAFE free of charge and without the requirement of participating in the criminal justice process.¹⁰ A police officer has the responsibility to provide the victim with information regarding the SAFE process and procedure. At no point are you permitted to deny a victim access to a SAFE or to condition access to a SAFE on cooperating with your investigation.¹¹
- Inform the victim that physical evidence may be obtained through a SAFE for investigative purposes.
 - Request that the victim refrain from hygiene activities such as bathing, showering, using the bathroom, or brushing their teeth. The victim should also refrain from eating, drinking, and removing any clothes.
 - **NOTE:** If a victim has already done any of the above activities, inform them that it is okay and it does not preclude them from obtaining a SAFE.
 - If a victim has already removed their clothing, ask the victim if you can take the clothing with you for investigative purposes and, if possible, secure the clothing before leaving the scene.
 - Potential biological evidentiary items, such as those containing blood, semen, or other DNA, should be transported in paper bags to prevent contamination, avoid plastic bags when possible.
- If the victim is interested in receiving a SAFE:
 - Provide for transportation to the nearest SAFE Program (Appendix B) according to departmental protocol.
 - **NOTE:** The victim should receive the exam at the nearest, or their preferred SAFE Program, regardless of

where the assault occurred.¹²

- Secure and protect the crime scene.
 - Consider potential evidence.
 - Bedding
 - Condoms
 - Condom wrappers
 - Clothing
 - Any item the perpetrator used to wipe potential evidence off with after the sexual assault
 - Digital evidence including phones, computers, and social media accounts
 - Video surveillance
 - Alcohol bottles, drinking glasses, and drug paraphernalia should be collected in suspected drug or alcohol facilitated sexual assaults.
 - **NOTE:** A victim of sexual assault should never be deterred from reporting due to the voluntary use of drugs or alcohol.
- Apprehend the alleged offender, if present, and in accordance with agency protocol.
 - The alleged offender should be subject to the same considerations as the victim for the purposes of evidence preservation. For example, they should not be permitted to shower, wash their hands, eat or drink, or use the bathroom unless they are accompanied.

9 42 U.S.C. § 13931 et seq. (2018).

10 Md. Code, Crim. Proc. §11-925.

11 IACP Report, pg. 5; available at:

<https://www.theiacp.org/sites/default/files/all/s/SexualAssaultGuidelines.pdf>;
see also Md. Code, Crim. Proc. §§11-926(f)(1) and (g).

12 Md. Code, Crim. Proc. §11-924.

Best Practices for Interacting with Victims

Following your agency's protocol is essential in all cases, including sexual assault cases. The following information is based on best practices and should be considered when interacting with a victim of assault upon an initial report. These practices will enhance victim support, mitigate concerns, and empower victims to be involved in the investigative process.

TAKING THE INITIAL REPORT

- No pressure! – Victims should not be required to make decisions regarding their participation in an investigation or prosecution during the initial contact or early stages of an investigation.
- The credibility of traumatized victims can appear questionable; however, it is critical to obtain information regardless of the perception of the victim's credibility. Law enforcement has a duty to continue a neutral and thorough investigation after an initial victim interview in which allegations are made that, if true, would constitute a criminal offense. Law enforcement's impression of a victim during an initial interview is not sufficient to determine whether or not a crime has been committed.
 - **Important:** A relatively new Maryland law prohibits law enforcement agencies from introducing, and using, any waiver of investigation forms in sexual assault cases.¹³ If a victim requests that the scope of an investigation be limited or that an investigation be temporarily or permanently suspended, the law enforcement agency shall thoroughly document the request and follow-up with the victim in accordance with trauma-informed practices recommended by the Maryland Police Training and Standards Commission (MPTSC).¹⁴
 - Refrain from making judgmental statements in a report, such as "victim's behavior is inappropriate," "victim is not behaving like a victim of rape," "victim is unreliable," etc.¹⁵
- Victims of sexual assault have a wide range of emotional and behavioral responses, all of which are valid. Any notation of victim behavior or demeanor should be detailed factually, without subjective information or interpretation of the behavior.
- Sexual assault victims often identify with other vulnerable groups of people, such as minorities, people with mental

¹³ Md. Code, Crim. Proc. §11-929.

¹⁴ For guidance on how to document a victim's request to suspend an investigation without using a waiver see SAEK Committee Annual Report: January 2021 pg. 35 – 41. (see Md. Code, Crim. Proc. §11-929), available at: https://www.marylandattorneygeneral.gov/Pages/Groups/010421_SAEK_Committee_2021_Report.pdf

¹⁵ See IACP Report, pg. 5, available at: <https://www.theiacp.org/sites/default/files/all/s/SexualAssaultGuidelines.pdf>

illnesses, people experiencing homelessness, those with immigration issues or non-English speaking ability, substance abuse issues, sex workers, the LGBTQ+ community, and those with a criminal history. Investigating officers must not let their own implicit or explicit biases or perception of the victims impact the quality of their investigations.

- All victims should be approached in a trauma-informed manner, with the understanding that some populations, such as those listed above, may need additional assistance or services. Make appropriate accommodations when necessary, while always keeping the victim's safety in mind.
- It is the responding officer's responsibility to gather basic information and then allow the lead investigator or detective to conduct detailed interviews and discuss the criminal investigation process with the victim.
 - **Remember:** A case determination cannot be made based on the initial report alone. In order to classify a case as unfounded, an investigation that produces clear evidence that a crime was not committed or attempted must take place prior to the case closure. It is essential that the lead investigators in sexual assault cases make case determinations only after a thorough investigation.
 - Sexual assault investigations are complicated and sensitive. A case should never be closed without the inclusion and input of a trained, specialized investigator.
- **Important:** The Violence Against Women Act (VAWA) prohibits law enforcement agencies from functioning as gatekeepers to SAFEs. Meaning law enforcement personnel, including patrol officers, operations personnel, and detectives, do not have the authority to prevent a victim of an alleged sexual assault from obtaining a SAFE. If a victim reports a sexual assault to police before receiving a forensic exam, they have a right to a SAFE regardless of the details of the alleged assault.

TIPS FOR INVESTIGATORS

Warning: An interview can produce the same physiological response in the victim as the assault itself. Be sure that victims are aware of this prior to each interview so that they are prepared and supported after the conclusion of the interview. This is also an opportunity to review services provided by the local rape crisis center including advocacy, counseling, and safety planning.

- Interviewing victims.
 - After an initial report is taken, and investigators have determined whether there is the need to address public safety and crime scene preservation immediately, victims should be allowed 24 – 48 hours (or 1 – 2 sleep cycles)

before an in-depth interview is conducted.¹⁶ Victims should have the opportunity to have a victim advocate present during an interview.¹⁷

- Advocates are trained to be a support person and not to respond to any investigative questions.
- Prepare the victim for the interview.
 - Inform the victim that questions may be asked in several ways. Reassure them that this does not mean that you do not believe them.
 - When able, explain why certain questions are necessary to assure the victim they are not being blamed.
 - **Example #1:** When asking a victim how much they had to drink the night of the assault, let them know that how much they drank is not being asked for judgment purposes or to devalue their case, but instead to determine what strategy law enforcement needs to utilize to conduct a thorough investigation.
 - **Example #2:** If asking what a victim was wearing, first explain that it is for the purposes of ensuring all clothing has been inventoried. Law enforcement can avoid implying blame or judgement regarding clothing choice by simply reading the list of items that have been inventoried and asking if anything else should be listed.
- Do not expect a chronological narrative.
 - Gaps in memory or ability to recall this information will vary.
 - Do not push the victim to provide this information.
- When interviewing victims, ask open-ended questions.
 - Research on the neurobiology of trauma explains that memory storage is often disrupted during trauma, but recall may be facilitated when a victim is discussing what they can already recall.¹⁸
 - Open-ended questions allow victims to expand their answer as memories return to them.
- Ask sensory questions¹⁹ about what they heard, smelled, and felt in addition to what they saw.
 - During a traumatic event, the brain stores sensory information better than chronological or supplemental

¹⁶ Lord, V.B. & Rassel, G. (2000). Law enforcement's response to sexual assault: A comparative study of nine counties in North Carolina. *Women & Criminal Justice*, 11 (1) 67-68.

¹⁷ Archambault, J., Lonsway, K.A. (2019). Interviewing the victim: Techniques based on the realistic dynamics of sexual assault. *End Violence Against Women International*.

¹⁸ Fisher, R.P. (1995). Interviewing victims and witnesses of crime. *Psychology, Public Policy, and Law*, 1 (4), p. 732-764.

¹⁹ Archambault, *supra* note 17.

information. Discussing what the victim felt, heard, or smelled may help with recall.²⁰

- Be sensitive to the nature of the interview and the content.
- Offer and provide breaks.
 - Follow the victim's lead - If they do not want to take a break, honor that request.
- Obtain information about the crime scene. Including information about the offender's identity, their age, and relationship to the victim.
 - In certain scenarios the relative ages of the victim and offender will affect both the sentencing and the available charges (for example, if the victim is under 14 and the offender is at least 4 years older).²¹
 - Additionally, the relationship between the victim and offender, will also impact the charges that are available (for example, if the offender was a frequent fixture in the household of the victim, they may be treated as a "household member" under the statute, which provides additional charging options).²²
- Details regarding the location of the assault.
 - Inform the victim that the location of the assault may be important for evidence collection purposes.
 - Car, home or apartment, hotel, business, street or alley, etc.
- Any objects used during the assault.
 - This may include restraints, items used for physical force, items used for vaginal, oral, or anal penetration.
 - However, remember that, as of October 1, 2017, evidence of physical resistance **cannot be considered** to prove that a sexual assault occurred under the law.²³ Additionally, a lack of force does not impact the validity of the report, only how the sexual offense will be charged.
- Threats made by the offender.
 - Examples of threats can include the offender telling the victim not to speak to the police, not to tell family members, and threatening consequences such as physical retaliation or release of personal information, such as photos.
 - **NOTE:** A threat of force can be equivalent to using force during an assault, depending on the facts, so it is

²⁰ Koss, M.P., Figueredot, A.J., Bell, I., Tharan, M., & Tromp, S. (1996). Traumatic memory characteristics: A cross-validated mediational model of response to rape among employed women. *Journal of Abnormal Psychology*, 105 (3), 421-432.

²¹ See, e.g., Md. Code, Crim. Law §§3-304(a)(3) and (b).

²² See, e.g., Md. Code, Crim. Law §3-601.

²³ Md. Code, Crim. Law §3-319.1(a).

important to determine if threats were made.²⁴

- Reasons the victim may not have been able to consent:
 - As defined in Maryland Code, if the victim is a substantially cognitively impaired individual,²⁵ a mentally incapacitated individual,²⁶ or a physically helpless individual,²⁷ and the offender knows or reasonably should know this about the victim, then the victim did **not consent** to the acts in question for purposes of Maryland law.²⁸
 - **NOTE:** It is irrelevant for purposes of Maryland law if the victim is rendered unable to consent due to substances that the victim consumed voluntarily. If the victim is unable to consent due to these substances, that is what is relevant to the investigation. Successful prosecution in these cases is often dependent on detailed questions and thorough documentation

DELAYED REPORTS

- Delayed reporting is common and may occur for a variety of reasons including, but not limited to, the following:
 - Fear of the perpetrator
 - Feeling ashamed or embarrassed
 - Feeling that the incident was minor, and not a crime or police matter
 - Belief that law enforcement cannot do anything
 - Concern that police officers would not believe their story or blame them for the assault
- A delayed report should never impact the necessity of a thorough investigation.²⁹
- Tips for taking delayed reports:
 - Determine when and where the incident(s) happened.
 - Be aware that the reporting victim may have been victimized by the assailant multiple times.
 - It may be important for the responding officers to ask why there was a delay in reporting the assault to law enforcement. Please be aware that this question, when asked improperly and without explanation, may cause the victim to feel blamed or not believed. To avoid this, explain that the question is for information only and will not have an impact on the investigation.
 - **Example:** "I know you have been through a very difficult and scary situation. In order to make sure we have all the information we need, and to ensure your safety, I

²⁴ See, e.g., Md. Code, Crim. Law §3-303(a).

²⁵ Md. Code, Crim. Law §3-301(f).

²⁶ Md. Code, Crim. Law §3-301(b).

²⁷ Md. Code, Crim. Law §3-301(c).

²⁸ See, e.g., Md. Code, Crim. Law §3-304(a)(2).

²⁹ See, e.g., Md. Code, Crim. Law §3-304(a)(2).

need to ask you to talk about why you waited to report this assault. This information will not change how the case is investigated."

- Keep in mind, the victim may say they do not know why they didn't report earlier. This is a valid and common response.
- If the victim outlines threats made by the perpetrator, be sure to document and investigate the threats made and assess any current threat level.
- Utilize advocacy services available through your local Rape Crisis Center for safety planning.
- Obtain the information for anyone that the victim may have told about the assault and reconstruct a timeline of disclosure, especially if disclosure was gradual.

CONCLUDING VICTIM INTERVIEWS

- Provide the victim with information on resources in the community. These resources may be local, state level, or national.
 - Advocacy
 - Support services
 - Crime victim rights attorneys
- Provide the victim with information on what to do if they are contacted directly or indirectly by the offender.
- Provide the victim with your contact information and inform them of the laws regarding the tracking, testing, and retention of the SAEKs. Agencies may provide victims with MCASA's brochure "Your Sexual Assault Evidence Kit: Know Your Rights," to ensure victims understand their rights and have access to this information after the interview.³⁰
- Be aware of departmental policies and state laws regarding responding to victim requests about the status of their SAEK.
 - The SAEK testing criteria and Untested Kit Review process, effective January 1, 2020, were implemented to ensure that all kits with potential foreign DNA eligible for the Combined DNA Index System (CODIS) are tested. Information on the new testing criteria and Untested Kit Review Process is provided below. Further information and guidance can be found in the SAEK Committee Annual Report: January 2020.³¹
 - As of October 1, 2018, all jurisdictions are required to retain SAEKs for a minimum of 20 years. Pursuant to Maryland law, law enforcement is obligated to notify victims no later than 60 days prior to the date of the

³⁰ MCASA's "Your Sexual Assault Evidence Kit: Know Your Rights" brochure is available at www.mcasa.org under "for providers".

³¹ SAEK Committee Annual Report: January 2020, pg. 47 available at: http://www.marylandattorneygeneral.gov/Pages/Groups/123019_SAEK_Committee_2020_Report.pdf; see also COMAR 02.08.03.02-03

intended destruction of their SAEK.³²

- As of January 1, 2020, law enforcement agencies must submit all SAEKs for forensic analysis unless they meet one of the below exemptions:
 1. There is clear evidence disproving the allegation of sexual assault;
 2. The facts alleged, if true, could not be interpreted to violate a provision of Title 3, Subtitle 2, Title 3, Subtitle 3, Subtitle 6, or Title 11, Subtitle 3 of the Criminal Law Article;
 3. The victim from whom the evidence was collected declines to give consent for analysis; or
 4. The suspect's profile has been collected for entry as a convicted offender for a qualifying offense in CODIS maintained by the Federal Bureau of Investigation and the suspect has pleaded guilty to the offense that led to the sexual assault evidence collection kit.
- As of January 1, 2020, Maryland Code states that law enforcement agencies are required to notify victims of sexual assault, upon their request, when their SAEK is not being sent for DNA analysis or testing.³³ However, it is recommended that law enforcement agencies conduct this notification in all cases in which a SAEK is not sent for testing.
 - In cases where the SAEK is not sent for testing, victims and service providers have the right to request a review of that decision through an Untested Kit Review conducted by the local Sexual Assault Response Team ("SART") or the Sexual Assault Evidence Kit Policy and Funding Committee ("SAEK Committee"). Guidelines on Untested Kit Review are provided in the Code of Maryland Regulations.³⁴

Drug-Facilitated Sexual Assaults

- The term drug facilitated sexual assault ("DFSA") references any case where an individual is subjected to nonconsensual acts while they are incapacitated or unconscious due to the effects of drugs or alcohol.³⁵
 - Keep in mind that DFSA cases are not limited to those in which a perpetrator "spikes" a victim's food or beverage without the victim's knowledge. In fact, DFSA cases include situations in which the victim voluntarily and knowingly ingests a drug (over-the-counter, prescriptions, or illegal) or alcohol and is targeted by a perpetrator due to their level of intoxication. Additionally, perpetrators may tell victims that the drug is something else in order to increase the likelihood that the targeted victim will consume the substance.
- Any victim presenting with symptoms of drug or alcohol intoxication should be treated as a DFSA case. Typical symptoms include:
 - Drowsiness
 - Dizziness
 - Loss of muscle control
 - Slurred speech
 - Decreased inhibitions
 - Memory loss or impairment
 - Loss of consciousness
 - Vomiting
- The drugs commonly associated with DFSA cases are typically those that are highlighted in the media. However, there are multiple classes of drugs that have been associated with this crime. These drugs are typically central nervous system ("CNS") depressants that slow down brain activity, decrease inhibitions, and induce drowsiness and relaxation. CNS depressants, of both illegal and over-the-counter varieties, used in DFSA may include:
 - Alcoholic beverages
 - Benzodiazepines such as Valium, Xanax, or Rohypnol
 - Antidepressants such as Zoloft or Elavil
 - Muscle relaxants such as Soma or Flexeril
 - Antihistamines such as Benadryl
 - Over-the-counter sleep aids (such as Unisom)
 - Hallucinogens such as ecstasy, marijuana, or ketamine
 - Opioids such as Vicodin or Oxytocin

³² Md. Code, Crim. Proc. §11-926.

³³ Md. Code, Crim. Proc. §11-926.

³⁴ COMAR 02.08.03.02-.03; see also SAEK Committee Annual Report: January 2020 at Appendix C, available at: https://www.marylandattorneygeneral.gov/Pages/Groups/123019_SAEK_Committee_2020_Report.pdf

³⁵ See Md. Code, Crim. Proc. §§3-301(b) and (c) (definitions of "Mentally incapacitated individual" and "Physically helpless individual.")

- Collecting urine, blood, and hair³⁶ samples from victims of suspected DFSA cases is an essential component to the investigation. SAFE Programs have protocols in place for the collection of these specimens. These protocols are typically implemented when a victim describes symptoms common in DFSA cases during the forensic exam. If you are aware of any information that may suggest a drug facilitated component to a sexual assault, it is important that you communicate this to the forensic nurse examiner conducting the exam.
 - **Example:** A victim that was voluntarily consuming alcohol prior to the sexual assault and that is complaining of "hangover" like symptoms may benefit from the collection of urine and blood specimens for testing of an unknown substance, even if they have not considered the possibility of having been unknowingly drugged.

Legal Theories: Rape, Sexual Offenses, and Related Crimes

There are three different legal theories for the crimes of rape and sexual offenses:

1. Force or Threat of Force
2. Capacity
3. Age

These crimes are found in the Maryland Criminal Law Code Subtitle 3, Sexual Offenses. Additionally, there are crimes related to these theories that are also sexual offenses, but are found outside of the Sexual Crimes Subtitle including sextortion and revenge porn, drug facilitated crime of violence and drug facilitated sexual offense in the third degree, harassment, stalking, human trafficking, and child pornography.

1 FORCE OR THREAT OF FORCE

RAPE

In order to identify whether rape has occurred using a theory of force or threat of force, there must be an element of force or a threat of force used by the suspect against the victim, in addition to lack of consent. In investigations it will be important to gather information about what the suspect said to the victim, any physical injuries that are present, and whether there was a weapon or anyone else present. Remember that a relatively new law clearly states that physical resistance by the victim is NOT required. This means that evidence of resistance should be collected but lack of physical resistance is not grounds to stop an investigation or to unfound a case. The legal factors for rape are:

- Vaginal intercourse, oral sex, anal sex, or other penetration, including with an object,
- By force or threat of force (physical resistance is not required and an offender's history of violence should also be considered),
- Without the consent of the other,
- For the more serious charge of first-degree rape: one or more aggravating factors are present.

Aggravating factors change the degree of the rape or sexual offense and can include instances where the suspect:

- Has a dangerous weapon (or the victim reasonably thinks they have a dangerous weapon);
- Inflicts serious injury on the victim, including suffocation, strangulation, or disfigurement;
- Threatens or places the victim (or someone the victim knows)

³⁶ The Federal Bureau of Investigation states that hair samples can be useful in delayed reporting DFSA cases, but it is not necessary in most cases. There are several difficulties with the utilization of hair for analysis including the impact of collection time on detection and the potential for negative testing results to be misleading.

in fear of imminent death, suffocation, strangulation, serious physical injury, or disfigurement;

- Commits the crime with someone else; or
- Commits the crime during commission of 1st, 2nd, or 3rd degree burglary (4th degree burglary does not apply).

IMPORTANT NOTE: Evidence of physical resistance is not required under Maryland Law.

SEXUAL TOUCHING WITHOUT CONSENT

Sexual touching without consent, other than rape, includes sexual offense (third and fourth degree). It is important to remember that there does not need to be force or threat of force to charge these crimes. It will be important to investigate whether there has been:

- Any sexual contact (a touching of intimate areas such as the breasts and genitals; but this can be broader, for instance, an inner thigh);
- Without consent of the other
- For the more serious charge of third-degree sexual offense: one or more aggravating factors are present

Aggravating factors change the degree of a sex offense involving touching are:

- Has a dangerous weapon (or the victim reasonably thinks they have a dangerous weapon);
- Inflicts serious injury on the victim, including suffocation, strangulation, or disfigurement;
- Threatens or places the victim (or someone the victim knows) in fear of imminent death, suffocation, strangulation, serious physical injury, or disfigurement; or
- Commits the crime with someone else.

Note: Committing the crime while burglarizing is NOT an aggravating factor in this section of the law

2 SEX CRIMES BASED ON CAPACITY

Charges can also be based on the inability of a person to consent because they lack the capacity to do so. It is important to gather evidence about capacity even if you believe that another theory, such as force, is also present.

These crimes can fall under rape in the second degree or sexual offense in the third degree and are not defined only by the actions of the suspect, but also by the ability and awareness of the victim.

In these cases, it is also necessary to investigate whether the suspect knew or reasonably should have known, that the victim lacked capacity to consent. Effectively gathering this

information will include documentation of the victim's behavior, including observations such as if the victim was slurring their speech or stumbling while walking. It is not necessary that the suspect have caused the incapacity. For example, a victim may have consumed drugs or alcohol voluntarily. But even if the consumption of drugs or alcohol was voluntarily, any behaviors that demonstrate the offender's planning should be investigated and documented.

The terms used by Maryland law to differentiate the three types of incapacitation are substantial cognitive impairment, mental incapacity, and physical helplessness.

SUBSTANTIAL COGNITIVE IMPAIRMENT

A **substantially cognitively impaired individual** is an individual who suffers from an intellectual disability or mental disorder, which temporarily or permanently make them incapable of:

- Understanding what is happening;
- Resisting vaginal intercourse, a sexual act, or sexual contact; or
- Communicating consent to vaginal intercourse, a sexual act, or sexual contact.

MENTAL INCAPACITY

A **mentally incapacitated individual** (or an "intoxicated individual") is an individual who, because of the influence of alcohol, drug, narcotic, or another intoxicating substance, or because of an act committed on the individual without the individual's consent or awareness (for example, being drugged), is incapable of:

- Understanding what is happening; or
- Resisting vaginal intercourse, a sexual act, or sexual contact

Further discussion of drug facilitated sexual assault is discussed in the previous section. However, another crime that is specific to administering drugs (not including alcohol) without the other's knowledge is **drug-induced conduct**. If an offender administers drugs in order to commit a crime of violence or a sexual offense in the third degree, it is considered the crime of "drug-induced conduct."

PHYSICAL HELPLESSNESS

A **physically helpless individual** is an individual who is:

- Unconscious;
- Does not consent to vaginal intercourse, a sexual act, or sexual contact; and is
- Physically unable to resist or communicate consent to vaginal intercourse, a sexual act, or sexual contact.

IMPORTANT NOTE: A victim is physically helpless if they are asleep regardless of why they are asleep (i.e. drugs, alcohol, seizure, etc.).

3 AGE-BASED SEX CRIMES

In Maryland, the age of both the victim and the suspect matter for how to classify the crime and the degree of the rape or sexual offense. Neither force nor lack of consent is required for age-based crimes. Therefore, it will be important to gather age information during investigations. Additionally, the suspect does NOT need to have known the age of the victim for the crime to qualify as an age-based rape or sexual offense.

For charges of rape or sexual offense based on age, there must be an age difference of at least four years. In Maryland, 14 is the age of consent for fondling and 16 is the age of consent for sexual activities involving penetration and for oral sex, however, there are other sex crimes where the victim is considered minor if they are under 18.

The chart below describes how age relates to rape and sexual offenses, commonly known as "statutory rape." "SO" stands for sexual offense in the chart.

		Suspect's Age					
		16	17	18	19	20	21 and older
Victim's Age	12	Rape 2 SO 3 SO 4	Rape 2 SO 3 SO 4	Rape 1 Rape 2 SO 3 SO 4	Rape 1 Rape 2 SO 3 SO 4	Rape 1 Rape 2 SO 3 SO 4	Rape 1 Rape 2 SO 3 SO 4
	13		Rape 2 SO 3 SO 4				
	14			SO 4	SO 4	SO 4	SO 3 SO 4
	15				SO 4	SO 4	SO 3 SO 4
	16 and over	Sexual Abuse of a Minor (see definition below)	Sexual Abuse of a Minor (see definition below)	Sexual Abuse of a Minor (see definition below)	Sexual Abuse of a Minor (see definition below)	Sexual Abuse of a Minor (see definition below)	Sexual Abuse of a Minor (see definition below)

Sexual abuse of a minor has to do with sex crime against children by specific types of perpetrators. There does not have to be a four year age difference for a crime to be considered sexual abuse of a minor and "minor" includes a victim under the age of 18. Sexual abuse includes:

- Molestation, incest, rape, sexual offense in any degree, sodomy, and unnatural or perverted sexual practices; by a
 - Parent or other person who has permanent or temporary care, custody, or responsibility for the supervision of a minor;
 - Household member (a person who lives with or is a regular presence in the home of the minor); or
 - Other family member (a relative of a minor by blood, adoption, or marriage).

A person in position of authority has committed a sexual offense in the fourth degree of a minor if the suspect is at least 21 years old, are employed or under contract with a public or private preschool, elementary school, or secondary school, and because of their occupation have supervision over a minor who attends the school.

Sexual solicitation of a minor is to command, authorize, urge, entice, request, or advise a minor by any means with the intent to commit a sexual crime or place them in prostitution. Additionally, a parent, guardian, or person who has temporary care or custody or responsibility for supervision of the minor may not consent to the taking or detention of the minor for prostitution (human trafficking).

Child pornography includes causing, inducing, soliciting, or knowingly allowing a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct.

ADDITIONAL SEX CRIMES & CRIMES FREQUENTLY COMMITTED IN CONJUNCTION WITH SEX CRIMES

Sextortion

Sextortion is typically thought of as a computer crime, however it also applies to coercive acts that cause another to engage in sexual activity. This may be especially useful in cases where it is difficult to prove force or threat of force. Sextortion includes a coercive act where:

- Threats against the other person, their property, or to accuse the other of a crime are used in order to engage in any of the following:
 - Sexual activity; or
 - The production of sexually explicit material (visual

representation or performance with intimate parts exposed either engaging in or simulating sexual activity).

Revenge Porn

Revenge Porn has the intent of harming, harassing, intimidating, threatening, or coercing another person by:

- Knowingly distributing sexually explicit material depicting the person (visual representation or performance with intimate parts exposed or engaged in sexual activity)
 - Without the consent of the other; or
 - With reckless disregard for the other's consent

Stalking

Stalking is the malicious approaching or pursuing of another with the intent to:

- Place another in reasonable fear of serious bodily injury, assault, rape, sexual offense, false imprisonment or death; or
- Cause serious emotional distress.

Harassment

Harassment is maliciously engaging in actions that alarm or annoy another person, with the intent to harass, alarm, or annoy the other, after requests to stop.

Human Trafficking

Human trafficking is a large and complicated topic, but also includes elements of force, threat of force, coercion, and fraud. In general, a person may not knowingly:

- Take, allow another to take, or keep a person in a place for prostitution;
- Persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;
- Receive compensation to bring others somewhere with the intent of causing them to engage in prostitution;
- Threaten to harm someone else to coerce a person to engage in prostitution;
- Destroy, conceal, remove, confiscate, or possess government identification, immigration documentation, or passport to force someone to engage in prostitution.



Appendices

APPENDIX A: Maryland Rape Crisis & Recovery Centers

County	Rape Crisis & Recovery Center
Allegany	Family Crisis Resource Center 301-759-9244
Anne Arundel	YWCA of Annapolis & Anne Arundel 410-222-6800
Baltimore City	TurnAround, Inc. 443-279-0379
Baltimore County	TurnAround, Inc. 443-279-0379
Calvert	Calvert Center for Change 410-535-1121; 301-855-1075
Caroline, Dorchester, Kent, Queen Anne's, Talbot	For All Seasons, Inc. 410-820-5600; toll-free: 1-800-310-7273 Para Español: 410-829-6143
Carroll	Rape Crisis Intervention Service 410-857-7322
Cecil	The Bridge 410-996-0333
Charles	Center for Abused Persons 301-645-3336
Frederick	Heartly House, Inc. 301-662-8800
Garrett	Dove Center 301-334-9000; toll-free: 1-800-656-4673
Harford	Sexual Assault/Spouse Abuse Resource Center (SARC) 410-836-8430
Howard	HopeWorks of Howard County 410-997-2272; toll-free: 1-800-752-0191
Montgomery	Victim Assistance & Sexual Assault Program 240-777-4357
Prince George's	DV/SA Center of University of Maryland Capital Region Health 240-677-2337
St. Mary's	Southern Maryland Center for Family Advocacy 240-925-0084
Somerset, Wicomico, Worcester	Life Crisis Center, Inc. 410-749-4357
Washington	CASA, Inc. 301-739-8975

APPENDIX B: Maryland SAFE Programs

FNE-A: Adult/Adolescent – Individuals age 13 and older

FNE-P: Pediatrics – Individuals 12 and younger

County Served	Hospital
Allegany, Garrett	UPMC Western Maryland FNE-A & FNE-P 240-964-1333
Anne Arundel (North)	Baltimore Washington Medical Center FNE-A & FNE-P ED: 410-787-4565 Directly to SAFE program: 410-787-4328 (number not manned 24/7)
Anne Arundel	Anne Arundel Medical Center FNE-A 443-481-1200
Baltimore City	Mercy Medical Center FNE-A Admin Office: 410-332-9494 Forensic Department: 410-332-9477
	University of Maryland Medical Center FNE-P 410-328-6335
Baltimore County	Greater Baltimore Medical Center FNE-A & FNE-P 443-849-3323
Calvert	Calvert Health Medical Center FNE-A & FNE-P 410-535-8344 (ask for Forensic Nurse Examiner or Sexual Assault Forensic Exam)
Caroline	UM Shore Medical Center at Easton FNE-A & FNE-P 410-822-1000 ext. 5557
Carroll	Carroll Hospital Center FNE-A & FNE-P SAFE line: 410-871-6655 ED: 410-876-3000
Cecil	Union Hospital FNE-A 410-406-1370
Dorchester	UM Shore Medical Center at Dorchester FNE-A & FNE-P 410-822-1000 ext. 8361 410-228-5511 ext. 8361
Frederick	Frederick Memorial Hospital FNE-A & FNE-P 240-566-3300
Harford	Harford Memorial FNE-A & FNE-P 443-843-5500
Howard	Howard County General Hospital FNE-A & FNE-P 410-740-7777 ext. 1

Kent	UM Shore Medical Center at Chestertown FNE-A & FNE-P 410-778-3300
Montgomery	Shady Grove Adventist Healthcare Center FNE-A & FNE-P SAFE: 240-826-6225 ED: 240-826-6000
Prince George's	University of Maryland Capital Region Medical Center FNE-A & FNE-P DV/SAC Office: 240-677-2337
Queen Anne's	UM Shore Medical Center at Chestertown FNE-A & FNE-P 410-778-3300
St. Mary's	St. Mary's Hospital FNE-A & FNE-P 301-475-8981
Somerset, Wicomico	Peninsula Regional Medical Center FNE-A & FNE-P 410-543-7100
Talbot	UM Shore Medical Center at Easton FNE-A & FNE-P 410-882-1000 ext. 5557
Washington	Meritus Medical Center FNE-A & FNE-P 301-790-8300
Worcester	Atlantic General Hospital FNE-A & FNE-P 410-641-1100

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