

# Testing Sexual Assault Evidence Kits

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## Introduction

Sexual Assault Evidence Kits (**SAEKs**) are collected by specially trained Forensic Nurse Examiners (**FNEs**) in hospitals with designated Sexual Assault Forensic Exam (**SAFE**) programs. SAEKs are used to gather potential forensic evidence from the victim following a sexual assault. The evidence collected can be a key part of an investigation as it may help identify the offender, support a victim’s story, and prove that sexual contact occurred.

In Maryland in 2017:<sup>1</sup>

- There were **1,299** sexual assault cases with crime scene DNA evidence samples collected.
- The average time between the submission of DNA evidence for forensic testing and receiving the results, known as “turnaround time,” was **105 days**.
- The Department of Health and Mental Hygiene, the agency responsible for reimbursing SAFE Programs for completing SAEKs in 2017, reported reimbursing for **2,932** cases.

Victims of sexual assault who obtain a SAFE but choose to not report the assault to law enforcement, are classified as “anonymous” or “Jane Doe” cases. These victims are still able to receive medical care and obtain a SAFE for evidence collection purposes. However, the SAEK will not be submitted for DNA analysis unless the victim chooses to report the assault to law enforcement. In Maryland, these anonymous cases, and all SAEKs, must be retained for a minimum of **20 years**.<sup>2</sup>

## Sexual Assault Evidence Kit Policy and Funding Committee

In January 2017, the Maryland General Assembly passed the Sexual Assault Victims Resources Act of 2017 (SB734). This bill established the Maryland Sexual Assault Evidence Kit Policy and Funding Committee (**SAEK Committee**), which is responsible for developing best practice recommendations related to the SAEKs, including the testing, tracking, and retention of kits in Maryland. Since its inception, the SAEK Committee has supported proposed legislation that impacts the testing of SAEKs, destruction of SAEKs, transparency of SAEK testing status, and victim rights regarding the testing and destruction of their SAEK.

In 2018, the SAEK Committee successfully applied for the Sexual Assault Kit Initiative (**SAKI**) Grant and obtained funding to test Maryland’s SAEK backlog. This funding supports a statewide inventory of untested SAEKs, testing these SAEKs, and victim notification and support.

## Uniform Testing Criteria

In 2019, the Maryland General Assembly passed legislation (HB1096/SB767) that requires the testing of all SAEKs which may contain evidence that is eligible to be uploaded into the Federal Bureau of Investigation’s Combined DNA Index System (**CODIS**) – a national searchable database that stores DNA profiles in order to link cases and solve crimes. The new criteria require all SAEKs be submitted to a forensic laboratory for testing unless:<sup>3</sup>

1. There is clear evidence disproving the allegations of sexual assault;
2. The facts alleged could not be interpreted as a crime;
3. The victim declines to give consent for analysis;
4. The suspect’s profile was previously uploaded into CODIS as a convicted offender for a qualifying offense and the suspect pled guilty in the current sexual assault case.

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<sup>1</sup> Governor’s Office of Crime Prevention, Youth, and Victim Services, 2017 Crime Scene DNA Collection and Analysis Reporting by Law Enforcement Agencies. (2018), p. 7, 8, 11.

<sup>2</sup> MD. CODE, Crim. Proc. §11-926(d)2 (2020).

<sup>3</sup> MD. CODE, Crim. Proc. §11-926(e)1-4 (2020).

## Untested Kit Case Reviews

In order to ensure that all SAEKs are submitted for testing in accordance with this new testing criteria, in 2019 the Maryland General Assembly directed the SAEK Committee to establish an independent process to review and make recommendations regarding a law enforcement agency's decision not to test a SAEK.<sup>4</sup> This process, known as an **Untested Kit Case Review**, allows survivors, a survivor's representative (i.e. advocate), or member of the local Sexual Assault Response Team ("SART") or SAEK Committee, to request a review of a decision not to test a SAEK. The review includes a multi-disciplinary examination of case materials with the goal of generating a recommendation regarding testing.<sup>5</sup>

For historical cases, the case review process may be initiated automatically by the investigating law enforcement agency.

## Untested SAEKs – The “Backlog”

In 2015, Maryland joined the nationwide effort to end the backlog of untested SAEKs by requiring law enforcement agencies to conduct an audit of their untested kits. To comply with this requirement, the Governor's Office of Crime Prevention, Youth, and Victim Services surveyed 135 law enforcement agencies and found that there were a total of **3,736 untested kits** in law enforcement's possession at the time.<sup>6</sup> The survey also revealed that Maryland does not have a backlog in the traditional sense, meaning there is no waitlist of SAEKs that were submitted to a forensic lab but have yet to be tested due to factors like limited staffing and resources. Instead, Maryland's backlog consists mainly of SAEKs that law enforcement determined, for various reasons, did not need to be sent for DNA testing.

Some of the major reasons the kits had not been tested were:

- Identity of the suspect is known
- Allegations were deemed unfounded
- Victim signed a waiver of investigation or no prosecution form
- Suspect admitted to consensual sex
- State's Attorney declined to prosecute or analysis was not needed for prosecution
- Suspect pled guilty
- Anonymous/Jane Doe kit

The 2015 survey results sparked further efforts to address the backlog of unsubmitted SAEKs and in 2018 the SAEK Committee applied for Sexual Assault Kit Initiative (SAKI) grant funding. Maryland was awarded SAKI funding in 2019. The grant is being administered by the Governor's Office of Crime Prevention, Youth, and Victim Services and overseen by the Office of the Attorney General. The Office of the Attorney General is responsible for conducting a statewide inventory of all SAEKs as a condition of SAKI grant funding. **As of January 1, 2020, over 6,000 untested and unsubmitted SAEKs have been inventoried in Maryland** and efforts continue to finalize this inventory data. Additional SAEK Committee member agencies, including MCASA and the Maryland State Police Forensic Sciences Division, are assisting in the efforts to eliminate the backlog by addressing victim notification and services and forensic testing, respectively.<sup>7</sup>

New research has found that testing *all* SAEKs, with the exception of anonymous cases, provides many benefits, including identifying or exonerating suspects and matching cases to serial perpetrators.<sup>4</sup> Maryland is working toward the elimination of the backlog and the implementation of a “test all” practice through the SAKI project and the newly established testing criteria.

<sup>4</sup> U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach* (2017), 46-47.

<sup>5</sup> *Guidelines for Reviewing a Law Enforcement Agency's Determination Not to Test a Kit* (2019). Sexual Assault Evidence Kit Policy and Funding Committee. Retrieved January 5, 2022 from: [https://www.marylandattorneygeneral.gov/Pages/Groups/Untested\\_Kit\\_Review\\_Guidelines\\_Case\\_Review\\_Form.pdf](https://www.marylandattorneygeneral.gov/Pages/Groups/Untested_Kit_Review_Guidelines_Case_Review_Form.pdf)

<sup>6</sup> *Annual Report* (January 2019). Sexual Assault Evidence Kit Policy and Funding Committee (January 2019). Retrieved January 5, 2022 from: [https://www.marylandattorneygeneral.gov/Pages/Groups/2019\\_SAEK\\_Committee\\_Annual\\_Report.pdf](https://www.marylandattorneygeneral.gov/Pages/Groups/2019_SAEK_Committee_Annual_Report.pdf)

<sup>7</sup> *Annual Report* (January 2020). Sexual Assault Evidence Kit Policy and Funding Committee. Retrieved January 5, 2022, from: [https://www.marylandattorneygeneral.gov/Pages/Groups/123019\\_SAEK\\_Committee\\_2020\\_Report.pdf](https://www.marylandattorneygeneral.gov/Pages/Groups/123019_SAEK_Committee_2020_Report.pdf)