

MARYLAND  
SEXUAL ASSAULT EVIDENCE KIT  
POLICY AND FUNDING COMMITTEE  
ANNUAL REPORT

JANUARY 2022



# **SAEK Committee 2022 Fourth Annual Report**

## **INTRODUCTION**

In 2017, the General Assembly established the Maryland Sexual Assault Evidence Kit Policy and Funding Committee (“SAEK Committee” or “Committee”) to develop and disseminate best practices information and recommendations governing sexual assault evidence kits (“SAEKs”) and Maryland’s overall response to sexual assault crimes.<sup>1</sup> Each year, the Committee is also required to submit an annual “report on [its] activities during the prior fiscal year to the Governor and...the General Assembly.”<sup>2</sup> In accordance with Section 11-927(i) of the Criminal Procedure Article of the Maryland Code, the SAEK Committee submits this report which sets forth its activities during FY2021.<sup>3</sup>

Fiscal Year 2021 marked the SAEK Committee’s fourth year in existence. Since its inception, the Committee has led the statewide SAEK reform effort in Maryland. The Committee’s advocacy has helped the State to:

- Establish a 20-year SAEK retention requirement;
- Create uniform statewide testing criteria;
- Develop a process to review law enforcement decisions not to test a kit;
- Increase victims’ access to sexual assault forensic exams (SAFEs);
- Protect victims’ privacy as medical personnel seek reimbursement for SAFEs;
- Provide victims with Human Immunodeficiency Virus (HIV) non-occupational post-exposure prophylaxis (nPEP) free of charge;
- Secure a \$2.6 million federal grant to clear the “backlog” of unsubmitted kits;
- Establish a State grant program to annually fund SAEK testing infrastructure; and
- Promote transparency by establishing annual reporting by law enforcement.<sup>4</sup>

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<sup>1</sup> See MD. CODE ANN., Crim. Proc. § 11-927(e)(1) (West 2020).

<sup>2</sup> Crim. Proc. § 11-927(i). For prior annual reports published by the Committee, visit the Committee’s website at: <https://www.marylandattorneygeneral.gov/Pages/Groups/SAEK.aspx>.

<sup>3</sup> This report also contains information regarding the Committee’s activities in fiscal year 2022.

<sup>4</sup> COMAR 02.08.04.01(A)–(B).

For FY2021, the SAEK Committee made a commitment to work to achieve uniform statewide implementation of these recent SAEK advancements. The Committee continued to: (1) implement the Sexual Assault Kit Initiative (“SAKI”) grant; (2) work to advance prior legislative enactments and SAEK Committee initiatives; and (3) develop new recommendations.

## **I. SAKI Grant Update**

This year the SAEK Committee continued to fulfill its obligations under the SAKI grant. SAKI is a federal grant program administered by the U.S. Department of Justice’s Bureau of Justice Assistance (“BJA”).<sup>5</sup> BJA provides funding to reduce the number of untested kits nationwide and help jurisdictions implement best practices and comprehensive reform in sexual assault cases.<sup>6</sup> In September 2018, Maryland was awarded \$2.6 million in SAKI grant funding to: (1) conduct a statewide inventory of unsubmitted kits; (2) test a portion of the unsubmitted kits; (3) establish a statewide tracking system; and (4) provide victim services.

The Governor’s Office of Crime Prevention, Youth, and Victim Services (“GOCPYVS”) is administering the grant. The Office of the Attorney General (“OAG”) serves as the SAKI Site Coordinator and oversees all aspects of the grant’s implementation. OAG also conducted the statewide inventory of unsubmitted SAEKs.<sup>7</sup> The Maryland State Police Forensic Sciences Division (“MSP”) in conjunction with several local forensic laboratories<sup>8</sup> is facilitating the process of testing kits and uploading qualifying DNA profiles into the Combined DNA Index System (“CODIS”). The Maryland Coalition Against Sexual Assault (“MCASA”) is implementing the

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<sup>5</sup> *Bureau of Justice Assistance Sexual Assault Kit Initiative*, BUREAU OF JUSTICE ASSISTANCE, [https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=117](https://www.bja.gov/ProgramDetails.aspx?Program_ID=117) (last visited Nov. 18, 2021).

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

<sup>7</sup> Unsubmitted SAEKs include all SAEKs that have not been submitted to a forensic laboratory for testing regardless of the reasons for not testing the kits.

<sup>8</sup> These local laboratories include: Anne Arundel, Baltimore City, Baltimore County, Montgomery County, and Prince George’s County.

Victim Notification Protocol and providing victim services. The SAEK Committee established the necessary requirements for Maryland’s tracking system, thoroughly reviewed all available tracking systems, and worked with the Maryland Department of Information Technology (“DoIT”) to develop a plan of action to implement a commercial product. The SAEK Committee also established SAEK policies that were consistent with the goals of the grant and necessary to successfully implement SAKI grant initiatives, such as establishing a SAKI grant testing protocol and a process for following-up on CODIS hits and investigating cold cases.

FY2021 is the third year Maryland has executed its duties under the SAKI grant. The term of the grant was originally slated to end in September 2021. However, Maryland was awarded a one-year no-cost extension due to unforeseen delays caused by the COVID-19 pandemic.

The current progress and/or results of each component of the SAKI grant are set forth below.

#### **A. SAKI Grant – Inventory**

Each SAKI grant recipient is required to conduct an inventory of unsubmitted kits as a condition to access the full SAKI grant funding. OAG conducted a manual inventory and hired six investigators to travel to each law enforcement agency (“LEA”) in possession of one or more unsubmitted SAEKs to capture all data required under the grant.<sup>9</sup>

Maryland began its inventory in March 2019, but encountered challenges that delayed the inventory’s progress. Those challenges include obtaining partially tested kit data, delays related to

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<sup>9</sup> The investigators documented the following data elements for the SAKI inventory: (1) Date the SAEK was collected; (2) Date the SAEK was obtained by the law enforcement agency; (3) Date of the offense; (4) Age of the victim; (5) Law enforcement incident number (or any other unique identifiers); (6) Agency in possession of the SAEK; (7) Location where the SAEK is stored (e.g. evidence room, offsite property storage facility); and (8) Reason why the SAEK was not submitted for testing (if attainable).

COVID-19, and internal personnel matters at local LEAs. Please reference the SAEK Committee's previous reports for more information about how OAG revised its inventory plan to address each challenge encountered throughout the inventory process.

The inventory was conducted in five phases. In March 2020, OAG submitted the Phase I inventory for certification, which was ultimately approved by BJA. OAG submitted the Phase II inventory in April 2020, which was also certified by BJA. The Phase III and IV inventories were delayed due to the COVID-19 pandemic. The Phase III inventory was submitted in September 2020 and was subsequently approved.

In January 2021, the majority of the Phase IV inventory data had been collected. However, the Salisbury Police Department ("SPD") encountered internal personnel matters that prevented them from providing the required inventory data in a timely manner. To overcome this obstacle, OAG received approval from BJA to create an additional Phase V. The Phase V inventory consisted solely of SPD.

The remainder of the Phase IV inventory was submitted in March 2021 and was approved shortly thereafter.

In November of this year, the Brunswick Police Department—who originally advised that they did not have any SAKI grant kits—contacted OAG to advise that they possessed SAKI grant kits. Brunswick promptly provided their SAKI grant inventory data and was subsequently added to the Phase V inventory.

As of December 21, 2021, OAG has not received the complete inventory data for the Salisbury Police Department. This is the only outstanding SAKI grant inventory for the State. OAG has been in contact with SPD and has consistently requested this data and worked with them

to clear any barriers that prevent them from providing the data. We will continue to contact SPD until we obtain the required inventory data and will then submit the Phase V inventory to BJA for approval.

Maryland’s inventory includes all unsubmitted kits that were obtained by an LEA on or before April 30, 2018—the month when Maryland applied for SAKI grant funding. The inventory data varies for several reasons, including each agency’s retention policy. The state’s 20-year retention policy mandate was implemented in 2017.<sup>10</sup> Prior to this requirement, each jurisdiction set its own policy for retaining untested SAEKs. Some agencies retained kits for longer than 20 years, while others destroyed kits within a shorter timeframe. For example, the Montgomery County Police Department’s (“MCPD”) policy is to retain all untested kits indefinitely. Therefore, MCPD’s number of untested kits is higher when compared to other agencies. The agencies that had shorter retention policies will have fewer untested kits compared to other agencies. The inventory data should be viewed within this context.

Maryland’s inventory data is set forth in the table below.

<b>Law Enforcement Agency</b>	<b>Total # Unsubmitted Kits</b>	<b>Total # of Partially Tested Kits</b>
Aberdeen Police Department	19	0
Allegany County Sheriff’s Office	11	0
Annapolis Police Department	70	1
Anne Arundel County Police Department	688	263
Baltimore City Police Department	857	0
Baltimore County Police Department	514	68
Bel Air Police Department	2	1
Berlin Police Department	19	0

<sup>10</sup> MD. CODE ANN., Crim. Proc. § 11-926(d)(2) (West 2017).

<b>Law Enforcement Agency</b>	<b>Total # Unsubmitted Kits</b>	<b>Total # of Partially Tested Kits</b>
Brunswick Police Department	10	0
Cambridge Police Department	76	5
Carroll County Sheriff's Office	83	0
Cecil County Sheriff's Office	35	10
Charles County Sheriff's Office	236	34
Chestertown Police Department	14	1
Crisfield Police Department	6	3
Cumberland City Police Department	18	0
Denton Police Department	7	0
Dorchester Police Department	3	0
Easton Police Department	58	2
Elkton Police Department	12	0
Frederick City Police Department	130	28
Frederick County Sheriff's Office	28	4
Fruitland Police Department	1	0
Garrett County Sheriff's Office	2	0
Greenbelt Police Department	1	0
Hagerstown Police Department	11	2
Harford County Sheriff's Office	64 <sup>11</sup>	1
Havre de Grace Police Department	25	0
Howard County Police Department	548	17
Hurlock Police Department	1	0
Hyattsville Police Department	37	0
Maryland State Police Department	64	8
Montgomery County Police Department	838	83
New Carrollton Police Department	1	0
Ocean City Police Department	83	3
Pocomoke City Police Department	2	0
Prince George's County Police Department	1863	72
Queen Anne's County Sheriff's Office	9	0

<sup>11</sup> This year, the Harford County Sheriff's Office reported that they were in possession of 3 additional SAKI grant kits. As such, the agency's inventory total has increased from 61 kits to 64 kits.

<b>Law Enforcement Agency</b>	<b>Total # Unsubmitted Kits</b>	<b>Total # of Partially Tested Kits</b>
Salisbury Police Department	89 <sup>12</sup>	??
Salisbury University Police Department	1	0
St. Mary's County Sheriff's Office	87	3
St. Michaels Police Department	2	1
Takoma Park Police Department	10	0
Talbot County Sheriff's Office	16	0
Thurmont Police Department	2	1
UMBC Police Department	4	0
University of Maryland College Park	5	0
University of Maryland Eastern Shore	11	0
Washington County Sheriff's Office	7	0
Wicomico County Sheriff's Office	53	4
Worcester County Sheriff's Office	1	0
<b>Total</b>	<b>6,734</b>	<b>615</b>

<b>Hospital</b>	<b>Total # Unsubmitted Kits</b>
Adventist HealthCare Shady Grove Medical Center	27
Atlantic General Hospital	3
University of Maryland Medical Center	8
University of Maryland Prince George's Hospital Center	3
Meritus Medical Center	3
<b>Total</b>	<b>44</b>

## **B. SAKI Grant Testing**

Like the phased inventory, testing under the SAKI grant is being conducted in phases. MSP negotiated a contract with Bode Technology to outsource testing at a rate of approximately \$1,000 per kit. We originally allocated \$900,000 of the SAKI grant funding to test approximately 900 kits.

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<sup>12</sup> This number is based on the number of unsubmitted SAKI grant kits SPD previously reported. When we receive the final inventory data, this number will likely change.



However, with savings from completing the SAKI grant inventory and the Governor’s Office’s agreement to reduce certain grant administration fees, we are able to test an additional 253 kits. In total, we will be able to test approximately 1,156 kits with funds from the current SAKI grant, eliminating the backlog for 35 law enforcement agencies. Once testing is complete, there will only be 16 law enforcement agencies that possess unsubmitted SAKI grant kits though April 2018.

Agencies are required to submit kits for testing based on the date of the offense with the more recent cases being tested first. Anonymous kits will not be tested. There are additional guidelines regarding unfounded cases and cases where the offender’s DNA is already in CODIS. Please reference the “SAKI Grant Testing Order & Protocol” for additional information regarding which kits will be submitted for testing. This document was published in 2020 and is available on the SAEK Committee’s webpage.<sup>13</sup>

The agencies in Phase I and II began submitting kits for testing in April 2020. Phase III began outsourcing in December 2020 followed by Phase IV in July 2021. Phase V will begin testing as soon as the Phase V inventory is complete.

Listed below is a general overview of the SAKI grant testing results, which are also available on the SAEK Committee’s SAKI grant webpage. This data is updated quarterly.

<b>Maryland SAKI Grant Testing Data</b>	
Number of SAEKs Submitted for Testing	450 (current through 10/31/21)
Number of SAEKs Tested	353 (current through 10/31/21)

<sup>13</sup> SAEK Committee, *SAKI Grant Testing Order & Protocol* (2020), <https://www.marylandattorneygeneral.gov/Pages/Groups/SAKI%20Grant%20Handout%20-%20Testing%20Order%20and%20Protocol.pdf>.

Number of DNA Profiles Uploaded into CODIS <sup>14</sup>	47 (current through 9/30/21)
<b>Maryland SAKI Grant Testing Data</b>	
Number of CODIS hits	9 (current through 9/30/21)

### C. Victim Notification

In FY2021, MCASA continued to provide victim services under the SAKI grant. Last year, MCASA developed the SAKI Victim Notification Protocol (“The protocol”) to give local law enforcement agencies and victim advocates guidance on how to conduct victim notifications—the process of contacting a victim to advise them about information concerning their case.

The protocol was made available to law enforcement for review, implementation, and feedback in December 2020. In early 2021, MCASA submitted the protocol to BJA for approval. BJA approved the protocol with the understanding that the protocol would remain a living document subject to change by MCASA in accordance with new policies and procedures, recommended best practices, and feedback from survivors and law enforcement. After this final approval from BJA, the document was again circulated to all participating LEAs for review and implementation.

Although the protocol was circulated and ready for use in the spring of 2021, the COVID-19 pandemic continued to affect the notification process. In response to safety concerns for survivors, many of whom found themselves trapped at home with their abusers or quarantined with

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<sup>14</sup> DNA profiles may have been produced from the additional 252 kits that have been tested. However, the results of the tests may be in the review process and have not been uploaded into CODIS. As such, this number does not mean that there was no DNA profile produced from the other kits that have been tested.

individuals that were not aware they ever reported an assault, MCASA implemented a policy that halted any active outreach to survivors regarding their untested SAEK. This policy also recognized the unprecedented stress and unique trauma that the pandemic has had on the public. Despite this policy, survivors still had the ability to learn about the SAKI project and obtain information about their untested SAEK through the SAKI opt-in line and email support options. During this time, law enforcement could still submit notification requests and MCASA would conduct outreach if the outreach was necessary for investigative purposes.

Throughout the year, the MCASA SAKI Team monitored both national and state COVID-19 restrictions. MCASA lifted its COVID-19 policy postponing victim notification during the pandemic in August 2021. This was announced to all LEAs through an email listserv.

Under the Victim Notification Protocol, all survivors with an untested SAEK must be notified if their kit will be tested. This notification should take place in accordance with the victim notification protocol, which applies to all historical cases with a previously untested kit, regardless of the funding source used to test the kit.<sup>15</sup> In practice, each survivor with a previously untested kit will be contacted by an MCASA SAKI Advocate. During this initial contact, the survivor will be informed about the SAKI project and State efforts to eliminate the backlog. The SAKI Advocate will then let the survivor know that there is an update regarding their kit. Each survivor is given the opportunity to discuss this information, including any test results, with an MCASA SAKI Advocate and the investigating LEA. If the investigating LEA needs additional information, like an exclusionary sample<sup>16</sup> to complete testing, survivors are contacted prior to the submission of

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<sup>15</sup> MCASA and the Sexual Assault Legal Institute is available to all survivors with a Maryland-based case, regardless of when their assault took place.

<sup>16</sup> When investigating a sexual assault, law enforcement may seek to obtain an exclusionary sample (as known as an elimination sample) from everyone who had consensual intercourse with the victim around the time of the assault, to account for all of the DNA found on the victim or at the crime scene.

their kit for testing. Survivors are given the opportunity to determine if they would like to proceed and have their kit tested. If the survivor cannot be reached after four notification attempts or does not have the contact information of a consensual partner for an exclusionary sample, but would still like their kit tested, law enforcement should proceed with testing.

As of November 30, 2021, MCASA reports the following data regarding victim notification under the SAKI grant:

<b>MCASA SAKI Victim Notifications</b>	
Number of successful notifications	20
Number of closed cases <sup>17</sup>	24
Number of notification attempts:	137
Total number of requests from LEAs	409

<b>Agency</b>	<b>Number of Requests</b>
Annapolis Police Department	3
Anne Arundel County Police Department	11
Baltimore County Police Department	142
Carroll County Sheriff's Office	4
Charles County Sheriff's Office	87
Cumberland Police Department	8
Elkton Police Department	1
Frederick Police Department	10
Hagerstown Police Department	1
Harford County Sheriff's Office	7
Howard County Police Department	90
Maryland State Police Department	12
Prince George's County Police Department	6
Queen Anne's County Sheriff's Office	4
Salisbury University Police	1
St. Mary's County Sheriff's Office	3

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<sup>17</sup> Cases may be closed without successful notification for several reasons, the most common of which has been the case was adjudicated and the kit was tested at law enforcement's discretion under the SAKI project.

UMBC Police	2
University of Maryland College Park	2
Washington County Sheriff's Office	2
Wicomico County Sheriff's Office	13
<b>Total</b>	<b>409</b>

Of the 409 total notification requests that MCASA received, 283 of these notification requests were submitted prior to October 1, 2021. Eight requests were received in October and 118 requests were received from LEAs in November.<sup>18</sup>

MCASA has attempted to contact survivors in 137 cases. This notification attempt rate reflects the implementation of MCASA's COVID-19 policy postponing notifications unless necessary for investigative purposes and the demand from agencies in compliance with the SAKI project as of October 1, 2021. The MCASA SAKI Team is now working to meet the significant influx in demand for notifications while providing ongoing technical assistance and support to agencies that are now beginning to review SAKI eligible cases.

In particular, MCASA recognizes the critical nature of victim notification for pre-testing purposes and successful completion of SAKI grant objectives. However, victim notification is not an instantaneous process. Each case requires processing and outreach conducted in a trauma-informed and victim centered manner that avoids inundating survivors with contact attempts and supports survivors' unique needs including time and space to process new information about their kit. To effectively address the increase in requests from law enforcement while prioritizing trauma-informed practices, MCASA will develop a policy outlining notification timeframes, expectations, and prioritization methods in FY2022.

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<sup>18</sup> This increase in victim notification requests was likely attributable to a correspondence that went out in October 2021 notifying LEAs of a March 2022 deadline to submit kits for testing.

MCASA's trauma-informed approach to victim notification is very important. Many survivors are shocked and upset when they hear that their kit was never tested. For survivors who were able to get to a good place in the years following the assault, the notification process reignites the trauma of the past, prompting frustration that they are now asked to carry the burden of a systemic failure to support them when they first reported. To heal these past wrongs, it is critical that survivors are offered an apology from law enforcement regarding how their case was initially handled. This apology can be incredibly powerful for the survivor and can also serve to renew their trust in the criminal justice system. Without that trust, further investigative steps and potential prosecution will be difficult. In cases that require an exclusionary sample from a consensual partner, survivors often feel overwhelmed by the need to think back many years to unearth old relationships and provide the notification team with the required details. Many survivors need time to process this disturbing new information and decide how they would like to move forward. In line with best practices, MCASA is resolute in defending the survivor's need for that space and will never rush them to decide.

Throughout FY2021, MCASA encountered several notification barriers. The most common barrier was outdated survivor contact information. When this occurs, MCASA will conduct its own search or ask law enforcement to conduct new searches for survivor contact information. While law enforcement has been responsive to requests for updated information, this obstacle places additional burdens on law enforcement and further delays the notification process. Additional funding, such as the continuation of SAKI funds, would significantly help to reduce this barrier by offering support to MCASA's SAKI Team and to law enforcement for investigative tasks.

This barrier can be further reduced if the survivor opt-in information line and email support option were utilized more frequently. Survivors that contact the MCASA SAKI Team through these methods are given the opportunity to dictate who contacts them regarding their untested kit and how that contact takes place. When a survivor calls the opt-in line, survivors are asked for their most up-to-date contact information including phone numbers and mailing and email addresses. Survivors are also able to outline their preferred method of contact and any specific contact requests. For example, each survivor is asked if it is safe for a MCASA SAKI Advocate to leave a voicemail, what information can be left in a voicemail or provided in the letter or email depending on their preferred method of contact, and what days and times are appropriate for contact attempts.

To encourage survivors' use of this service, MCASA created a digital toolkit containing printable flyers and social media posts for use by LEAs, and community agencies like Rape Crisis Centers, colleges, and universities. To date, there has been minimal use of the digital toolkit items and as a result, there has been minimal use of the opt-in information line and email.

Although increased public awareness of the project and opt-in services is important, an additional barrier has been identified by MCASA. When notifying individuals about the SAKI project and their SAEK, most individuals report that they assumed their kit was tested and that they were just not updated on the results by law enforcement. This indicates an increased need to educate the public of the reality of the backlog of untested SAEKs in Maryland. To address this issue, MCASA has developed a SAKI brochure that outlines the goals of the project and victim notification process. This brochure was approved by BJA in November 2021 and will be available to service providers and community partners free of cost in 2022.

Additionally, victim notification has been directly affected by the delayed implementation of the Victim Notification Protocol and SAKI testing policies in some jurisdictions. Although many agencies have begun submitting notification requests and are working diligently with their SART to conduct case reviews, some agencies have either expressed a reluctance to implement the protocol or have not been responsive to MCASA's outreach. For example, an agency indicated that they would prefer to use their own trauma-informed investigators to contact victims, as opposed to MCASA's SAKI Team. The protocol specifically notes that initial contact with a survivor will be conducted by a confidential advocate in a manner that aligns with any opt-in preferences the survivor may have provided. Since MCASA's SAKI Team is independent from law enforcement, it may be better situated to initially establish trust with survivors. Moreover, failure to implement the notification protocol as outlined means some survivors will not have immediate access to advocacy support services or crime victims' rights representation and contact preferences may be violated, risking survivor safety, and violating their trust and expectations. The SAEK Committee supports MCASA's efforts to work with LEAs to ensure proper implementation of the Victim Notification Protocol.

Throughout the year, MCASA made extensive efforts to educate Maryland agencies and service providers about the SAKI project. In addition to partnering with the SAEK Committee to provide trainings, MCASA regularly attended local Sexual Assault Response Team (SART) meetings and provided technical assistance. As of November 30, 2021, MCASA has attended over 100 SART meetings and received 113 technical assistance requests regarding the SAKI project. These efforts will continue in FY2022.

#### **D. SAEK Tracking System**



The SAEK Committee is responsible for selecting the statewide tracking system that will be implemented pursuant to the SAKI grant. In 2019, the Governor identified GOCPYVS as the host agency for Maryland's tracking system. GOCPYVS and the Committee began working with DoIT to determine the technological requirements to launch and maintain a statewide tracking system. Led by DoIT, the SAEK Committee reviewed various tracking systems including STACS DNA Track-Kit System, Portland's Sexual Assault Management System ("SAMS"), Idaho's tracking system, and Forensic Advantage.

In FY2021, DoIT conducted a presentation on each tracking system. The presentation analyzed the SAEK Committee's articulated tracking system requirements in relation to each system's capabilities. DoIT went through the requirements and explained whether each tracking system met the requirements or did not meet the requirements. DoIT also conducted a cost analysis for each system.

After the presentation, the Committee was given an opportunity to discuss and ask questions. The Committee ultimately reached a consensus to proceed with a commercial solution to be acquired consistent with Maryland procurement law.

To start the procurement process, DoIT helped GOCPYVS develop a request for proposal ("RFP"). GOCPYVS intends to release the RFP for the statewide tracking system by January 2022.

#### **E. Triaging CODIS Hits & Investigating Cold Cases**

As a SAKI grant recipient, Maryland was required to develop a plan that outlines how the State will investigate Combined DNA Index System ("CODIS") hits and cold cases. In April 2021, the SAEK Committee, in conjunction with Captain Brian Edwards of the Baltimore County Police

Department, drafted a plan based on professional experience and best practices resources developed by the SAKI Training and Technical Assistance Team.

Before finalizing the plan, the Committee met with representatives from a diverse group of law enforcement agencies to obtain their input. The agencies included representation from both small and large LEAs, as well as agencies from different geographical locations across Maryland.<sup>19</sup>

The SAEK Committee officially published its “CODIS Hit Follow-up & Cold Case Investigation Plan” in June 2021. The plan offers guidance to sexual assault investigators on how to respond when an investigator receives multiple CODIS hits within a short timeframe. The plan also provides general principles to aid in the investigatory process and ensure that all CODIS hits are reviewed in a timely manner.

#### The CODIS Hit Follow-up & Cold Case Investigation Plan:

- Establishes multiple levels of response to help an LEA develop a plan of action when investigating multiple CODIS hits.
- Provides a list of investigative steps an agency should complete when investigating cold cases.
- Requires LEAs to begin the investigative process within a reasonable amount of time, not to exceed 90 days after being notified of the CODIS hit.
- Acknowledges the unique dynamics of cold cases and emphasizes that the plan is only intended to offer guidance and should not trump individual determinations by law enforcement.

This guidance document is available on the Committee’s website and is attached to this report as Appendix A.<sup>20</sup>

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<sup>19</sup> The following law enforcement agencies were represented during the meeting on April 8, 2021, to discuss the CODIS Hit & Cold Case Investigation Plan: Baltimore County Police Department, Caroline County Sheriff’s Office, Charles County Sheriff’s Office, Maryland State Police, Montgomery County Police Department, Prince George’s County Police Department, and St. Mary’s County Sheriff’s Office.

<sup>20</sup> SAEK Committee, *CODIS Hit Follow-Up & Cold Case Investigation Plan* (2021), <https://www.marylandattorneygeneral.gov/Pages/Groups/SAEK.aspx>.

## **F. 2021 SAKI Grant Funding**

Under the FY2018 SAKI grant, the SAEK Committee received enough funding to test approximately 1,156 kits. Recognizing that this is only a small portion of Maryland's backlog of untested kits, the Committee made a commitment to seek funding until all unsubmitted kits (that require testing) are submitted for testing.

Consistent with its commitment, the SAEK Committee submitted an FY2021 SAKI grant application in July 2021. The application seeks \$2.5 million in SAKI grant funding to: (1) test additional SAKI grant kits; (2) hire investigators to offer investigative support to local law enforcement agencies; (3) continue to provide victim services; and (4) hire a Violent Criminal Apprehension Program ("ViCAP")/CODIS Hit Coordinator for the State.

Maryland inventoried over 7,000 SAKI grant kits, including both unsubmitted and partially tested kits. The state will test a little over 1,000 kits with the previous SAKI grant funding. After removing anonymous kits which Maryland has decided not to test, there will still be a backlog of over 5,000 kits. Maryland requested additional funds in the FY2021 SAKI grant application to test additional kits in an effort to further reduce the backlog.

Additionally, as LEAs began receiving CODIS hits and reviewing cold cases under the SAKI grant, the LEAs expressed a need for additional resources to follow-up on CODIS hits and effectively investigate cold cases. Therefore, Maryland requested additional SAKI grant funding to obtain investigative support and resources to assist LEAs as they investigate CODIS hits and cold cases.

OAG will receive funding to hire contractual CODIS Investigators. The CODIS Investigators will be a resource for LEAs and work closely with them to conduct investigations.

OAG will also develop a process for identifying and prioritizing agencies that need assistance and deploy CODIS Investigators accordingly.

As law enforcement continues to reopen cold cases and submit kits for analysis under the SAKI grant, the need for victim services will simultaneously increase. Maryland requested additional SAKI grant funding to continue to implement the victim notification protocol and ensure a statewide trauma-informed approach to victim notification. To effectuate this end, MCASA will be funded to retain its current Victim Notification Team, as well as the personnel necessary for administrative support.

Lastly, while implementing the SAKI grant, we discovered inefficiencies related to the State's ViCAP entries and its ability to track CODIS hit investigations and any subsequent convictions or exonerations. ViCAP—a department within the FBI's National Center for the Analysis of Violent Behavior—developed a web-enabled software that allows non-FBI federal, state, and local ViCAP users to directly enter data into a national database for the purpose of identifying and apprehending violent serial offenders.<sup>21</sup> Under the SAKI grant, all grantees are required to enter eligible cases into the ViCAP database. Maryland's current ViCAP representative is housed at the Maryland State Police and enters eligible cases for MSP and the agencies that receive MSP's services. Several other LEAs also have ViCAP access and enter eligible cases on behalf of their agency. However, there is currently no way for the State to ensure that all criteria cases are identified and entered in ViCAP. In addition to ensuring that ViCAP entries are made, the State also identified the need to ensure that CODIS hits that are reported to LEAs are adequately followed up on and that the progress of the investigations and any convictions or

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<sup>21</sup> FEDERAL BUREAU OF INVESTIGATION, *Privacy Impact Assessment Violent Criminal Apprehension Program (VICAP)* (July 18, 2003), <https://www.fbi.gov/services/information-management/foipa/privacy-impact-assessments/vicap>.

exonerations are tracked. At this time there is no statewide coordinated effort to address either of these needs. Therefore, Maryland requested additional funding to address these matters.

MSP will receive funding to hire a ViCAP/CODIS Hit Coordinator. The Coordinator will be the central point of contact to ensure that ViCAP entries are made and CODIS hits are tracked. The Coordinator will also be responsible for conducting all necessary outreach and follow-up with LEAs.

In December 2021, GOCPYVS was notified that Maryland was awarded the FY2021 SAKI grant. The state will receive another \$2.5 million in SAKI grant funding. The SAEK Committee and its partners will immediately begin executing their duties under the grant at the start of the grant's term.

## **II. Implementing Past SAEK Legislation**

In addition to implementing the SAKI grant, the SAEK Committee advanced its commitment to achieve uniform implementation of the State's recent SAEK reforms by: (1) conducting training for law enforcement and SARTs; (2) helping GOCPYVS implement the HIV nPEP Pilot Program; and (3) assisting OAG in collecting important law enforcement policies and reports.

### **A. Training for Law Enforcement Agencies & Sexual Assault Response Teams**

In June 2021, the SAEK Committee partnered with MCASA to provide a two-day virtual training for SARTs and LEAs who investigate sexual assaults in Maryland. The purpose of the training was to ensure statewide compliance with recent SAEK policies and SAKI grant initiatives. Trainees were also given an opportunity to ask questions.

SAEK Committee members from various disciplines conducted a series of presentations. Jessica Williams, Committee Counsel, provided information about LEA reporting requirements under the Code of Maryland Regulations as well as the SAKI grant. Baltimore County State's Attorney Scott Shellenberger, and OAG's Principal Counsel for Criminal Policy, Carrie Williams, provided an in depth discussion of the uniform statewide SAEK testing criteria.<sup>22</sup> Laura Jessick from MCASA presented on the neurobiology of trauma, Victim Notification Protocol, and how to conduct an Untested Kit Review. Lindsey O'Neill with the Sexual Assault Legal Institute, gave an overview of a victim's legal rights regarding SAEKs and Untested Kit Reviews. Captain Brian Edwards with the Baltimore County Police Department presented on the CODIS Hit Follow-up & Cold Case Investigation Plan. Heather Amador with GOCPYVS provided an update on the statewide tracking system. Lastly, Committee Chair Zenita Hurley moderated a panel discussion on the 15-day extended SAEK collection criteria.<sup>23</sup> The following SAEK Committee members were on the panel: Argi Magers with MSP; Pamela Holtzinger with Frederick Health Hospital; Laura Jessick from MCASA; and Barbara Darley with GOCPYVS.

The SAEK Committee trained 85 sexual assault practitioners. Due to its success, the Committee plans to hold a similar training in FY2022.

In addition to the training, the SAEK Committee also hosted two virtual Q&A sessions for LEAs and SARTs in reference to the SAKI grant. The Q&A sessions occurred on December 7<sup>th</sup> and December 9<sup>th</sup>. Over 100 individuals participated. The Committee plans to hold additional Q&A sessions next year.

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<sup>22</sup> MD. CODE, Crim. Proc. § 11-926(e)(1)-(4) (2020).

<sup>23</sup> Crim. Proc. § 11-1007(c)(1) (2020).

## B. HIV nPEP Pilot Program

In 2019, the legislature established a three-year pilot program to fund the full 28-day course of Human Immunodeficiency Virus (“HIV”) non-occupational post-exposure prophylaxis (“nPEP”) treatment for victims of sexual assault.<sup>24</sup> HIV nPEP is a form of medical intervention designed to prevent HIV infection after exposure to the virus.<sup>25</sup> The medication must be started within 72 hours (3 days) to maximize its effectiveness.<sup>26</sup> Under the Pilot Program, a victim of sexual assault or child sexual abuse will be provided the full course of nPEP treatment and follow-up care free of charge, if the medication is requested by the victim or prescribed by a healthcare provider.<sup>27</sup>

The Pilot Program has been in effect for two years and is being administered by GOCPYVS.<sup>28</sup> This year, the SAEK Committee, led by MCASA and MHA, assisted GOCPYVS in creating an HIV nPEP reimbursement form to simplify the process of reimbursement for SAFE Programs. These agencies also worked together to develop a guidance document with a step-by-step guide regarding how to complete the forms. This document will be discussed in more detail under Section III, below.

During its second year of operation,<sup>29</sup> GOCPYVS reported the following data:

nPEP Data	October 1, 2020 to September 30, 2021	Entire Term Totals
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<sup>24</sup> MD. CODE ANN., Crim. Proc. § 11-1008(b)(1)–(3) (West 2020).

<sup>25</sup> MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE & MARYLAND INSTITUTE OF EMERGENCY MEDICAL SERVICES SYSTEMS, IMPROVED ACCESS TO SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS IN MARYLAND 15 (2015), *available at* <https://phpa.health.maryland.gov/Documents/Sexual-Assault-Forensic-Exam-Report-2015.pdf>.

<sup>26</sup> *Id.*

<sup>27</sup> Crim. Proc. § 11-1008(c)(2)(iii)(1).

<sup>28</sup> Crim. Proc. § 11-1008(b)(3).

<sup>29</sup> Please reference the SAEK Committee’s 2021 Annual Report for additional information about GOCPYVS’ first year data; MARYLAND SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE, ANNUAL REPORT (2021), *available at* [https://www.marylandattorneygeneral.gov/Pages/Groups/010421\\_SAEK\\_Committee\\_2021\\_Report.pdf](https://www.marylandattorneygeneral.gov/Pages/Groups/010421_SAEK_Committee_2021_Report.pdf).

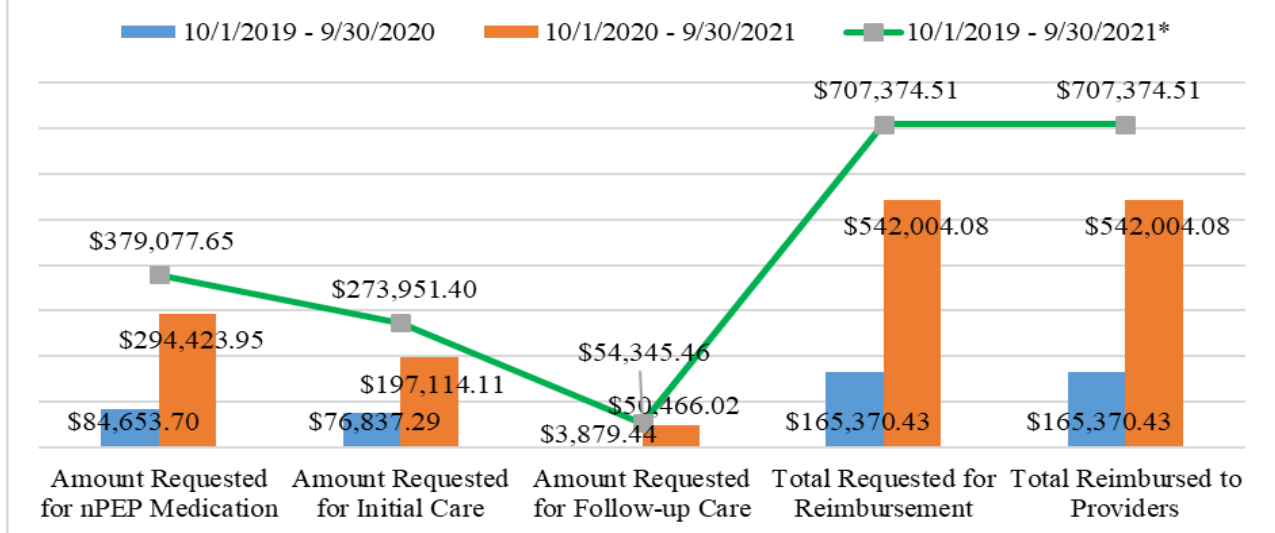
		<b>October 1, 2019 – September 10, 2021</b>
Number of Patients Who Qualified to Receive nPEP	852	1,147
Number of Patients Who Chose to Receive nPEP	172	328
Number of Patients with Initial Care (To Include Lab Work)	728	992

<b>nPEP Data</b>	<b>October 1, 2020 to September 30, 2021</b>	<b>Entire Term Totals October 1, 2019 – September 10, 2021</b>
Number of Patients with Follow-Up Care (Emergency Room/Hospital Billing SARU only)	125	143
Total Number of Claims Received	1,025	1,362
Dollar Amount of Claims Received for Patients for nPEP Medication	\$294,423.95	\$379,077.65
Dollar Amount of Claims Received for Initial Care (To Include Lab Work)	\$197,114.11	\$273,951.40
Dollar Amount of Claims Received for Follow-Up Care (Emergency Room/Hospital Billing SARU only)	\$50,466.02	\$54,345.46
Total Dollar Amount of Claims Received for nPEP Patients' Medication, Initial and Follow-Up Care	\$542,004.08	\$707,374.51 <sup>30</sup>

<sup>30</sup> In its most recent report, GOCPYVS indicated that there were errors in the data it reported last year. Specifically, GOCPYVS previously reported that the total amount reimbursed for nPEP expenses last year was \$165,380.43. The correct amount is \$165,370.43.



**Chart 2. Total Amount Requested & Reimbursed**  
(October 1, 2019 - September 30, 2021)



Last year, GOCPYVS identified a series of issues it encountered while implementing the Pilot Program. GOCPYVS was able to address some of its previous barriers:

- **Dispensing of the medication and availability of the medication to victims.** The nPEP medications are only dispensed at hospitals if the facility has the appropriate dispensing license and if the cost to stock the full course of medication is not cost-prohibitive.

Barrier eliminated: GOCPYVS’ Sexual Assault Reimbursement Unit (SARU) partnered with Terrapin Pharmacy to provide medication to patients where hospitals cannot provide the full 28-day therapy at the time of discharge. Terrapin Pharmacy can deliver medication to patients via mail service or courier. Facilities have been instructed to provide at least 3-7 days of therapy initially since the medication regimen must be started within 72 hours of the sexual assault. This initial supply of medication ensures that Terrapin Pharmacy has enough time to provide the remainder of the therapy. Facilities have also been encouraged to stock at least 3-7 days of medication (if possible) to cover weekends and holidays that might prevent mail-order or courier services from delivering the medication within the designated time frame.

- **Training of medical providers and victim service providers.** Many medical and victim service providers requested clarity regarding the administrative protocol for the Pilot Program. GOCPYVS and its core stakeholders conducted meetings and training sessions with stakeholders to ensure that there is a clear understanding of the Pilot Program and the reimbursement process.

Barrier eliminated: GOCPYVS and the core stakeholders have worked diligently with an advisory group, composed of forensic nurse examiners, pharmacists, and hospital representatives, who have convened multiple times to solicit constructive feedback on the State’s reimbursement forms and process. GOCPYVS also hosted a joint webinar with the MCASA and MHA featuring Terrapin Pharmacy staff to encourage SAFE Programs to use their services.

While GOCPYVS was able to address some barriers, they also identified the following areas which still require further guidance or improvement: delivering medication to alternate addresses (including residential and businesses) especially during the COVID-19 pandemic; securing additional funding; and increasing awareness of the Pilot Program.

The SAEK Committee is committed to working with GOCPYVS to address these matters. For more information, please reference GOCPYVS’ “Report on the Operation and Results of the Pilot Program (HIV Postexposure Prophylaxis).”<sup>31</sup>

### **C. Law Enforcement and Forensic Lab Reporting**

This year, LEAs were required to submit written policies and reports to OAG and/or the SAEK Committee pursuant to recent statutory and regulatory enactments. The local forensic laboratories in Maryland were also required to report certain information. An overview of law enforcement’s written policies and the annual reports for LEAs and forensic labs are set forth below.

#### **a. Waiver of Rights Prohibition Policies**

During the 2020 Legislative Session, the General Assembly passed legislation that prohibits law enforcement from presenting sexual assault victims with forms that purport to limit

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<sup>31</sup>GOCPYVS, *Report on the Operation and Results of the Pilot Program (HIV Postexposure Prophylaxis)*, (forthcoming January 2022).

the scope of or prevent an investigation or prosecution.<sup>32</sup> The law also required LEAs to adopt a policy to enforce the prohibition on seeking waivers from victims by January 1, 2021.<sup>33</sup> Each LEA was also required to provide a copy of their updated policies to the SAEK Committee by January 15, 2021.<sup>34</sup>

In December 2020, the Committee sent an email to LEAs reminding them that their updated policies were due on January 15<sup>th</sup>. To date, the Committee has received updated policies from the following LEAs:

<b>Agencies</b>	
1	Aberdeen Police Department
2	Anne Arundel Community College Police
3	Baltimore City Police Department
4	Baltimore County Police Department
5	Bel Air Police Department
6	Brunswick Police Department
7	Cambridge Police Department
8	Cecil County Sheriff's Office
9	Charles County Sheriff's Office
10	Chevy Chase Village Police Department
11	Delmar Police Department
12	Denton Police Department
13	Dorchester County Sheriff's Office
14	Easton Police Department
15	Elkton Police Department
16	Frederick Police Department
17	Frostburg City Police Department
18	Gaithersburg Police Department
19	Harford County Sheriff's Office
20	Havre de Grace Police Department
21	Howard County Police Department
22	Landover Hills Police Department

<sup>32</sup> See S.B. 807, Chapter 584 (2020); *see also* Crim. Proc. § 11-929(b).

<sup>33</sup> Crim. Proc. § 11-929(e)(1).

<sup>34</sup> Crim. Proc. § 11-929(e)(2).

23	Maryland State Police
24	Montgomery County Police Department
25	Ocean City Police Department
26	Office of the Attorney General
27	Perryville Police Department
28	Salisbury University Police Department
29	St. Mary's County Sheriff's Office
30	St. Michaels Police Department
31	Talbot County Sheriff's Office
32	Thurmont Police Department
33	UMBC Police Department
34	University of Baltimore Police Department
35	Washington County Sheriff's Office
36	Westminster Police Department
37	Wicomico County Sheriff's Office

**b. LEA Annual Reports**

In addition to updating their written policies, LEAs were also required to submit a report to OAG starting on September 1, 2021, and every year thereafter, providing the following information:

- (1) The number of SAEKs in its possession as of June 30<sup>th</sup> of that calendar year.
- (2) The number of untested SAEKs in its possession as of June 30<sup>th</sup> of that calendar year.
- (3) The date each SAEK in its possession was received.
- (4) The number of SAEKs tested within the prior year as of June 30<sup>th</sup> of that calendar year.
- (5) The number of SAEKs not tested pursuant to each of the exceptions outlined in the statewide testing criteria.
- (6) The number of any other kits that were not tested and the reason why those kits were not tested.
- (7) Information about untested kit review:
  - a. The number of untested kit reviews requested during the prior year as of June 30<sup>th</sup> of that calendar year;
  - b. The written recommendation resulting from each of the untested kit reviews conducted during the prior year as of June 30 of that calendar year;

- c. The number of sexual assault evidence collections kits tested at the recommendation of an untested kit review;
- (8) The number of kits destroyed in the prior year as of June 30th of that calendar year.
- (9) The number of written requests received from victims requesting to be notified prior to the destruction or disposal of the evidence.<sup>35</sup>

In August, OAG sent an email to LEAs reminding them about this reporting requirement. As of December 15, 2021, OAG has received reports from 43 agencies.<sup>36</sup> This represents 59% of the 74 agencies that investigate sexual assaults.<sup>37</sup>

The 43 agencies that submitted an annual report reported possessing over 6,900 untested kits. This number includes SAKI grant kits and kits that were collected up until June 30, 2021. This number also includes Anonymous kits, which are exempt from testing in Maryland.<sup>38</sup>

Our initial analysis of the data suggests that although there has been an improvement regarding LEAs retaining kits for the 20-year retention timeframe, some agencies are not testing kits in accordance with the statewide testing criteria. Unless one of the four statutory exceptions apply, the law requires that all SAEKs be submitted for testing. The four instances when a SAEK

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<sup>35</sup> COMAR 02.08.04.01(B)(1)-(9).

<sup>36</sup> The following 43 LEAs submitted an annual report: Aberdeen Police Department; Annapolis Police Department; Anne Arundel County Police Department; Baltimore City Police Department; Baltimore County Police Department; Bel Air Police Department; Carroll County Sheriff's Office; Office; Cecil County Sheriff's Office; Office; Charles County Sheriff's Office; Cumberland Police Department; Dorchester County; Easton Police Department; Frederick County Sheriff's Office; Frostburg State University Police Department; Fruitland Police Department; Greenbelt Police Department; Hagerstown Police Department; Harford County Sheriff's Office; Howard County Police Department; Hurlock Police Department; Hyattsville Police Department; Kent County Sheriff's Office; Maryland Transportation Authority Police Department; Maryland State Police; Montgomery County Police Department; North East Police Department; Ocean City Police Department; Perryville Police Department; Pocomoke City Police Department; Prince Georges County Police Department; Queen Anne's County Police Department; Salisbury Police Department; Salisbury University Police Department; St. Mary's County Sheriff's Office; St. Michaels Police Department; Takoma Park Police Department; Talbot County Sherriff's Office; Thurmont Police Department; University of Maryland Baltimore County Police Department; University of Maryland College Park Police Department; Washington County Sheriff's Office; and Worchester County Sheriff's Office.

<sup>37</sup> Please reference the SAEK Committee's 2020 Annual Report for the complete list of agencies that investigate sexual assaults. MARYLAND SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE, ANNUAL REPORT (2020), *available at*

[https://www.marylandattorneygeneral.gov/Pages/Groups/123019\\_SAEK\\_Committee\\_2020\\_Report.pdf](https://www.marylandattorneygeneral.gov/Pages/Groups/123019_SAEK_Committee_2020_Report.pdf).

<sup>38</sup> See Crim. Proc. § 11-926(e)(3) (2020).

should not be tested are: (1) there is clear evidence disproving the sexual assault; (2) the facts alleged, if true, could not be interpreted to constitute a crime of sexual assault; (3) the victim declined to give consent for analysis; and (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 case.<sup>39</sup>

Notwithstanding this statutory requirement, some LEAs provided additional reasons for not testing a SAEK that are inconsistent with the statewide testing criteria. Those reasons include: (1) victim uncooperative; (2) "both parties admitted to...intercourse," and (3) State's Attorney declined to prosecute. The first two reasons do not constitute a valid basis not to test a SAEK. Additionally, without additional information regarding the basis for the prosecutor declining to test the kit, there is no way to determine if the basis meets one of the exemptions. In order to ensure that kits are tested in accordance with the law, the SAEK Committee will provide another training on the statewide testing criteria next year. We will also contact each agency that is not submitting kits in accordance with the new testing criteria.

The SAEK Committee will continue to follow up with agencies who did not submit an annual report to obtain a more complete accounting of the current handling of SAEKs statewide. After reviewing each agency's data, we will publish a summary of the submissions on the SAEK Committee's webpage.

### **c. Forensic Lab Annual Reports**

Last year, the General Assembly passed legislation under Section 11-926 of the Criminal Procedure Article requiring "Forensic laboratories...[to] report annually to the Maryland Sexual

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<sup>39</sup> Crim. Proc. § 11-926(e)(1)-(4).

Assault Evidence Kit Policy and Funding Committee regarding the duration required to complete testing, beginning with receipt of the kit until a report is prepared, of each sexual assault evidence collection kit.”<sup>40</sup> To facilitate the submission of these reports, OAG adopted a regulation in May 2020:

On or before September 1, 2021, and every year thereafter, a forensic laboratory shall submit the following information to the Office of the Attorney General:

- A. The number of sexual assault evidence collection kits tested within the prior completed fiscal year;
- B. The date each sexual assault evidence collection kit tested was received from a law enforcement agency; and
- C. The date on which a report summarizing the results of the test was prepared for each sexual assault evidence collection kit.<sup>41</sup>

In September, the SAEK Committee sent an email to forensic labs reminding them of this reporting requirement and extending the submission date to October 1, 2021 for labs that had not yet submitted their reports. As of December 15, 2021, OAG has received reports from three<sup>42</sup> of the State’s six forensic laboratories.

The three forensic labs reported testing a combined total of 521 SAEKs in FY2021—July 1, 2020 to June 30, 2021. Of the kits received and tested in FY2021, the average time between the lab receiving the kit and producing a final report was 5 months. Under the law, labs are to complete screening, testing, and analysis in a timely manner.<sup>43</sup> The SAEK Committee will follow up with each forensic lab that did not submit a report. We will also review and publish an overview of their submissions on the SAEK Committee’s webpage.

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<sup>40</sup> Crim. Proc. § 11-926(h)(2).

<sup>41</sup> COMAR 02.08.04.02

<sup>42</sup> The following three forensic laboratories submitted a report: Maryland State Police Forensic Science Division; Montgomery County Police Department Forensic Science Laboratory; and Prince George’s County Police Department.

<sup>43</sup> Crim. Proc. § 11-926(h)(1).

### **III. Subcommittee Activities & New Recommendations for FY2022**

The SAEK Committee is organized into three Subcommittees: (1) Testing, Retention, Tracking, and Victim Notification Subcommittee (“Testing Subcommittee”); (2) Availability of Exams and shortage of Forensic Nurse Examiners Subcommittee (“FNE Subcommittee”); and (3) Funding Subcommittee. Throughout FY2021, the Subcommittees met several times to address issues impacting Maryland’s response to sexual assaults in Maryland, complete tasks related to the SAKI grant, and develop new recommendations.<sup>44</sup> The Subcommittee’s activities and new recommendations are outlined below and will be the Committee’s focus for FY2022.

#### **A. Testing Subcommittee**

The Testing Subcommittee worked to complete several tasks relevant to implementing the SAKI grant including developing the aforementioned “CODIS Hit Follow-up & Cold Case Investigation Plan.”<sup>45</sup> In addition to executing its duties pursuant to the SAKI grant, the Testing Subcommittee also helped the State implement new legislation related to Forensic Genetic Genealogical testing and planned a discussion series for FY2022 to continue to produce sexual assault policy reform in Maryland.

##### **a. HB240/SB807 Implementation – FGGS**

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<sup>44</sup> The Funding Subcommittee did not hold an official meeting in FY2021. However, a Subset of the Funding Subcommittee met to complete the FY2021 SAKI Grant application. The SAEK Committee as a whole also discussed Funding Subcommittee matters during its quarterly meetings.

<sup>45</sup> See Appendix A.



During the 2021 Legislative Session, the General Assembly passed House Bill 240, Chapter 681 (2021), cross-filed under Senate Bill 807, Chapter 681 (2021), which governs Forensic Genetic Genealogical DNA Analysis and Searches (FGGS) and establishes a regulatory framework for law enforcement's use of FGGS in Maryland. Forensic Genetic Genealogical DNA Analysis refers to obtaining a genetic profile obtained from a forensic sample for the purpose of comparing it to open source genetic databases (such as GEDmatch) that contain genetic profiles uploaded by individuals who have had their own DNA analyzed by direct-to-consumer DNA companies like 23andMe and Ancestry.com. Many people choose to upload this information into the databases in order to increase their likelihood of finding distant relatives and tracing their heritage.<sup>46</sup> Over the years, these databases have grown and can be used by law enforcement to help solve crimes.<sup>47</sup>

Forensic Genetic Genealogical Searches refer to the actual searching of the open source genetic databases as well as traditional genealogical resources in order to establish connections between the source of the forensic sample and a relative (often distant) who has uploaded their own sample to the genetic database. FGGS allows investigators to identify potential relatives of an alleged perpetrator.<sup>48</sup> The search result serves as a lead that is then investigated until a DNA sample of the suspect is obtained and tested.<sup>49</sup> FGGS has proven to be a beneficial tool to help law

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<sup>46</sup> Emily Shetty, *HB240 Criminal Procedure - Forensic Genetic Genealogy DNA Analysis, Searching, Regulation, and Oversight Statement in Support*, MDGA (2021);

[https://mgaleg.maryland.gov/cmte\\_testimony/2021/jud/1YrpC8oiQQZ2attC6nOL-pJVPbKN33Qb\\_n.pdf](https://mgaleg.maryland.gov/cmte_testimony/2021/jud/1YrpC8oiQQZ2attC6nOL-pJVPbKN33Qb_n.pdf).

<sup>47</sup> *Id.*

<sup>48</sup> Bureau of Justice Assistance, *Introduction to Familial DNA Searching for State, Local, and Tribal Justice Agencies, Issues for Consideration 2* (2016),

[https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/an\\_introduction\\_to\\_familial\\_dna\\_searching1.pdf](https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/an_introduction_to_familial_dna_searching1.pdf).

<sup>49</sup> *Id.*

enforcement apprehend serious offenders like the Golden State Killer who committed 30 murders and 15 rapes in California.<sup>50</sup>

In 2020, the Maryland State Senate convened a Forensic Genetic Genealogy Workgroup to research FGGS and develop a first-in-the-nation bill that would regulate the use of FGGS by balancing the constitutional privacy concerns of individuals with the legitimate public safety benefits of using this technology.<sup>51</sup> HB240/SB807 regulates FGGS by, among other things:

- Requiring law enforcement to submit a sworn affidavit to the Court, approved by the local State’s Attorney before initiating FGGS and limiting the use of this technology for certain types of crimes<sup>52</sup>
- Requiring the Court to authorize the initiation of FGGS<sup>53</sup>
- Requiring GOCPYVS to submit an annual report to the General Assembly regarding specific FGGS data<sup>54</sup>

In May, the SAEK Committee was contacted by an LEA who inquired about how HB240/SB807 would impact sexual assault cases and the requirements of the legislation. The Testing Subcommittee met to discuss HB240/SB807. During the meeting, we discovered that some of our SAEK Committee members participated on the workgroup convened by the Senate to research and develop the legislation. Since HB240/SB807 has a broader impact than just sexual assault cases, the Testing Subcommittee ultimately decided to host a follow-up meeting—which

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<sup>50</sup> Michael Levenson, *Golden State Killer Sentenced to Life in Prison Without Parole*, N.Y. TIMES (Aug. 21, 2020), <https://www.nytimes.com/2020/08/21/us/golden-state-killer-sentenced.html>.

<sup>51</sup> Emily Shetty, *HB240 Criminal Procedure - Forensic Genetic Genealogy DNA Analysis, Searching, Regulation, and Oversight Statement in Support*, MDGA (2021); [https://mgaleg.maryland.gov/cmte\\_testimony/2021/jud/1YrpC8oiQZ2attC6nOL-pJVPbKN33Qb\\_n.pdf](https://mgaleg.maryland.gov/cmte_testimony/2021/jud/1YrpC8oiQZ2attC6nOL-pJVPbKN33Qb_n.pdf).

<sup>52</sup> See House Bill 240, Chapter 681 (2021); see also Senate Bill 807, Chapter 681 (2021).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

would include the bills' sponsors as well as the specific agencies mentioned in the legislation—to help facilitate the statewide implementation of HB240/SB807.

In August, the Testing Subcommittee hosted a meeting that included representation from the following entities: Maryland State Senate; Maryland State House; Administrative Office of the Courts; Baltimore County State's Attorney's Office; Harford County State's Attorney's Office; Baltimore Police Department Forensic Science Laboratory; Prince George's County Police Department Forensic Science Laboratory; Montgomery County Police Department Forensic Science Laboratory; Maryland Chiefs of Police and Sheriffs Association; University of Maryland Francis King Carey School of Law; GOCPYVS; MCASA; and OAG. Both of the bill sponsors, Senator Charles Sydnor and Delegate Emily Shetty attended the meeting. Two of the SAEK Committee's legislative representatives, Senator Shelly Hettleman and Delegate Sandy Bartlett, also participated in the meeting.

As a result of the meeting, the State was able to establish a standard affidavit and data collection form, and start the process of training the Judiciary on FGGS. The Maryland Chiefs of Police and Sheriffs Association developed a standard affidavit that law enforcement agencies will use to obtain judicial authorization to initiate FGGS. GOCPYVS developed the FGGS data collection form that will accompany the standard affidavit to simplify the process of collecting relevant data. Lastly, the District Court of Maryland agreed to incorporate FGGS trainings in its Judiciary meetings.

#### **b. 2022 Dialogue Series**

In addition to receiving questions about the implementation of HB240/SB807, sexual assault practitioners also contacted the SAEK Committee regarding compliance with recent SAEK

policies and additional areas where reform is needed. To address these matters, the Testing Subcommittee will host a dialogue series in 2022. The dialogue series will consist of four meetings and cover the following topics:

**(1) Storing & Transferring SAEKs**

- Forensic Nurse Examiners (FNEs) in Maryland reported having difficulties getting neighboring jurisdictions (like the District of Columbia) to take custody of SAEKs for sexual assaults that occurred in those jurisdictions. During this discussion, we will invite representatives from neighboring jurisdictions to discuss ways to facilitate the transfer of these kits.
- Likewise, LEAs in Maryland have reported having difficulties getting other Maryland LEAs to collect SAEKs for sexual assaults that occurred in those jurisdictions. We will invite all LEAs in Maryland to participate in this discussion and reiterate COMAR 02.08.01.04(A)(4) which provides that SAEKs “shall be given to the law enforcement agency responsible for investigating the crime associated with the kit, if known.” Furthermore, “Upon notification, [a] law enforcement agency shall promptly send a representative to retrieve the kit.”<sup>55</sup>
- Some LEAs have expressed issues with properly storing kits for the required 20-years and have recommended that the State store Anonymous kits in a central location for the entire State. During our discussion, we will discuss the feasibility of this recommendation.

**(2) Drug-Facilitated Sexual Assault**

- Over the last two years, the SAEK Committee, led by the FNE Subcommittee, has researched and evaluated Maryland’s response to drug-facilitated sexual assault (DFSA). During the dialogue series, we plan to bring together each Subcommittee, as well as DFSA experts to recommend statewide best practices.

**(3) Impact of the SAKI grant & Benefits of Collaboration between SAEK Practitioners**

- During this dialogue, we plan to bring in people from different SAKI jurisdictions to talk about their SAKI grant success stories. The presenters will also discuss how the various sexual assault practitioners worked together to successfully solve and prosecute cases using a victim-center approach. We will invite all LEAs participating in the SAKI grant.

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<sup>55</sup> COMAR 02.08.01.04(A)(3).

#### (4) **Statewide SAEK Tracking System**

- Next year, the SAEK Committee will select a commercial product and rollout the statewide SAEK tracking system. We will host a dialogue session to discuss the implementation of the tracking system and answer questions from end-users.

The Testing Subcommittee will invite experts and practitioners in the field to offer their input and establish solutions to resolve the above referenced matters.

#### **B. FNE Subcommittee**

In FY2021, the FNE Subcommittee worked to ensure its previous recommendations were implemented, updated a recommendation to provide for COVID-19 restrictions, helped the State implement SAEK legislation, and established new recommendations.

##### **a. Status Update - FNE Subcommittee's Previous Board of Nursing Recommendations**

This year, the FNE Subcommittee checked the status of its previous recommendations to determine if additional advocacy was necessary. In the Committee's first annual report, the FNE Subcommittee recommended that the Maryland Board of Nursing support the FNE workforce by: permitting online learning courses for FNEs seeking certification or renewing their certification; conducting annual reviews of regulations, standards, and training curriculums with stakeholders; and implementing an online renewal process for FNE certification.

The Board of Nursing began hosting stakeholder meetings in response to these recommendations. The status of each recommendation is outlined below.

- **Online Training Courses:** During the COVID-19 pandemic, many fields, including forensic nursing, were forced to provide online training opportunities that reduced exposure risks for attendees while still meeting training requirements. As a result, FNE training programs throughout Maryland, with permission from the Board of Nursing, worked quickly to move their trainings to online platforms. The benefits of online training opportunities not only include a reduction of COVID-19

exposure risks, but also allowed nurses to attend training sessions when they previously would have been required to travel and possibly secure lodging. The online training courses have continued throughout 2021 and may be a long-term option for FNEs.

- **Reviewing and Updating the Training Curriculum:** Over the last three years, the Maryland Board of Nursing has worked with Maryland FNEs to review the curriculum for FNE trainings for both adult-adolescent and pediatric courses. With extensive efforts from stakeholders, new curriculums that incorporate the training requirements of the International Association of Forensic Nurses (IAFN) have been finalized for use by Maryland training programs.
- **Updating the FNE Board of Nursing Certification Process:** Since the FNE Subcommittee's initial recommendation in 2019, the Maryland Board of Nursing has been working to expedite the certification process. Despite the efforts made, the process remains lengthy and tedious and the pandemic only compounded this issue. When the Governor declared a state of emergency, health care providers were allowed to delay renewing their licenses. This resulted in an influx of applications for licensure and renewal when the state of emergency ended, creating further delays. The Maryland Hospital Association (MHA) worked as a liaison to help resolve outstanding licensure renewals and certifications, but resources are still needed to implement long-term solutions.

The FNE Subcommittee will continue to monitor the status of its recommendations that have yet to be implemented or finalized.

#### **b. Updating Former Recommendations to Accommodate COVID-19 Restrictions**

In the SAEK Committee's 2019 report, the FNE Subcommittee also recommended that an advocate be present for SAFEs. In accordance with national protocol,<sup>56</sup> the Subcommittee specifically recommended that SAFE Programs "collaborate with the local certified Rape Crisis and Recovery Center (RCC) to ensure that an advocate is always offered to a survivor and members of their support network during the SAFE process." This guidance focused on ensuring the

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<sup>56</sup> See generally U.S. Dept. of Justice, Office on Violence Against Women, *A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents Second Edition* (2013), available at <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>.

survivor, at minimum, had an opportunity to speak to an advocate over the phone, even if they were not able to be physically present.

Prior to the COVID-19 pandemic, the local RCCs worked diligently to collaborate with SAFE Programs and provide in-person advocacy services to survivors during a SAFE. However, the pandemic created an unprecedented barrier when support persons were prohibited from hospitals and medical settings, including during SAFEs, to limit the spread of the virus. Local RCCs adapted to provide virtual advocacy services. Many SAFE Programs gave survivors the opportunity to have private phone calls with advocates and some programs obtained funding for electronic devices that permitted video calls through private and confidential platforms. For example, Carroll County Hospital collaborated with their local RCC, Rape Crisis Intervention Services (RCIS), to apply for grant funding for the purchase of an iPad for the hospital that is setup with a HIPAA compliant video conferencing application (doxy.me). With this technology, survivors that report for a SAFE are able to use the iPad while an RCIS advocate conferenced in using their laptop. The SAFE Program coordinator in Carroll County reported that, although not ideal, video conferencing seemed to provide a better opportunity for rapport building and increased survivor's comfort levels when compared to support provided via phone call.

In light of the restrictions put in place to combat COVID-19, the FNE Subcommittee has updated its previous recommendation as follows:

- SAFE Programs and local RCC's should communicate regularly regarding agency policies for in-person advocacy support. Agencies' websites and staff should remain up-to-date on policies to ensure accurate information.
- When in-person advocacy is not available, due to COVID-19 related restrictions or other barriers, virtual options should be implemented according to the survivor's comfort level. These virtual options may include private phone calls or use of advanced technology like video conferencing.

- When virtual options are utilized, it is critical that privacy and confidentiality are maintained. All video conferencing platforms should be reviewed to ensure compliance with the Violence Against Women’s Act (VAWA) and Health Insurance Portability and Accountability Act.
- Survivor needs and concerns should also be considered when advocacy services are offered. For example, hospital and RCC policy may permit in-person advocacy services, but a survivor may request a virtual option due to exposure concerns. This request should be honored.
- SAFE Programs should ensure that survivors have access to advocacy support and empower the survivor to dictate who is in the exam room, whether in-person or virtually.

Additionally, during the COVID-19 pandemic, some Sexual Assault Response Teams (SARTs) struggled to meet as the professional demands shifted and increased for FNEs, hospital staff, and other collaborating agencies. The FNE Subcommittee recommends that SARTs continue to meet and conduct case reviews and Untested Kit Reviews in accordance with the law.

### **c. Implementing HB425/SB406**

During the 2020 Legislative Session, the General Assembly passed House Bill 425, Chapter 204 (2020)—cross-filed under Senate Bill 406, Chapter 205 (2020)—which ensures that health care providers are reimbursed for services provided to victims up to 15 days after the sexual assault and expanded privacy protections for victims of sexual assault. HB425/SB406 protects the privacy of victims by narrowing the scope of information that health care providers are required to provide in order to be reimbursed for a SAFE.

To ensure compliance with this new law, GOCPYVS worked with the FNE Subcommittee, MCASA, and MHA to develop and implement a new reimbursement process that protects victims’ privacy, assists in the collection of required data for HIV prophylaxis, and streamlines the reimbursement process. The group developed computer friendly forms that list the services rendered to a survivor, similar to how somatic medical services are billed to an insurance provider.



The reimbursement form, known as the Sexual Assault Reimbursement Unit Sexual Assault Forensic Exam Reimbursement Form (SSRF) will be required to be used by SAFE Programs when it is released by GOCPYVS in 2022. The SSRF was released in conjunction with a newly developed HIV nPEP reimbursement form.

GOCPYVS released the reimbursement forms with a Guidance Document entitled, “Maryland Sexual Assault Forensic Exam Reimbursement Guidance Document.” This document provides step-by-step guidance on how to complete the SSRF and HIV nPEP reimbursement form. The SSRF, HIV nPEP reimbursement form, and Guidance Document are available on GOCPYVS’ website.<sup>57</sup>

#### **d. FNE Subcommittee FY2022 Recommendations**

The FNE Subcommittee reached a consensus on the following recommendations for FY2022:

##### **(1) Dissemination of forms and education of statutory and regulatory requirements**

- The FNE Subcommittee developed slides to accompany the statutory and regulatory guidance documents and model victim testing consent form developed last year.
- The slides, and associated statutory and regulatory guidance documents, will be provided to each SAFE Program Coordinator in Maryland. This guidance will be available on the appropriate stakeholder websites with available training opportunities for FNEs, SAFE Programs, and SARTs, as appropriate, or upon request.

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<sup>57</sup> See GOCPYVS, *SARU SAFE Reimbursement Form (SSRF) Authorization For Sexual Assault Forensic Medical Examination* (2021), available at <http://goccp.maryland.gov/wp-content/uploads/SARU-SAFE-Reimbursement-Form-SSRF-2.pdf>; see also GOCPYVS, *nPEP/HIV Prophylaxis Treatment Reimbursement Claim & Prescription Form* (2021), available at <http://goccp.maryland.gov/wp-content/uploads/nPEP-Reimbursement-Form.pdf>; see also GOCPYVS et al., *Maryland Sexual Assault Forensic Exam Reimbursement Guidance Document* (2021), available at <http://goccp.maryland.gov/wp-content/uploads/SAFE-Guidance-Document.pdf>.

**(2) The HIV nPEP Pilot Program:** The Pilot Program, which provides the full course of HIV nPEP to survivors free of charge, is scheduled to end in 2022. The sunset on this Pilot Program should be removed and the HIV nPEP Program should be made permanent.

- The permanent program should continue to provide the full course of nPEP to survivors free of charge.
- The permanent program should reimburse prescribing entities for the full cost of the treatment regimen.
- The permanent program should ensure continued collaboration between the state and Terrapin Pharmacy, or an equivalent dispensing pharmacy.
- The permanent program should reimburse for nPEP associated follow-up care to include laboratory testing that aligns with national recommendations.

**(3) Drug-Facilitated Sexual Assault (“DFSA”):** The FNE Subcommittee remains dedicated to addressing DFSA by recommending policies and protocols for sample collection, storage, and testing. The FNE Subcommittee will partner with the Testing Subcommittee during the 2022 Dialogue Series on DFSA.

- During the Dialogue Series, the FNE Subcommittee plans to collaborate with the Testing Subcommittee and Funding Subcommittee to address the following DFSA matters:
  - Standardized sample collection protocols
  - DFSA specimen sample preservation and storage
  - Toxicology screening lab services
  - Statewide contract with a laboratory with appropriate toxicology testing capabilities
  - Standardized reimbursement processes for toxicology screening including the development of a standard invoice for DFSA reimbursement.
- Until a standardized policy for the collection of DFSA samples is finalized, SAFE Programs are encouraged to have a policy in place regarding the identification of potential drug and alcohol facilitated sexual assault and the collection of evidence. This policy should reflect current national clinical best practices. Please reference Appendix B for detailed information regarding the minimum standards for a DFSA policy.

**(4) Support for the Maryland Board of Nursing and Continued Engagement with the FNE Stakeholder Group**

- The FNE Subcommittee supports the Maryland Board of Nursing’s anticipated request for administrative support and funding during the 2022 Legislative Session to update their technology, increase staffing, and improve overall operations.

- The Subcommittee recommends the Board of Nursing resume its stakeholder meetings in 2022. The Subcommittee values the relationship built with the Board of Nursing over the past several years and hopes to continue this partnership.

#### **(5) Reimbursement for adult and pediatric sexual assault cases**

- In 2019, the Subcommittee provided several recommendations to improve the reimbursement structure for hospitals and physicians. Although progress has been made in several areas, including modification of the reimbursement process, the reimbursement rates have remained static since the early 1990’s.
  - SAFEs should be reimbursed irrespective of which healthcare facility conducts the exam. Ensuring that all SAFEs are reimbursed will increase survivor accessibility to SAFEs, ensure compliance with VAWA which provides that a “State, Indian tribal government, or unit of local government...be deemed to incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault”<sup>58</sup> while also supporting SAFE Programs and FNE workforce sustainability.
  - When an FNE must travel to another healthcare facility to perform an exam, the healthcare facility and FNE should be reimbursed for travel time and mileage as well as the cost of providing the exam. This ensures that mobile SAFE programs can dispatch an FNE to the survivor’s location, which aligns with trauma-informed best practices, instead of requiring the original healthcare facility to transfer the survivor or place the responsibility of securing private transportation on the survivor.
  - FNEs should be reimbursed for time spent collecting evidence during a SAFE.
  - The state should review and increase physician reimbursement for providing medical clearance. The current amount in regulation is set at \$80. This rate has not kept up with inflation and is significantly lower than other states.
  - The State should review and increase physician reimbursement for child sexual abuse exams. The current amount in regulation is set at \$80 per hour up to five hours. This rate has not kept up with inflation and is significantly lower than other states.
  - The State should review the current rate for the cost of emergency services for hospitals submitting claims for SAFEs under policies of the Health Services Cost Review Commission to determine if reimbursement levels are adequate. Based on the time spent and acuity of the patient, the FNE

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<sup>58</sup> 34 U.S.C.A. § 10449 (West 2017).

Subcommittee recommends reimbursement levels correspond with the care delivered to trauma patients.

In FY2022, the FNE Subcommittee will focus on developing strategies for implementing the above recommendations.

### **C. Funding Subcommittee**

During the 2019 Legislative Session, the General Assembly established the Rape Kit Testing Grant Fund, now commonly referred to as the Sexual Assault Kit Testing Grant (“SAKT Grant”). The State established this grant fund when it created the statewide testing criteria, in order to accommodate the increased cost associated with testing. Forensic labs in Maryland are authorized to use the grant fund for “equipment, supplies, personnel, and outsourcing” necessary to test kits.<sup>59</sup>

The Maryland General Assembly directed \$3.5 million of the State’s FY2020 budget to the grant fund.<sup>60</sup> Since the grant fund has been in existence for 2 years, the SAEK Committee in conjunction with Senator Shelly Hettleman, requested an update on the status of the grant fund from GOCPYVS, who is charged with distributing the grant. As of December 15, 2021, we have not received a response. In FY2022, the Funding Subcommittee will work to secure an update on the status of the grant fund, to determine how much of the fund has been used and if additional funds need to be allocated to the grant fund.

## **CONCLUSION**

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<sup>59</sup> MD. CODE ANN., Public Safety § 4-401(g) (West 2019).

<sup>60</sup> GOCCP, *Governor’s Office of Crime Control and Prevention Releases Notice of Funding Availability for Sexual Assault Kit Testing Grant* (Oct. 21, 2019), <http://goccp.maryland.gov/governors-office-of-crime-control-and-prevention-releases-notice-of-funding-availability-for-sexual-assault-kit-testing-grant/>.

As the SAEK Committee embarks on its fifth year of existence, the Committee is proud of its many accomplishments to advance Maryland's response to sexual assault. In FY2021, the Committee fulfilled its commitment to work to support the uniform statewide implementation of recent SAEK policy changes. The Committee continued to implement the SAKI grant and applied for additional SAKI grant funding; worked to advance prior legislative enactments and SAEK Committee initiatives; and developed new recommendations. In FY2022, the SAEK Committee will continue its commitment and efforts by establishing the statewide tracking system, hosting a dialogue series, educating sexual assault practitioners, completing its duties under the SAKI grant, ensuring distribution of the Sexual Assault Kit Testing Grant funds, and advancing its previous recommendations.<sup>61</sup>

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<sup>61</sup> A list of the current members of the SAEK Committee has been attached to this report as Appendix C.

**Appendix A**  
**CODIS Hit Follow-Up & Cold Case Investigation Plan**



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**Maryland Sexual Assault Evidence Kit Policy and Funding Committee**

**CODIS Hit Follow-Up & Cold Case Investigation Plan**

Derived from RTI International's and SAKI TTA's *Strategies for Sexual Assault Investigators: Prioritizing CODIS Hit Follow-Up* and *Strategies for Sexual Assault Investigators: CODIS Hit Review and Investigation*

This document was developed in consultation with local law enforcement.

**Purpose**

The purpose of this document is to provide the appropriate actions to take when a sexual assault investigator receives a Combined DNA Index System (CODIS) hit notification in a SAKI grant case.<sup>62</sup> This document should be used to help prioritize SAKI grant CODIS hits when an investigator receives multiple CODIS hits within a short time period. Law enforcement agencies (LEAs) should use this information to aid in the investigatory process and ensure that all CODIS hits are reviewed and investigated in a timely manner.

**General Principles**

- Investigators should not rely solely on this plan when making decisions. Throughout the investigation, new information may be revealed and circumstances involving the suspect(s) may change, thus requiring an updated evaluation, assessment, and follow-up strategy in the case.
  - Given the unique dynamics of cold cases, this document should only be used to offer guidance and is not intended to trump individual determinations by law enforcement.
  - Each case should be evaluated on an individual basis.
- All CODIS hits should be reviewed in a timely manner.

<b><u>Prioritizing CODIS Hits</u></b>
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**Application:** This section should be referenced when an LEA is notified of multiple CODIS hits at one time.

<b>Step 1</b>	All CODIS hits should be assigned to an investigator and their supervisor within <b><u>5 - 10 days</u></b> of the initial CODIS hit notification. <sup>63</sup>
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<sup>62</sup> SAKI grant cases involve kits that were collected on or before April 30, 2018 that were never submitted for analysis.

<sup>63</sup> The assigned investigator should receive a CODIS hit notification letter generated by a crime laboratory.

**Appendix A**  
**CODIS Hit Follow-Up & Cold Case Investigation Plan**

<b>Step 2</b>	<p>Upon assignment, the investigator should complete the following steps:</p> <ul style="list-style-type: none"> <li>• Review details of the hit: Did the CODIS hit match to another case or to an offender? <ul style="list-style-type: none"> <li>○ <b>Offender Hits:</b> If the CODIS hit was an offender hit, consider whether this CODIS hit may belong to the victim’s consensual partner. <ul style="list-style-type: none"> <li>▪ If you determine that the hit belongs to a consensual partner, contact the lab so that the profile can be removed from CODIS.</li> </ul> </li> <li>○ <b>Forensic Hits:</b> If the CODIS hit was a “case-to-case” or forensic hit, locate the other case file and incorporate it into your case file. <ul style="list-style-type: none"> <li>▪ If the match belongs to another police jurisdiction, contact the other jurisdiction and initiate coordination of investigative follow-up.</li> </ul> </li> </ul> </li> <li>• Complete initial research on the named suspect</li> <li>• Determine, if appropriate, the probative relationship the CODIS hit may have to the case <ul style="list-style-type: none"> <li>○ Please notify the lab if you determine that the hit is non-probative.<sup>64</sup></li> </ul> </li> <li>• Assess priority of completing follow-up based on the prioritization chart below.</li> </ul>
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<b>CODIS Hit Organizational Chart (Prioritization Chart)</b>
<p>If a case meets any of the bullet points within a level, then the case should be classified according to that specific level.</p> <ul style="list-style-type: none"> <li>• Example: If a suspect is incarcerated and will be released within 12 months, but there is only a reasonable likelihood of judicial success, the case would still be a level 1 case.</li> </ul>
<b>Level 1</b>
<ul style="list-style-type: none"> <li>• Suspect is in custody and release date is less than 1 year away.</li> <li>• Suspect has at least one arrest/conviction for a prior sex offense.</li> <li>• Suspect can be located with minimal effort.<sup>65</sup></li> </ul>

<sup>64</sup> A non-probative hit is a hit that hinders case progress.

<sup>65</sup> Involves a basic criminal/intelligence database search of the suspect’s name and returns relevant information that shows a current home or work address, or shows that the suspect is in Department of Corrects (DOC) custody.

**Appendix A**  
**CODIS Hit Follow-Up & Cold Case Investigation Plan**

- There is a high degree of confidence the CODIS hit belongs to the suspect and not the victim’s consensual partner or another person.
- Victim has been located and is willing to participate in the investigation and prosecution process.
- The case appears to have a high likelihood of judicial success.

**Level 2**

- Suspect is in custody (in or out of state) and their release date is more than 1 year away
- Suspect has DNA matches for another crime.
- Suspect is not in custody but could be located with minimal effort.
- An elimination sample from the victim’s consensual partner has not been collected; however, the consensual partner can be located.
- Victim can be located with minimal effort and, based on the investigation filing, is believed to want to participate in the investigation and prosecution process.
- The case appears to have a reasonable likelihood of judicial success.

**Level 3**

- Suspect is not in custody and has no prior sex offenses.
- An elimination sample from the victim’s consensual partner has not been collected and the consensual partner’s identity is not known or the consensual partner cannot be located.
- Suspect is not in custody and has no prior violent crimes.<sup>66</sup>
- Victim cannot be located.

After deciding the organizational level for each CODIS hit, law enforcement should proceed with the investigation starting with the level 1 cases.

<b>Step 3</b>	<b>Investigating CODIS Hits &amp; Cold Cases</b>
	Conduct general investigative follow-up: <ul style="list-style-type: none"> <li>• Complete a comprehensive case file review</li> <li>• Check for other physical evidence or other evidence available to you               <ul style="list-style-type: none"> <li>○ Avoid using CODIS hit as the only evidence</li> </ul> </li> </ul>

<sup>66</sup> Violent crime means a crime of violence as defined in [Section 14-101 of the Criminal Law Article of the Maryland Code](#). “Violent crime” also includes burglary in the first, second, and third degree.



**Appendix A**  
**CODIS Hit Follow-Up & Cold Case Investigation Plan**

	<ul style="list-style-type: none"><li>• Consider whether the CODIS hit may belong to a victim’s consensual partner.<ul style="list-style-type: none"><li>○ If the CODIS hit belongs to the victim’s consensual partner, notify the lab so that the profile can be removed from CODIS.</li><li>○ Upon further investigation, if it is determined that the profile does not relate to the case, notify the lab so that the profile can be removed from CODIS</li></ul></li><li>• If applicable and possible, discuss case with the original investigator</li><li>• Conduct a full background investigation of the offender</li><li>• Review any previous suspect/offender interviews</li><li>• Consider the manner of victim involvement</li><li>• Contact MCASA to initiate victim notification protocol</li><li>• Consider whether there are enough facts and information in the victim’s original statement to develop, at minimum, probable cause<ul style="list-style-type: none"><li>○ How much additional information is needed to advance the case and support criminal charges?</li></ul></li><li>• Locate witnesses and interview them</li><li>• Obtain the victim’s medical records that relate to the sexual assault.</li><li>• Visit the crime scene</li><li>• Conduct offender interview(s) at the later stages of the investigation.<ul style="list-style-type: none"><li>○ It is critical to have knowledge of all available information about the crime, victim, and offender prior to contacting the offender.</li></ul></li><li>• Confer with prosecutor regarding what they would like to have prior to filing charges.<sup>67</sup><ul style="list-style-type: none"><li>○ You will need to obtain a warrant to collect a sample of the suspect’s DNA based on the CODIS hit. Thereafter, submit the sample to the lab for testing and comparison to the case.<ul style="list-style-type: none"><li>▪ The lab will need sufficient time to test the sample and make the comparison. Please contact the lab for guidance regarding submittal procedures and testing timeframes.</li></ul></li></ul></li><li>• Have a supervisor review the case.</li></ul>
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<sup>67</sup> Please keep track of all SAKI grant cases that are charged and prosecuted and the outcomes in each case. You will need to report this information to the Office of the Attorney General. If you have any questions please email Jessica Williams at [jwilliams@oag.state.md.us](mailto:jwilliams@oag.state.md.us).

**Appendix A**  
**CODIS Hit Follow-Up & Cold Case Investigation Plan**

Timeline for CODIS Hit Follow-Up

Law enforcement should follow-up on all CODIS hits within a reasonable time not to exceed 90 days. If no investigative steps are taken within 90 days, the delay should be communicated to the investigating officer's supervisor. Given the complexities associated with cold case investigations, we understand that follow-up will vary among cases and the demands of other cases may impact follow-up. As such, this timeline is aspirational. However, the general rule remains: law enforcement should follow-up on all CODIS hits within a reasonable amount of time.

**Appendix B**  
**FNE Subcommittee's**  
**Recommendation for SAFE Program DFSA Policy**



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**Maryland Sexual Assault Evidence Kit Policy and Funding Committee**

Until the SAEK Committee establishes a standardized policy for the collection of drug-facilitated sexual assault (DFSA) samples, SAFE Programs are encouraged to have a policy in place regarding the identification of potential drug and alcohol facilitated sexual assault and the collection of evidence. This policy should reflect current national clinical best practices.

- At minimum, SAFE Program protocols should address the following items, as outlined by the National Protocol for Sexual Assault Medical Forensic Examinations – Adults/Adolescents
  - Identification of DFSA cases

The following circumstances indicate a potential DFSA case and should prompt an FNE to follow DFSA case protocol and sample collection:

    - Patient's medical condition appears to warrant toxicology screening for optimal care (Examples: drowsiness, fatigue, light-headedness, dizziness, physiologic instability, memory loss, loss of consciousness, impaired motor skills, severe intoxication, vomiting, or slurred speech)
    - Patient, or accompanying persons, state that the patient may have been drugged
    - Patient suspects drug involvement because of lack of recollection of event(s)
    - FNEs conducting exams should have some professional discretion as to the collection of samples for toxicology screenings. Clinical best practices and guidelines should be followed.
  - Informed Consent

Survivors of potential DFSA should understand the following before agreeing to toxicology testing:

    - The purpose of the toxicology testing and the scope of the confidentiality of results.
    - The ability to detect and identify drugs and alcohol depends on the collection of urine and/or blood within a limited time period following ingestion.
    - Possible testing limitations

**Appendix B**  
**FNE Subcommittee's**  
**Recommendation for SAFE Program DFSA Policy**

- Testing may or may not be limited to drugs commonly used to facilitate sexual assault and may reveal other drugs or alcohol that the patient may have ingested voluntarily
- There is no guarantee that testing will reveal if drugs were used to facilitate the sexual assault
- Whether any follow-up treatment is necessary if testing reveals the presence of drugs used to facilitate sexual assault
- Any potential impact toxicology testing may have on a criminal case:
  - Test results showing voluntary use of drugs and/or alcohol may be discoverable by the defense and used to attempt to discredit patients or to question their ability to accurately perceive the events in question.
  - This same information can also help substantiate that voluntary drug and/or alcohol use sufficiently impaired patients' consent and prevented legal consent.
- Whether there is a local prosecution practice of charging sexual assault victims with a crime for illegal voluntary drug and/or alcohol use revealed through toxicology screening
  - The FNE Subcommittee encourages the testing subcommittee to discuss a recommendation that the practice of prosecuting a victim of sexual assault for illegal voluntary drug and/or alcohol this type of case be eliminated, or, at minimum, discouraged.
- Declining testing when indicated by circumstances as described above may affect the investigation and/or prosecution
- When and how they can obtain information on, and copies of, the results from toxicology testing
- Who they can contact to discuss the results and any concerns
- Who will pay for toxicology testing
- If toxicology testing can proceed without a report to law enforcement
- Inform the survivor that voluntary use of drugs or alcohol does not reduce the seriousness of the assault. The SAFE should never be contingent upon patient consent to testing.

**Appendix C**  
**SAEK Committee Members**

**SAEK COMMITTEE MEMBERS**

Zenita Wickham Hurley (Chair)	Chief Counsel, Civil Rights, Office of the Attorney General	Office of the Attorney General
Daniel Katz	Director	MSP - Forensic Sciences Division
Tiffany Rexrode	Assistant Deputy Secretary	Department of Human Services
Joyce Dantzler <sup>68</sup>	Chief, Center for Injury and Sexual Assault Prevention	Department of Health
Kristen Lease	Crime Lab Director	Prince George's County Police Department - Forensic Science Division
Pamela Holtzinger	Forensic Nurse Coordinator	Frederick Memorial Hospital
Ashley Young <sup>69</sup>	Managing Attorney	Sexual Assault Legal Institute
Laura Jessick	SAKI Victim Notification Project Manager	Maryland Coalition Against Sexual Assault
Scott Shellenberger	State's Attorney	Baltimore County
Heather Amador	Program and Policy Administrator of Victim Services	Governor's Office of Crime Prevention, Youth, and Victim Services
Barbara Darley	Deputy Director of Victim Services	Governor's Office of Crime Prevention, Youth, and Victim Services

<sup>68</sup> Joyce Dantzler worked with the SAEK Committee until June 2021.

<sup>69</sup> Ashley Young worked served on the SAEK Committee until August 2021.

**Appendix C**  
**SAEK Committee Members**

**EX-OFFICIO MEMBERS**

Senator Adelaide C. Eckardt	Senator and Member, Budget and Taxation	Maryland Senate
Senator Shelly L. Hettleman	Senator and Member of Judicial Proceedings	Maryland Senate
Delegate J. Sandy Bartlett	Delegate and Member, House Judiciary	Maryland House of Delegates
Delegate Shaneka T. Henson	Delegate and Member, House Appropriations	Maryland House of Delegates

**ADVISORY MEMBERS**

Argi Magers	Forensic Scientist Manager, Biology Section	MSP - Forensic Sciences Division
Captain Brian Edwards	Commander, Precinct 8 - Parkville	Baltimore County Police Department
Detective Sergeant Kristen Clark	Special Victims Unit	Charles County Sheriff's Office
Donna Melynda Clarke	Program Director	Domestic Violence & Sexual Assault Center, Prince George's Hospital Center
Jane Krienke	Legislative Analyst	Maryland Hospital Association
Jennifer Witten <sup>70</sup>	Former Vice President of Government Affairs	Maryland Hospital Association

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<sup>70</sup> Jennifer Witten worked with the SAEK Committee until November 2021.

**Appendix C**  
**SAEK Committee Members**

Jessica Volz	Clinical Director of Forensics, Forensic Medical Unit	Adventist Healthcare Shady Grove Medical Center
Michelle Groves	CODIS State Administrator	Maryland State Police

**STAFF**

Carrie Williams (Former Chair)	Division Director, Criminal Appeals Division, Office of the Attorney General	Office of the Attorney General
Jessica Williams (Committee Counsel)	Assistant Attorney General, Civil Rights, Office of the Attorney General	Office of the Attorney General
Ron Levitan	Counsel, State Police, Office of the Attorney General	Office of the Attorney General