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Maryland Chiefs of Police Association

Maryland Sheriffs’ Association

MEMORANDUM

TO: Zenita Hurley, Chief Counsel for Civil Rights, Office of the Attorney General

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee

Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee

Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: March 18, 2020

RE: **Proposed Action on Regulations - Title 02 Office of the Attorney General Subtitle 08 Sexual Assault Evidence Kits**

The Maryland Chiefs of Police Association and the Maryland Sheriff’s Association provide the following comments on the above referenced proposed regulations. MPCA and MSA looks forward to hearing from on the outlined questions and concerns.

**Questions and Concerns:**

Request to OAG:

* Please provide official guidance regarding 02.08.02.01 Criteria for Analysis, section C. Specifically, when the victim withdraws consent for analysis/terminates any further police investigation.
* Regarding .03 Untested Kit Review by SARTs: we support the review of a case when the victim or a victim's representative requests a review. However, we do not believe the Committee or a member of the SART should be able to request a review when the victim has withdrawn consent for analysis, as this overrides the victim's explicit consent.
* It is unreasonable to prohibit persons involved with the investigation to present information during the review, given those individuals are the best informed regarding the specifics of the case.

**Will the SART attempt to apply this legislation retroactively to kits collected before the law went into effect?**

"*D. A person involved in the investigation of a sexual assault case may not participate in the untested kit review for a kit related to that case."*

**Would the Sergeant of the unit who reviews the detective's reports not be able to participate in any review because they are involved in the investigation? The detective investigating the case would certainly not be able to participate, so would multiple detectives from the unit need to be present for the review so they can swap in-and-out depending on which case is being discussed?**

"*E. The SART may request and consider case files and any other evidence it deems appropriate when conducting an untested kit review."*

**Releasing the entire police case file to the committee, particularly with the intent of requiring the case be reopened for future investigation, would seem to conflict with the department's SOPs for release of case information.**

"*C. Written determinations issued by a SART or Committee are* ***not confidential****."*

**If the SART team determines an untested kit should be tested, and if this decision is made public, will that hinder future investigation/prosecution?**

**Given the amount of time and resources involved in these SART reviews, will it be likely that the lab will simply be asked to test all non-VAWA kits, even those that are unfounded or there is a written statement that the victim no longer wishes to proceed. While the laboratory could certainly do so, there is concern about the short-term impact, given the backlog. Also concerned about the CODIS implications. Unfounded cases could be tested, but could not be entered into CODIS. On the other hand, if there is a written statement from the victim stating they no longer wish to proceed, but the lab tests the kit, they would have to enter all probative profiles into CODIS (CODIS guidelines do not allow for the victim to opt-out if a crime has occurred). If there is a CODIS hit, would the department be able to follow through with investigations?**

**02.08.02.02 (A) - Anonymous Kits**

*"If a victim of sexual assault wishes to remain anonymous and not file a criminal complaint, the victim shall be informed that the victim may file a criminal complaint at a future time."*

**Whose responsibility is it to inform the victim? Perhaps the hospital's and not law enforcement's responsibility, as the department would not attempt any contact for a victim who chooses to remain anonymous. Recommendation would be to add "the victim shall be informed by the health care provider that performs a sexual assault evidence collection kit exam on a victim of a sexual assault…"**

*02.08.02.04 - Use of Victim Service Organizations*

*"A law enforcement agency that receives a sexual assault evidence collection kit shall make use of certified sexual assault crisis programs or other qualified community-based sexual assault victim service organizations that can provide services and support to survivors of sexual assault."*

**What does it mean to "make use of"? Do you have a list of organizations for each county that can be used? What is the criteria to be an "other qualified community-based sexual assault victim service organization" and how can departments protect themselves from liability when they choose to work with an organization that is later found to be corrupt?**

*02.08.03.03 (D) - Untested Kit Review by SARTs*

*“A person involved in the investigation of a sexual assault case may not participate in the untested kit review for a kit related to that case."*

**Add other persons such as those involved in the testing, prosecution, or even a relative of the victim. This section should not just be limited to the police officer. Same comment for 02.08.03.04.**

*02.08.02.03 (E) - Untested Kit Review by SARTs*

*The Sexual Assault Response Team may request and consider case files and any other evidence it deems appropriate when conducting an untested kit review.*

**Concern as to continuing with a review if the victim does not wish to proceed. These are not closed cases (the victim has a right to reopen) and as such, would not be released according to current policy.**

**Concern with providing any EVIDENCE in a case to members of a committee who have nothing to do with the investigation. Are they going to be on the chain of custody and are they all willing to be called into court at a later time should this case be prosecuted? Same comment for 02.08.03.04.**

*02.08.04.01 (B) - Reporting by Law Enforcement Agencies*

*"A law enforcement agency shall submit the following information to the Office of the Attorney General:*

*(7) For untested kit reviews:*

*(a) The number of untested kit reviews requested during the prior year as of June 30 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; and  
(c) The number of sexual assault evidence collections kits tested at the recommendation of an untested kit review.*

**Would not the SART or the Sexual Assault Evidence Kit Policy and Funding Committee be in a better position to report these numbers rather than law enforcement? From reading the regulations the request would go directly to them, not law enforcement. In addition, they would also know the exact number of written recommendations they completed. It would be extremely difficult for law enforcement to accurately track and report this data.**