

SHELLY HETTLEMAN
Legislative District 11
Baltimore County

—
Chair
Rules Committee

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Subcommittees

Health and Human Services

Pensions



James Senate Office Building
11 Bladen Street, Room 203
Annapolis, Maryland 21401
410-841-3131 · 301-858-3131
800-492-7122 Ext. 3131
Shelly.Hettleman@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

TESTIMONY OF SENATOR SHELLY HETTLEMAN

SB 949 CONSUMER PROTECTION SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KITS

In 2017, the General Assembly enabled the creation of the Sexual Assault Evidence Funding and Policy Committee (SAEK) in the Office of the Attorney General (OAG). Assistant Attorneys General, State's Attorneys, forensic nurse examiners (FNE's), law enforcement personnel, hospital representatives and other legislators serve on the SAEK. The SAEK has a broad policy mandate to develop best practices related to: the preservation and testing of sexual assault forensic exams (SAFE); access and support of forensic nurse examiners; providing services including information, mental health, legal support, and preventive medication to survivors, etc.

Just last year, this committee considered a bill (SB 789) and passed it requesting (among other things) that the SAEK, with input from the Consumer Protection Division of the OAG, make recommendations related to the provision of Do-it-Yourself rape kits. After many months of consideration and discussion, the OAG issued a report in early February that recommended:

- the state ban the sale, offer for sale, or distribution of self-administered sexual assault kits in the State unless they are state-issued
- Any person who sells, offers for sale, or distributes non-state issued kits should be subject to an enforcement action by the Consumer Protection Division and/or a civil fine
- Kits should not be excluded from use in criminal prosecution if they are brought to law enforcement or prosecutors by a victim

We have significant concerns over whether any evidence collected via the kits would be admissible in a court of law, whether it provides survivors with a false sense of hope of accountability, whether the genetic material would have any privacy protections, and whether survivors would receive the support and medical care so desperately needed after trauma.

Hospitals provide SAFE exams by very highly trained forensic nurse examiners for free. There is no cost to the survivor and the hospital is reimbursed by the Criminal Injuries Compensation Board. At each step in the process, a survivor has the autonomy to proceed or stop as they determine. They also decide whether they want to call in law enforcement and a very careful chain of custody is followed to ensure that evidence is handled properly.

Under the bill, survivors will still be permitted to present evidence obtained by these kits in court, if someone was to obtain a kit from out of state, for example, but it will be up to the discretion of law enforcement and the prosecutors as to whether it is permissible. There is no guarantee that the evidence will be admitted. There has not been a single case, in the five-year existence of company selling this product, in which the kit has been successfully used in court. In fact, the company would need to use a laboratory for the testing of kits that has a detailed agreement with our state lab in order for it to be accepted in Maryland – which they do not have.

Attorney Generals from eight states across the country, including Maryland, have issued cease and desist letters or warning letters attempting to halt the sale of these kits. Washington and New Hampshire have already banned the sale of the product, as this bill proposes.

We agree that it can be extremely challenging for sexual assault survivors to get the help they need. That is why we have worked tirelessly to expand access and services to sexual assault survivors. This year, we have another bill (SB 950) to expand access to telehealth so that if a survivor were to go to a hospital that does not have forensic nurse examiners present, they would not be turned away, and would still be able to get the help they need. We are in complete alignment with the intent to increase access to evidence collection for sexual assault survivors. These kits do not accomplish that goal.

Survivors may put their faith in this product, collecting evidence and showering instead of going to the hospital, making permissible evidence nearly impossible to re-collect. Instead of offering survivors false hope and potentially re-traumatizing them by ruining a criminal case, there are other ways that we can support survivors in their sexual assault cases. The risks of these DIY kits far outweigh their benefits.

We continue to search for new ways to better support sexual assault survivors, but these products do not serve this purpose. I respectfully ask for your support of SB 949. Thank you.