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February 21, 2017

TO: Delegate Joseph F. Vallario, Jr., Chair
Delegate Kathleen M. Dumais, Vice Chair
Esteemed Members of the House Judiciary Committee

FROM: Ilse Knecht
Director, Policy and Advocacy
Joyful Heart Foundation

RE: Testimony in Support with Amendments, H.B. 1076, An Act Concerning Criminal Procedure – Sexual Assault Evidence Collection Kits – Analysis; Testimony in Support, H.B. 255, An Act Concerning Criminal Procedure – Sexual Assault Victims’ Rights – Disposal of Rape Kit Evidence and Notification; and Testimony in Support, H.B. 1141, An Act Concerning Criminal Procedure – Statewide Sexual Assault Evidence Collection Kit Tracking System - Requirements

The Joyful Heart Foundation submits this testimony in support of H.B. 1076, H.B. 255, and H.B. 1141 and thanks you for bringing these important measures up for consideration. Taken together, these bills will increase accountability in the criminal justice system, help apprehend dangerous offenders, and offer a path to healing and justice for survivors.

Joyful Heart Foundation’s mission is to transform society’s response to sexual assault, domestic violence, and child abuse, support survivors’ healing, and end this violence. Since 2010, Joyful Heart has made the elimination of the national rape kit backlog our top advocacy priority and we work directly with survivors, stakeholders, and jurisdictions to achieve this goal. Our staff, consultants, and partners have decades of expertise that allow us to be at the forefront of rape kit reform efforts. This has also afforded us the unique opportunity to support the development and implementation of best policies and practices to address the rape kit backlog in jurisdictions nationwide, including Charlotte, NC; Cleveland, OH; Detroit, MI; Fayetteville, NC; Las Vegas, NV; Memphis, TN; Portland, OR; and Virginia Beach, VA; among others. We have been instrumental in passing state-level rape kit reform legislation in Florida, Georgia, Hawai’i, Iowa, Kentucky, Minnesota, and New York. We are currently working directly to support rape kit reform legislation in 19 states in the 2017 legislative session.

Right now, there are hundreds of thousands of untested rape kits sitting in police storage facilities across the country. In January 2017, the Maryland State Attorney General’s Office released an audit report that found approximately [3,700 untested rape kits](#) statewide. Each one of these kits represents a survivor who has consented to the invasive and lengthy evidence collection examination after experiencing a significant and life-changing trauma.

Research and clinical reports regarding survivor decision-making about experience with rape evidence exams find that survivors do consent to the invasive evidence-gathering procedure because

they hope, believe, and expect that the evidence will be tested and that their offenders will be brought to justice.

They are right to think so: DNA evidence is a powerful law enforcement tool. When tested, rape kit evidence can identify an unknown assailant, identify serial offenders, and exonerate the wrongfully convicted. Testing rape kits for DNA evidence can both solve and prevent crimes; however, too often, these kits are never tested.

Given Joyful Heart’s legislative record and expertise, we are grateful for this opportunity to offer the following observations on H.B. 1076, H.B. 255, and H.B. 1141.

Support with Amendments: H.B. 1076, AAC Criminal Procedure - Sexual Assault Evidence Collection Kits - Analysis

Joyful Heart supports H.B. 1076, which contains key components of comprehensive reform to eliminate the backlog, including mandatory submission and testing of both previously unsubmitted and newly collected sexual assault evidence collection kits (“rape kits”). Further, the bill would establish key notification rights for survivors—one of the most crucial elements of rape kit reform. Our research has shown that survivor access to critical information about the status of their kits can help counter the loss of self-determination and control at the core of the sexual assault experience.

While Joyful Heart fully supports the bill, we do have concerns that the provisions creating exceptions to mandatory submission in Sections C(1), C(2) and C(4) may hinder the full intent of the law, and respectfully submit the following amendments for the Committee’s consideration:

1. As currently drafted, H.B. 1706 Section C(1) would require that rape kits be submitted to a laboratory for analysis unless there is clear evidence disproving the allegation of sexual assault. **We recommend adding “and convincing” after “clear” to establish a higher threshold for the decision not to submit a kit for testing.**
2. Further, Section C(2) would require that rape kits be tested unless the kit contains an insufficient amount of evidence. The determination of whether a kit “contains a sufficient amount of evidence” requires laboratory equipment and trained forensic staff in an accredited crime laboratory. Local law enforcement agencies do not have the skills or the tools to engage in this assessment. **Section C(2) should be eliminated to avoid assigning inappropriate duties to law enforcement agencies.**
3. Lastly, the language in Section C(4) would allow law enforcement agencies to not submit rape kits in certain acquaintance cases, which does not align with national best practices. Through testing backlogged rape kits collected in acquaintance cases, other jurisdictions have linked these perpetrators to unsolved stranger rapes and other types of crimes. **Testing every rape kit connected to a reported crime would bring Maryland into compliance with national best practices on this issue, and ensure that law enforcement agencies statewide can link crimes together, regardless of the relationship between the victim and the perpetrator.**

Eliminating the above provisions in subsection (C) will reduce discretion over which rape kits are submitted for testing—a key contributing factor in the current backlog of untested rape kits—and ensure that only scientifically-trained professionals decide whether the DNA evidence in a forensic rape kit is possibly probative. Our proposed amendments will strengthen this bill and ultimately support the standardization of rape kit submission policies across Maryland.

Support for H.B. 255, AAC Criminal Procedure - Sexual Assault Victims’ Rights - Disposal of Rape Kit Evidence and Notification

Joyful Heart strongly supports H.B. 255, which would strengthen rights for survivors of sexual assault. Many survivors, upon leaving the hospital or evidence collection facility, are never contacted about the status of their rape kit. Our research in victim notification suggests that, for survivors who want to know about their case, not having access to such information can severely hamper recovery. Access to critical information about the status and location of their rape kits can help survivors counter the loss of self-determination and control that is often at the core of the experience of sexual assault.

H.B. 255 grants survivors key rights, including the right to be informed when their rape kits are sent to the lab for testing and of any forensic analysis results; the right to be notified 60 days in advance of planned kit destruction; the right to have their kit preserved for the duration of the statute of limitations or for 20 years; and the right to be informed of these rights.

Taken together, these rights ensure that all sexual assault survivors can make decisions and obtain information about their cases. This bill is a critical step forward in offering a path to justice and healing to all sexual assault survivors in Maryland.

Support for H.B. 1141, AAC Criminal Procedure - Statewide Sexual Assault Evidence Collection Kit Tracking System - Requirements

Joyful Heart strongly supports H.B. 1141, which would require the Department of State Police to develop a statewide tracking system that allows hospitals, law enforcement agencies, and crime labs to enter information on rape kits into a secure system and track them from collection to analysis. The bill also contains provisions that require the system to enable survivors of sexual assault to anonymously track or receive updates regarding the status of their kits. The bill would also require the Department of State Police to report biannually an array of metrics, including the number of kits entered into the system, the number of kits that remain untested, and the number of kits that have been destroyed.

Statewide tracking systems are an important accountability mechanism for ensuring that all kits associated with a reported crime are collected, transported, and tested in an expeditious manner. By allowing survivors to anonymously track or receive updates about the location and status of their kits, this system would ensure that survivors have a choice about whether, how, and when to receive such information. A tracking system with discretionary survivor access allows survivors to decide for themselves what information they need and when to get it in order to heal.

The bill's regular data collection and reporting provision allows the state to track its progress in implementing rape kit reform policies. By requiring a comprehensive and public biannual report, H.B. 1141 will ensure that all stakeholders, most importantly survivors, can monitor whether agencies are complying with submission and testing deadlines and assess the state's progress in eliminating the backlog. Establishing a sexual assault kit tracking system demonstrates Maryland's commitment to accountability and transparency.

Thank you for your leadership on this issue. Testing all rape kits sends a powerful message to survivors that they—and their cases—matter. Joyful Heart continues to advocate for policies that are in the best interest of survivors, and we look forward to serving as a resource for evidence-based strategies for reform. We look forward to working with you to end the untested rape kit backlog in Maryland.

Thank you,

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