



SEXUAL ASSAULT RESPONSE TEAM (SART)
ROADMAP FOR DEVELOPING CONFIDENTIALITY
AGREEMENTS FOR CASE REVIEW

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In 2019, the Maryland General Assembly addressed the concerns raised regarding the inconsistent policies for the testing of sexual assault evidence kits (SAEKs) through the passage of House Bill 1096, Chapter 34 (2019),¹ sponsored by Delegate Shelly Hettleman². Specifically, HB1096/SB767 established several important components regarding the testing of SAEKs including a directive by the General Assembly that the SAEK Committee establish an independent process to review and make recommendations regarding a decision of a law enforcement agency not to test a SAEK. The review process is outlined in the SAEK Committee’s Annual Report: January 2020, and is regulated in COMAR 02.08.03.01-.06.³

This case review process, although specifically designed for the review of cases in which a SAEK will not be submitted for testing (“Untested Kit SART Case Review”), the process may also be implemented by SARTs conducting regular case reviews (“General SART Case Review”). These general case reviews may be conducted in an effort to improve the victim-centered response to sexual assault, to identify effective responses by each discipline involved in the SART, to discuss the delivery of services, to identify risk factors and trends within the local community, to evaluate current policies and practices, and to implement new policies and practices as necessary.

It is recommended that all SART member agency executives (e.g. executive director or commanding officer) review and sign the confidentiality agreements, regardless of their agency’s regular, or required, participation in case reviews. This ensures the understanding of the

¹ This bill was cross-filed as Senate Bill 767, Chapter 33 (2019), by Senator William Smith.

² Senator Shelly Hettleman was a member of the House of Delegates from January 14, 2015 – February 3, 2020, During her tenure as a Delegate she sponsored and supported a number of bills regarding sexual assault evidence kits, including HB1096. She resigned on February 3, 2020 and was sworn into the Maryland Senate on the same day where she continues to participate in, and support the work of, the Sexual Assault Evidence Kit Policy and Funding Committee.

³ The proposed regulations are currently in the comment phase. All comments are due by March 30, 2020. Once the comment period is closed and the regulations are published, the Maryland Coalition Against Sexual Assault will provide an updated document. This applies to all references to COMAR 02.08.03.01-.06 throughout this document.

confidentiality provision among all members and protects the interest of each victim within the SARTs jurisdiction.

The following sample documents are available for all Maryland Sexual Assault Response Teams (SARTs) to adopt and implement for their SART's case review process. However, this document is necessary for use when reviewing cases in which a sexual assault evidence kit was not sent for testing ("Untested Kit SART Case Review).

This document includes the following information and sample agreements:

- An overview of the SART's mission and the purpose of the General SART Case Review process and the Untested Kit SART Case Review process that each SART can edit to ensure that the document accurately identifies the goals of the team. This document must be signed by each member organization's executive (e.g. executive director or commanding officer).
- Information for the SART Coordinator, or designated SART member, for maintaining signed confidentiality agreements and recommendations for regular review of the agreement.
- Case review confidentiality provision and requirements for SART member signatures prior to each case review meeting.
- A sample document for case tracking and updates – this document can assist with ensuring that all SART members are aware of the status of sexual assault evidence kits (SAEKs) being sent for testing.

The Maryland Coalition Against Sexual Assault is available to assist SART Coordinators in the implementation of the necessary confidentiality agreements. If you have questions regarding confidentiality agreement implementation, or need a copy of these forms, please contact the Maryland Coalition Against Sexual Assault at info@mcasa.org or 301-328-7023.

Annotations and explanations below are in *italics*, while the confidentiality agreement model language is in regular font. A word document with only the model language is available to all SART Coordinators.

Instructions: Before implementing a case review process, member organizations are responsible for reviewing the proposed confidentiality agreement. All member organizations should have their agency's executive (e.g. executive director, commanding officer) review and sign the Case Review Confidentiality Provision. As noted in the signature portion, the agency executive's signature indicates that the member agency is agreeing that all participating representatives will abide by the outlined provision. Once signed by the member organizations the SART Coordinator is responsible for maintaining copies on file. The Case Review Confidentiality Agreement should be passed out and signed prior to each case review as a reminder of the confidentiality provision for the participating individuals.

[Insert County] Sexual Assault Response Team (SART)

Case Review Confidentiality Provision

Introductory Language: Case Review and SART Mission

In order to ensure that the case review proceedings are effective and beneficial to the SART member agencies, the community, and victims of sexual assault, it is essential that local SARTs meet to discuss and establish an agreed upon case review process. All team members should have an understanding of the intent of the case review, goals of the case review, how to initiate a case review, and what to expect during the case review. The process should be established by the group and not developed by a single discipline. It is important that all SART member agencies understand, and accept, the established process.

Additionally, as outlined in COMAR 02.08.03.01-.06, these review processes are intended to, at minimum, review a law enforcement's decision not to test a SAEK. Each member agency should have a thorough understanding of the testing criteria outlined in COMAR 02.08.03.01-.06 to ensure proper evaluation of SAEK testing decisions and appropriate recommendations under the law.

Model Language:

The mission of the [insert county] Sexual Assault Response Team is to promote a systemic response that holds sexual offenders accountable and fosters a community sensitive to the needs of sexual assault survivors. This will be done through the collaborative and coordinated multidisciplinary response of the agencies and organizations that work with sexual assault survivors in [insert county].

Types of case review:

There are two types of case review. Each local SART must, at minimum, conduct Untested Kit SART Case Reviews. However, General SART Case Reviews are recognized as an effective tool for SARTs to review their current policies, practices, and delivery of services for effectiveness and improvement.

Model Language:

General SART Case Review: The purpose of the General SART Case Review is to involve the expertise of the multi-disciplinary team in holding offenders accountable and improving the

criminal justice process for survivors. This will ensure a trauma-informed and victim-centered approach to criminal case investigations involving sexual assault.

Untested Kit SART Case Review: The purpose of the Untested Kit SART Case Review is the same as the General SART Case Review, but must also ensure that cases with untested sexual assault evidence kits are being reviewed in accordance with COMAR 02.08.03.01-.06.

Confidentiality Requirements: Protecting Victim Identity

All parties must recognize that protecting personally identifiable information is imperative in each case review. SARTs may want to consider developing release of information forms that will allow the victim to consent to the disclosure of personally identifiable information and information shared during the delivery of services. However, it is important to recognize that case reviews are effective without the disclosure of such information. These reviews focus on the systemic processes, policies, and decision made by SART member agencies.

Model Language:

It is critical that the SART uphold a victim’s right to be treated with “dignity, respect, courtesy, and sensitivity,” Md. Code Ann., Crim. Pro. §11-1002, by acknowledging the sensitive nature of the information being discussed, and the importance of maintaining the survivor’s confidentiality through redaction of personally identifiable information.

Confidentiality Requirements: Understanding Professional Obligations

Each SART member agency will have specific professional obligations and confidentiality limits that will impact their ability to share information. It is important that participants recognize that some parties may not be able to disclose information due to their professional obligations and is not a reflection of their unwillingness to participate in the case reviews. The following section outlines professional confidentiality obligations for advocates, mental health professionals, medical personnel, and attorneys.

Model Language:

In addition, it is important to understand the different confidentiality limits each member of the SART has and each party’s obligation to maintain compliance with the laws outlining those limits.

Specifically, the Violence Against Women Act (VAWA), requires all grantees and subgrantees receiving VAWA funding from the Department of Justice, Office on Violence Against Women, to protect the confidentiality and privacy of persons to whom those grantees and subgrantees are providing services. 34 U.S.C. § 12291(b)(2). There is additional guidance in the supporting Federal Regulations, which provide that absent a “written, informed, and time-limited release,” personally identifying information or information collected in connection with services “requested, utilized, or denied” through grantees’ and subgrantees’ programs is strictly prohibited. *See* 28 C.F.R. § 90.4.

Similarly, the Victims of Crime Act (VOCA), which also authorizes a formula grant administered by the Department of Justice, Office of Violence Against women, has strict

confidentiality requirements for the State Administering Agencies and sub-recipients of VOCA funds. *See* 34 U.S.C. § 20103 et. seq. The supporting Federal Regulations describe the confidentiality guidelines, stating that all State Administering Agencies and sub-recipients of VOCA funds “shall, to the extent permitted by law, reasonably protect the confidentiality and privacy of persons receiving services under this program and shall not disclose, reveal, or release,” any personally identifying information collected in connection with VOCA-funded services “requested, utilized, or denied.” 28 C.F.R. § 94.115.

However, State Administering Agencies and sub-recipients may share individual client information with “informed, written, and reasonably time-limited” consent of the person, except “consent cannot be given by an abuser of a minor or the abuser of another parent of the minor.” 28 C.F.R § 94.115(a)(2). Non-personally identifying information can also be shared in the aggregate regarding services to their clients to comply with reporting, evaluation or data collection requirements 28 C.F.R. § 94.115(c)(1).

These federal laws may limit VAWA and VOCA funded agency’s ability to provide identifying victim information but it does not limit their ability to have non-identifying victim case conversations, to comment on the delivery of services in the community, or to participate in discussions regarding decisions relating to the testing of a sexual assault evidence kit.

Furthermore, mental health professionals and licensed social workers, who may be working in rape crisis centers or as victim advocates, must keep victim information privileged, absent an express waiver of privilege from the victim. *See* Md. Code Ann., Cts. & Jud. Proc. §9-109 and Md. Code Ann., Cts. & Jud. Proc. §9-121. Similarly, medical information shared with a healthcare professional or hospital is considered confidential under Md. Code Ann., Health Gen. §4-302, and can only be released as provided in the statute.

Prosecutors, who may be attending the SART case reviews, must remember their duties to abide by *Brady v. Maryland*, 373 U.S. 83 (1963). *Brady* requires prosecutors to disclose certain exculpatory evidence, including evidence that is in law enforcement officers’ possession, to the defense. Exculpatory evidence is anything that could oppose the guilt of a defendant, undermine the credibility of a prosecution witness, or support the testimony of a defense witness.

The confidentiality provision outlined in this agreement applies to any personally identifiable information. This includes all information that may directly or indirectly identify an individual. For example, information such as an individual’s name, address, other contact information, and social security number. Personally identifiable information can also include an individual’s race, date of birth, number of children, occupation, area of residence, or marital status if that information could identify the individual.

Confidentiality Requirements: Special Circumstances

Each SART serves a community with unique characteristics that must be considered during the development of a confidentiality agreement. When developing the confidentiality agreement, it is important that SARTs discuss the community characteristics that may need to be specifically addressed to ensure confidentiality is upheld. For example, small communities with less diversity

may be easily able to identify a victim based on race or religious background. In these circumstances those identifying factors should be removed. Therefore, SARTs should recognize that personally identifiable information may vary based on specific case details and careful consideration must be taken when redacting the necessary documents.

Model Language:

Rural communities, LGBTQ+ communities, immigrant communities, and any other close communities within the SARTs jurisdiction are especially vulnerable to the unintentional release of personally identifiable information. In these cases, consideration should be given to details that might not normally be considered personally identifiable information but may put the confidentiality of the victim at risk due to the nature of the community itself.

However, personally identifiable information does not include the identities of law enforcement personnel, investigators, or prosecutors acting in their professional capacity.

It is the responsibility of the SART meeting coordinator, or other designated member, to ensure when cases are reviewed, all personally identifiable information is removed, all documents used during the case review are returned to the SART Coordinator, and necessary documents are stored securely, within law enforcement case files, and in accordance with the case review process outlined in COMAR 02.08.03.01-.06 following the meeting.

Member Agency Executive's Signature

The signature of each member agency's executive reflects the agency's understanding of the confidentiality provision and recognition of the agencies obligation to ensure that all participating employees will abide by the agreed upon provision.

Model Language:

I, _____, understand the purpose of the [insert county] SART case review process and agree to adhere to the above Case Confidentiality Provision, to work cooperatively with other SART members, and to keep details of case discussions strictly confidential.

As the member organization's executive, my signature below indicates that all employees participating in any of [insert county] SART case reviews will abide by the guidelines in this Confidentiality Provision.

Expiration of Confidentiality Agreement:

It is important that this document is regularly reviewed by MCASA and each local SART to ensure that the agreement reflects changes to law, professional, or ethical obligations. It is recommended that this document be reviewed in conjunction with the regular review of the SARTs Memorandum of Understanding (MOU). A period for agency comments and revisions should be allotted before MCASA renews the document and the SART solicits the signatures of all member agency executive's.

Model Language:

I understand that this agreement is valid for 1 year - expires: ____/____/____

Signature: _____

Agency/Title: _____

Date: _____

Instructions: The following document is a sample confidentiality agreement that outlines specific terms that must be met for participation in any case review. This form should be signed by all members participating in each case review, prior to starting any review proceedings, as a reminder of their confidentiality obligations.

[Insert County] Sexual Assault Response Team (SART)

Case Review Confidentiality Agreement

The following items serve as a reminder to all participating SART members that case review proceedings are considered confidential and that they each must uphold the obligations required under the law and each of their professional ethical responsibilities.

1. Each individual representative and agency is responsible for maintaining privilege or confidentiality to the extent required by their respective professions and the law.
2. Each member of the team is bound by their professional ethics and legal obligations to share information within their organization only to the extent allowed by law and required by their professional ethical responsibilities.
3. All personally identifiable information, such as the survivor’s name, date of birth, or social security number, in the case review information or discussions are to be regarded as confidential. As a team member you are expected to –
 - a. Protect and secure information in your possession.
 - b. Not discuss or share specific information about individual cases or the process of the case review outside of the meeting except if the member organization is required by legal or professional ethical duties.
 - c. Return all written case information to the SART meeting coordinator at the conclusion of the case review meeting.
 - d. Not photocopy or duplicate case review information.
4. Refrain from using individual’s names (including family members or other witness names) or other personally identifiable information during the case review process.

I, _____, agree to adhere to the above request to work cooperatively with other SART members and to keep details of case information and discussions strictly confidential.

Signature: _____ Date: _____

Agency/Title: _____

Instructions: *This sample status update form is an optional tool for local SARTs, designed to assist in information sharing among team members. Law enforcement agencies are responsible for providing the case number to the SART, or SART Coordinator, for inclusion in the following chart. Once a case is noted as “closed” it may be removed from the list or the State’s Attorney’s Office may continue to provide updates regarding the trial status (i.e. plea, conviction).*

Anonymous cases may be listed for the purposes of collecting data, but no case or survivor information will be discussed, and the kit will not be tested unless the victim decides to report the assault to law enforcement.

Providing updates on the status of sexual assault evidence kit testing will allow SART members to request a review if they feel it is necessary. All confidentiality agreement rules and provisions will be followed and upheld during case discussion.

[Insert County] Sexual Assault Response Team (SART) Status Updates on Sexual Assault Evidence Kits

Case Scenarios:

Local SARTs will want to consider which cases the team is interested in tracking and discussing. It is important that all member agencies are aware of cases in which a SAEK will not be submitted for testing in order to ensure that all members have the opportunity to request a review of that decision. The following document includes case circumstances that are often seen in connection with sexual assault. This document reflects the case tracking process implemented by the Washington County Maryland SART.

Terms:

- **SA:** Sexual Assault
- **ST:** Strangulation (only reported to SART when co-occurring with SA)
- **DV:** Domestic Violence (only reported to SART when co-occurring with SA)
- **AN:** Anonymous/Jane Doe – may be tracked for data purposes
- **Open:** the case is still being investigated by the assigned law enforcement agency
- **Closed:** the case is no longer being investigated and has received a classification in line with the FBI UCR Codes (cleared by arrest, cleared by exemption, unfounded – false, unfounded – baseless)
- **In Process:** the Sexual Assault Evidence Kit (SAEK) has been sent to the crime lab for testing purposes
- **Not Sending:** the investigation law enforcement agency and/or State’s Attorney’s Office has decided not to send the SAEK to the crime lab for testing purposes
- **N/A:** Not applicable due to anonymity
- **Baseless:** After thorough investigation, the events alleged, assumed true, do not meet the elements of a crime

- **False:** After thorough investigation it was determined that the evidence indicates that a crime was not completed or attempted

Case Number/Identifier	Investigating Agency	Case Type	Status	SAEK Testing
012345	[Insert County] Sheriff's	SA/ST	Open	In Process
234567	[Insert County] Sheriff's	SA	Closed	Not sending – baseless classification
345678	[Insert County] Sheriff's	AN	N/A	N/A
456789	[Insert City] PD	SA	Open	No sending – known offender, pled guilty and in CODIS