

mecasa

**MAINE COALITION AGAINST
SEXUAL ASSAULT**

March 1, 2017

Senator Rosen, Representative Warren, and Members of the Joint Standing Committee on Criminal Justice and Public Safety:

My name is Elizabeth Ward Saxl and I am submitting testimony today on behalf of the Maine Coalition Against Sexual Assault (MECASA), the organization which represents and serves Maine's sexual violence prevention and response programs. MECASA initiates and advocates for victim-centered public policy; provides expert training, technical assistance, and resources for providers and partners; funds sexual assault service providers; and works to change the public perception of sexual violence. I am submitting testimony neither for nor against LD 169, "An Act to Support Sexual Assault Survivors" on behalf of MECASA, as well as Maine's sexual violence prevention and response programs.

We are grateful for Representative Madigan's consistent commitment to improving Maine's response to sexual violence, and for her attention to the problems which gave rise to the bill before you today. As you may be aware, forensic kits and sexual violence victims' rights have received significant attention in Congress and the national media over the last year. While numerous challenges face Maine victims as they interface with the criminal justice system, we are fortunate not to have many of the problems which impact victims in other states. Maine's local sexual violence response programs report that some of the issues this bill intends to address are less significant here, or the issues before us are not likely to be addressed by statutory changes.

With regard to sections 1 and 3 of the bill, for the few victims in Maine who disclose directly to law enforcement, and our providers are not aware of situations in which law enforcement or prosecutors do not share the option to have forensic evidence collected. Likewise, they are not seeing issues with victims obtaining the results of forensic exams. Some of this information is included in their medical records, and the balance can be accessed on their own or with the support of Maine's prosecution-based victim witness advocates or community-based sexual assault advocates.

With regard to section 2 (6.A) of the bill, we do see the benefit of retaining the results of a forensic exam until the expiration of the period of the statute of limitations. But we wonder if there are prosecutions which have been compromised as the result of reports being destroyed before the case was brought forward. It is worth remembering that there is no statute of

limitations for some sex crimes, so this measure would require these records be stored in some fashion (as technology changes) for as many as 80 or 90 years.

The section of the bill which we find most interesting is section 2 (6.B.) which would require notice to the victim before the destruction of the record of the kit forensic results. This might allow for a victim who was not initially ready to fully cooperate with law enforcement or the prosecutor a final opportunity to reconsider before evidence is disposed of. That said, there may be some privacy concerns which arise – I could imagine a victim having a kit done who did not tell her family about the sexual assault. Then a piece of mail arrives at the house, opened by her partner which explains the kit results are going to be destroyed in sixty days. We would need to think carefully about how that would work, as well as how to make it the least burdensome for the Crime Lab, as we know that victims may not be located at their last address. Some “reasonable effort to notify” language might be useful.

All of that said, this bill, as well as at least two more which are coming your way, raise many questions about the way we handle forensic evidence processing and storage in Maine. In our office, we have many questions about how the process might be improved – and rarely seem to have the time to follow up. The last time a legislatively-initiated group (or any group?) looked comprehensively at this issue was 1999, which resulted in a report to the Legislature in 2000 (<http://www.maine.gov/legis/opla/forensc.pdf>) (I remember it particularly because it was one of the first policy initiatives I worked on as MECASA’s brand-new Executive Director.) Though we have rarely advocated for legislative studies, this issue may warrant it. Some questions which come to mind include:

- Are district attorneys facing issues in prosecution related to the current kit processing or disposal practices?
- What is the status of the kits in Maine? There is a national movement to create kit tracking systems in all the states, which seems like a lot of administration for limited benefit. Could an alternative be a ‘moment in time’ census of the status of sexual assault forensic kits to address the questions about what is happening with kits?
- How long are law enforcement agencies are storing kits? While Maine law (as a result of the recommendations of the 1999 Legislative Study Commission) requires that kits be stored for at least 90 days, my anecdotal sense is that they are being stored far longer.
- Is it legally possible or financially prudent to process the kits which are not being actively prosecuted? (I have attached a white paper from the Department of Justice on the subject.) Many in our field have been interested in the study in Detroit in recent years:

“In 2009, the Wayne County Prosecutor's Office discovered 11,341 untested rape kits in a Detroit Police Department storage facility. With funding from the National Institute of Justice, a collaborative team of law enforcement, prosecutors, researchers and advocates studied the causes of the backlog and developed and implemented a plan for testing.

As of September 2016, Detroit has tested approximately 10,000 kits, resulting in 2,616 DNA matches and the identification of 770 potential serial rapists, and the Wayne County Prosecutor's Office has obtained 60 convictions. DNA from the kits tested linked to crimes committed in 40 states and Washington, D.C."ⁱ

- Is there a way to implement the notification section of this bill (section 2, (6.B.)) while still reserves victim privacy?
- Are there breakdowns in communication between law enforcement and district attorneys with regard to kits? I recently heard a story of a district attorney finding out very belatedly that a kit had been done. While I suspect that is unusual, it may warrant further attention.

We would recommend that you work through the forensic kit-related bills (including LD 142 & LR 11) in the same work session, and consider a legislative study commission (or something more informal) to further study these issues and report out draft legislation for next session if needed.

Thank you for your consideration and I would be happy to answer any questions you might have.

About Sexual Violence

A recent study found that one in five adult Maine residents reports that they have been the victim of rape or attempted rape during their lifetime; 35.7% of females surveyed and 10.1% of males surveyed have experienced rape or sexual assault at some point in their lives.ⁱⁱ

Sexual assault is the most underreported violent crime in the United States.ⁱⁱⁱ Approximately 14,000 Mainers will experience sexual assault each year.^{iv} However, in 2015, only 373 reports of rape or attempted rape were made to Maine law enforcement.^v These crimes have a devastating impact on Mainers and our communities.

About Maine's Sexual Assault Service Providers

Maine's sexual violence service providers provide free and confidential services across the state to victims/survivors of sexual assault and those close to them, as well as to individuals who wish to increase their understanding of sexual violence. Just some of the services include a 24-hour statewide sexual assault crisis and support line (1-800-871-7741), crisis intervention and information, support groups, in-person accompaniment and advocacy through the medical and legal systems, and school- and community-based prevention education. Services are provided for a victim/survivor regardless of when they experienced sexual violence, and regardless of what type of sexual violence they experienced. Types of sexual violence include, but are not limited to, sexual harassment and gender-based bullying, child sexual abuse, elder sexual abuse, stalking, sex trafficking, and sexual violence within an intimate partner relationship.

ⁱ <http://www.endthebacklog.org/detroit>

ⁱⁱ Dumont, R & Shaler, G. (2015). *Maine Crime Victimization Report: Informing public policy for safer communities*. Muskie School of Public Service, University of Southern Maine. Retrieved from http://muskie.usm.maine.edu/justiceresearch/Publications/Adult/2015_Maine_Crime_Victimization_Survey.pdf

ⁱⁱⁱ Truman, J. & Morgan, R. (2016). *Criminal victimization, 2015*. Retrieved from <https://www.bjs.gov/content/pub/pdf/cv15.pdf>

^{iv} Dumont & Shaler, 2015.

^v Maine Department of Public Safety. (2016). *Crime in Maine 2015*. Augusta, Maine.