REPORT TO GOVERNOR WES MOORE AND THE MARYLAND GENERAL ASSEMBLY FROM THE SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE ON HB758/SB789, "SEXUAL ASSAULT EVIDENCE KITS – PRESERVATION AND STORAGE"

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INTRODUCTION

The Sexual Assault Evidence Kit Policy and Funding ("SAEK") Committee was created by statute in the 2017 session of the Maryland General Assembly. The SAEK Committee was instructed to address a variety of issues that aim to achieve a larger goal: reducing the backlog of sexual assault evidence kits and increase efficiency and proficiency and improve outcomes in the collection and testing of these kits to better assist victims[1] of sexual assault.

In furtherance of this goal, the General Assembly in the 2023 session passed HB758/SB789, "Sexual Assault Evidence Kits – Preservation and Storage." Among its directives was a request for a report regarding historic evidence transfer and the future of self-administered sexual assault kits in Maryland, to be provided to the Governor and the General Assembly by December 1, 2023. The General Assembly requested three components to this report: one, guidance on the transfer of sexual assault evidence kits to law enforcement collected before January 1, 2000; two, issue recommendations regarding the use of self-administered sexual assault kits in Maryland; and three, a plan to educate consumers about self-administered SAEKs collaboratively developed by with the Office of the Attorney General ("OAG")'s Consumer Protection Division ("CPD"). This report is the product of that directive.

[1] The term "victim" is used here as it is how the statute refers to those impacted by sexual assault. It is not reflective of how the Committee views those individuals. The Committee and its partners recognize that not all people who have been victimized use this term to describe themselves.

I. Historic Evidence Kits (Greater Baltimore Medical Center Slides)

a. Background

The Greater Baltimore Medical Center Slide Project ("GBMC slides") is the result of the trailblazing work of Dr. Rudiger Breitenecker at the Greater Baltimore Medical Center. Dr. Breitenecker, who was a doctor at GBMC from the mid-1970s until his retirement in 1997, had created medical slides of DNA evidence from victims of rape before the advent of the modern sexual assault evidence kit. Baltimore County Police Department ("BCoPD") discovered the existence of the slides in 2004 from Mary Beck, a former supervisor in the pathology department of GBMC.[2] At the time of the discovery, GBMC was in possession of slides from over 2,000 victims of rape who had come through the emergency department from the 1970s and 1980s.

BCoPD began testing slides where it could and prosecuting perpetrators of rape. Multiple offenders were convicted or pled guilty during the 2000s. However, despite the recognition that this historical evidence was a forerunner to the modern sexual assault evidence kit in Maryland, the slides were not considered a sexual assault evidence kit in the modern sense. It was not until Maryland developed a statutory definition of sexual assault evidence kits during the 2023 legislative session that these slides, along with modern SAEKs, were given law enforcement protection and accountability measures. This new statutory definition of a sexual assault evidence kit was created to cover all pieces of medical forensic evidence gathered by a medical professional "following an allegation or suspicion of sexual assault" for the purpose of gathering evidence. This also included any materials collected before January 1, 2000, such as the GBMC

[2] "Who is this monster?" Catherine Rentz for ProPublica; published May 20, 2021. https://www.propublica.org/article/who-is-this-monster.

slides. The statute additionally asked the SAEK Committee to deliver in its December 1 report the recommended transfer protocol for these kits from GBMC into the possession of BCoPD. Those recommendations are below.

Prior to this collaborative effort, the total number of cases with slides, as well as the number of slides in total, has been unknown. GBMC fully researched each case in order to provide those numbers to BCoPD prior to October 1, 2023. As a result, BCoPD has accounted for all remaining cases both in their possession that have not yet been tested and those still held by GBMC. All GBMC slide cases previously transferred to BCoPD prior to the implementation of the new policy have been tested or are currently at one of two outsourcing labs pending testing: Bode Technology ("Bode") and DLI Labs International ("DLI")

b. <u>Recommended transfer protocol</u>

Prior to October 1, 2023, GBMC and BCoPD engaged in a transfer process that is notably different than this new process that will be outlined below. Prior to September 30, 2023, GBMC's standard provision to BCoPD included any slides and other material (such as photographs, hair samples, etc.) along with a **copy** of the Medical Examination and Report of Sexual Assault document. Under the post-October 1, 2023, transfer process, GBMC's provision to BCoPD will include any slides (if contained in the case or not previously transferred) along with the **original** Medical Examination and Report of Sexual Assault document along with any additional associated documents (lab results, prior subpoenas, etc).[3]

[3] Contents contained in this document reflect the transfer and testing plan as of October 19, 2023. Certain procedures and protocols may change, as necessary, as this project is underway.

GBMC has developed an efficient and valid process to accumulate, collate and transfer each case to the BCoPD in a timely manner. This process is estimated to produce a realistic outcome of batches of 250 cases being transferred at a time beginning in early October of 2023.[4] This rate of transfer will be evaluated after the first batch is prepared and transferred. Subsequent batches will be scheduled based upon the time required for the first batch transfer.

The accurate transfer of cases, and all associated material, that will maintain the chain of custody is of the utmost importance. Though Maryland Law requires this legal transfer, a Grand Jury Subpoena will still be used for each batch in order to maintain a consistent chain of custody that matches the process that has successfully stood up to courtroom scrutiny.

The process will go as follows:

1. GBMC's inventory of cases that contain slides will be broken into pre-determined batches of 250 cases, beginning with the oldest cases;
2. GBMC will provide the pertinent information for each batch of cases to BCoPD for review;
3. BCoPD will confirm receipt and review with GBMC and forward this information to the Baltimore County State's Attorney's Office ("SAO");
4. GBMC will produce "Certification of Records" forms that will be pre-populated to match the cases being subpoenaed;
5. GBMC will work internally to collect the slides, medical records, and any other associated materials;
6. GBMC will compile all items and records for each case and pre-package these items in slide cards and evidence envelopes that are provided by BCoPD;
7. The Baltimore County SAO will produce a Grand Jury Subpoena requesting each batch on a semi-weekly basis. Each subpoena will include 250 cases, and will be served on GBMC;
8. GBMC will include a signed "Certification of Records" form with each case after final verification;

[4] The first batch of 250 cases with slides were transferred from GBMC to the Baltimore County Cold Case Squad on Monday 10/16/2023.

9. BCoPD Special Victim Unit (SVU) will respond to GBMC to collect the 250 cases;
10. BCoPD SVU will complete the evidence packaging process and submit the evidence to the Evidence Management Unit (EMU);
11. This process will be repeated semi-weekly until all cases with slides are transferred to the BCoPD;
12. This process will then continue for any cases at GBMC that do not contain slides; and
13. This process will culminate with a complete transfer of all materials from GBMC to the BCoPD. The estimated time of completion for transfer of all materials from GBMC to BCoPD is approximately mid-February of 2024.

c. Recommended Testing Protocol:

As the slides come into the possession of BCoPD from GBMC, BCoPD and GBMC recommend the following testing protocol:

1. BCoPD SVU will submit a request for analysis form to the Forensic Services Section (FSS) for each case containing slide evidence;
2. BCoPD FSS will receive slide cases from EMU and ship them to an outsourcing lab for testing;
3. Shipping in large batches (500) to an outsourcing lab will begin in January 2024 and be complete by June 2024; and
4. The outsourcing lab is to report results on all cases by December 31, 2024

BCoPD has determined that it will begin victim notification protocols after testing, not before. This notification will occur in conjunction with BCoPD's victim advocates and the Maryland Coalition Against Sexual Assault (MCASA). This process has been decided upon to allow for streamlined testing and to avoid delays in sending materials for testing. BCoPD will test all materials it receives, regardless of statutory exceptions to testing that may exist.

BCoPD received two bids for outsourcing the testing of the GBMC slides. The two bidding laboratories were Bode and DNA Labs International. Both offered a streamlined fee

structure, volume discounted pricing, and a dedicated workflow that does not interfere with any testing already in progress for other agencies or projects. Both structured their workflow to receive all slides by June of 2024 and complete all slide testing by December of 2024. After reviewing both offers, BCoPD has selected Bode to complete its GBMC slide testing.

The testing portion of the project will be funded through multiple sources. These sources include BCoPD FY24 funding, SAKT FY24 funding, BCoPD FY25 funding, and the Hackerman Foundation grant to Seasons of Justice to establish a dedicated account for direct payment to the outsourcing lab. The total cost of the testing component of the project will be $2.67 million dollars.

II. Self-Administered Sexual Assault Evidence Kits

a. Background of Commercially Marketed Self-Administered Sexual Assault Evidence Kits

The history of commercially marketed, self-administered sexual assault evidence kits began in the wake of the #MeToo Movement of 2017, which was a social movement that sought to encapsulate the problem of sexual harassment, sexual assault, and rape culture in the United States and globally. Indeed, the first commercially available self-administered sexual assault kit brand was called the MeToo Kit. The MeToo Kit first received public attention in 2019 when it began marketing to colleges and universities as a product to provide victims the opportunity to "take control back"[5] of their experience.

Almost as soon as these kits hit the marketplace, the attorneys general of multiple states issued statements indicating concerns about the admissibility of the kits in a criminal

[5] "This company is advertising MeToo-branded at-home rape kits. Experts say it's a terrible idea." Updated September 6, 2019. https://www.vox.com/identities/2019/9/5/20850965/me-too-kit-metoo-rape-sexual-assault.

prosecution. Between 2019 and 2021, eight states issued warnings or cease-and-desist letters to MeToo and MeToo's successor, Leda Health, including New York[6], Oklahoma[7], Michigan[8], Virginia[9], New Jersey, Connecticut, and Pennsylvania[10]. In 2020, New Hampshire banned the sale of "over the counter" self-administered sexual assault evidence kits,[11] and Washington State followed suit in 2023.[12]

In consideration of the above, and with the intent to investigate the issues previously associated with self-administered sexual assault evidence kits, the SAEK Committee worked with its legislative partners to introduce HB758/SB789, "Sexual Assault Evidence Kits – Preservation and Storage." In that bill, the Committee agreed that it would work with its stakeholders to review the historical development, benefits, risks, implications, and concerns raised in other jurisdictions regarding evidence integrity and admissibility of commercially marketed self-administered SAEKs.

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[6] "Consumer Alert: Attorney General James Orders Sexual Assault Evidence Kit Companies To Cease And Desist Operations." Published September 12, 2019. https://ag.ny.gov/press-release/2019/attorney-general-james-orders-sexual-assault-evidence-kit-companies-cease-and.

[7] "Attorney General Hunter Issues Consumer Alert, Cease & Desist Letters to At-Home Rape Kit Companies." https://oag.ok.gov/articles/attorney-general-hunter-issues-consumer-alert-cease-desist-letters-home-rape-kit-companies.

[8] "Notice of Intended Action Dated August 29, 2019." https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2019/August/Notice_of_Intended_Action_to_MeToo_Kits_Company_08-29-19_664596_7.pdf?rev=467467d7282c44a68b5ba316172bec91&hash=67B8E5F1F6939D939350CF213B6B3059.

[9] "Herring Issues Warning About Self-Administered Sexual Assault Evidence Kits." Published September 10, 2019. https://web.archive.org/web/20191213142624/https:/www.oag.state.va.us/media-center/news-releases/1525-september-10-2019-herring-issues-warning-about-self-administered-sexual-assault-evidence-kits

[10] The Committee has reached out to stakeholders in these states after obtaining this information from the article, "Washington state considers banning over-the-counter rape kits," posted on March 7, 2023. https://crosscut.com/politics/2023/03/washington-state-considers-banning-over-counter-rape-kits. As further information is received, this report will be updated.

[11] House Bill 705, Signed by Governor Sununu on July 20, 2020, included a provision banning the sale of "over the counter" rape kits in New Hampshire. https://legiscan.com/NH/text/HB705/id/2194274/New_Hampshire-2020-HB705-Amended.html.

[12] House Bill 1564 passed the Washington State Senate on April 13, 2023 and had an effective date of July 23, 2023. https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/House/1564.SL.pdf?q=20231018113822.

HB758/SB789 passed the Maryland General Assembly in the 2023 session and was signed into law by the Governor on May 16, 2023.

b. The Committee's Formation and Initial Understandings

Once signed, the Committee formed a subcommittee of stakeholders from multiple disciplines, including legislators, law enforcement, victims' rights attorneys and advocates, state's attorneys, forensic nurse examiners, forensic labs, the Maryland Hospital Association, the Maryland Coalition Against Sexual Assault ("MCASA"), the Office of the Attorney General, and the Governor's Office of Crime Prevention, Youth, and Victim Services ("GOCPYVS"), to address the legislature's directive and create this report. The group held its first meeting on May 23, 2023. Representatives from the OAG's Consumer Protection Division ("CPD") joined the committee at its June 12, 2023 meeting and continued attending through the completion of this report in November 2023.

The group's intent was to have a complete and thorough conversation before reaching its conclusions. The subcommittee committed to an in-depth and thorough exploration of existing knowledge and information about the development of self-administered sexual assault kits, currently available kits, marketing practices, processes for obtaining and using a self-administered sexual assault kit and the potential impact on medical care, access to advocacy services, and legal implications for victim survivors and accused persons. The subcommittee acknowledges that access to medical forensic examinations is limited in some communities and that there is a shortage of forensic nurse examiners in the workforce. It also acknowledges that these challenges are a critical element in the conversation about self-administered sexual assault kits and there is a dire need for a solution to resolve this gap. Additionally, the group understands that there may be victims who do not wish to engage in the traditional criminal-legal system but

would like to engage with a self-administered sexual assault kit for other reasons. The subcommittee did not wish to reach a consensus that would address commercially marketed, self-administered sexual assault kits without also looking to resolve the challenges and barriers to services victims and survivors of sexual assault in Maryland face.

The conversations in these meetings included receiving information from the Committee's representative stakeholders on how these commercial self-administered kits would work in the market and their potential benefits and pitfalls, meeting with a leading manufacturer of commercially marketed kits, and investigating and meeting with programs that provide alternative services to increase access to a sexual assault forensic exam ("SAFE") administered by a healthcare provider. The subcommittee also worked together over the course of October and November to develop its recommendations for the final report based on all the information it had received.

c. Concerns Regarding Commercially Marketed Self-Administered Sexual Assault Evidence Kits

Concerns about the utility and potential harm of commercially marketed self-administered SAEKs fell into three main categories described below including criminal-legal, privacy, and medical and advocacy.

i. Criminal-legal concerns

As with many other jurisdictions that have pondered the question of whether to allow these kits in their jurisdiction, the subcommittee considered one of the most common questions related to these commercially marketed kits: that is, whether such a kit would be admissible in a criminal prosecution.

Like many of our colleagues across the country, the subcommittee investigated whether any of these commercially marketed kits had been accepted as evidence in criminal proceedings. The committee conducted a nationwide review to determine whether such a case existed; however, the committee has not located a single case where a self-administered kit marketed by a commercial manufacturer has been accepted as evidence of a sexual assault in a criminal proceeding. When discussing this with Leda Health representatives in a meeting on October 6, 2023, Leda Health stated that self-administered kits had been used in the San Francisco Bay Area during the COVID-19 Pandemic; however, when asked, they did state that these kits were not kits produced by a commercial manufacturer. Rather, according to Leda's own admission, they were kits distributed by the State of California that conformed to the state's guidelines.

One of the greatest concerns around admissibility is the lack of ability to track a chain of custody for the kits. The currently available self-administered sexual assault kits offer the option of telehealth visits that provide a forensic nurse to instruct the victim on specimen collection, as well as witness collection and sealing of specimens. The subcommittee inspected the kit and spoke with representatives from Leda Health who confirmed that the telehealth visit is optional and specimens can be processed without a nurse to provide instruction and witness collection. Without the guidance of a medical professional, a victim may inadvertently collect genetic samples incorrectly and receive no results, incomplete results, or contaminated results. After collection, the kit can be mailed by the victim to an accredited lab where the kit would be tested for foreign DNA and the kit is retained by Leda Health for its records. The results sent to the victim are limited to reporting presence or absence of foreign DNA. Victims are not provided with the opportunity for counseling about the meaning, potential implications, and limitations of the results.

A SAEK collected at the hospital clearly meets chain of custody requirements and is tracked from the moment it is opened, used, sealed, transferred (by a forensic nurse examiner or other approved hospital staff) to the custody of law enforcement, and stored in accordance with Maryland law. The tracking of these kits will be even easier to follow once the contracted-for SAEK Tracking System through InVita Healthcare is rolled out in 2024. The committee notes, however, that there continue to be significant barriers to obtaining SAFEs and acknowledges that availability of SAFEs must be increased in order to consistently provide sexual assault survivors with this option across the State.

Commercially marketed, self-administered sexual assault kits are not required to be sent for testing by law enforcement. While SB789 allows for a victim to submit their kit to law enforcement, law enforcement has no requirement to send it in for testing. Commercially marketed, self-administered sexual assault evidence kits are not considered SAEKs under Maryland law. When this question was raised in the 2023 legislative session, commercially marketed, self-administered sexual assault kits were explicitly removed from the new, proposed definition of SAEKs. Additionally, as currently marketed, there are significant concerns that these self-administered kits would not be eligible for entry into the Federal Bureau of Investigation's (FBI) Combined DNA Index System ("CODIS"). CODIS hits allow forensic scientists and law enforcement to find patterns in DNA evidence and identify serial offenders. The inability of forensic labs to trace the evidence submitted in a commercially marketed, self-administered sexual assault evidence kit raises the possibility of a serial offender who cannot be held accountable.

i. Privacy Concerns

During the meetings, CPD also raised several privacy concerns with these kits that also concern the subcommittee. These privacy concerns may result in a victim who submits one of these kits in Maryland being subjected to a violation of their most private data.

Maryland does not currently have a general privacy law that provides consumers with the right to delete DNA evidence submitted in a product such as a self-administered sexual assault kit. This means that a survivor that submits a commercially marketed, self-administered sexual assault evidence kit has no ability to control its use at a later date, and it remains subject to the subpoena power of a state's attorney for a criminal matter or a court or attorney in a civil proceeding.

Additionally, Maryland's Genetic Information Privacy Act only permits a company to collect genetic data from a consenting party. It is unclear whether a company could obtain consent from all parties in instances of sexual assault.

ii. Medical and Advocacy Support Concerns

In addition to the specific categories of concerns named above, the committee also has concerns about the long-term support available for a survivor in both the medical and advocacy services areas. These concerns were raised by forensic nursing professionals, by the state sexual assault coalition, and by victim advocate representatives who staff the committee.

Firstly, the committee is concerned that a victim that uses a self-administered sexual assault evidence kit may not have immediate access to advocacy support services during the evidence collection process, and resources through a company like Leda Health may only be available to victims for a limited time. In Maryland, a victim may have an advocate present with

them before, during, and after a SAFE. The advocate is there to provide support to the victim during a difficult time and may act as an advocate with medical professionals if a victim is feeling uncomfortable with certain aspects of the exam, or if the victim feels like their patient rights are not being honored while they are in the hospital. That advocate then becomes a connection for the victim after their exam and can connect them to hyper-local referrals to counseling, crisis intervention services, civil legal services, and crime victims' rights representation in the event of a criminal proceeding. A victim's access to crime victims' rights representation allows them to engage with the system through experienced professionals who can explain the criminal-legal system in an accessible, trauma-informed way. The advocate and attorney can help a victim feel heard in a process where it can feel like a victim's voice goes unheard.

Additionally, there are concerns that a patient who does not engage with medical services at the time they use a commercially marketed, self-administered sexual assault evidence kit may have to pay for those services if they are needed later. Access to prophylactic medication for human immunodeficiency virus (HIV), sexually transmitted infections (STIs), and pregnancy prevention is time sensitive and, if not addressed adequately through a self-administered sexual assault evidence kit company, a survivor could miss the window for this critical care. Further, it is unclear if these medications, or any related follow-up care and testing, are provided to survivors free of cost through commercially marketed, self-administered sexual assault evidence kits. In contrast, Maryland has ensured survivors of sexual assault that receive a SAFE at a medical facility have access to these medications, along with follow-up care and testing, free of cost.

d. The Committee's Meetings with Outside Stakeholders

iii. Leda Health

Leda Health is a private commercial marketer of self-administered sexual assault kits. Leda first came onto the market in 2019 as the MeToo Kit and has sought private venture capital to fund its work. Leda's states that its mission is to "work with hospitals, organizations, legislators, and universities to empower survivors with additional resources."[13] Leda represents that it offers resources to survivors for STI testing, medication, and educational resources for college campuses. *See* Appendix B for a one-pager distributed by the company.

At the time of launch in 2019, as noted in the report above, MeToo Kits received criticism from multiple attorneys general. In February 2023, MeToo Kits' founder, Madison Campbell, characterized the publicity surrounding the kits as the kind of press "people pay tons of money for."[14] She additionally characterized sexual assault as a "multi-billion dollar industry" at a Bay-area pitch accelerator event.[15] As of the date this report was completed, Leda has only announced one partner in 2023, Syracuse University, which will be providing technical assistance to Leda to develop a self-administered kit for use by military personnel in the field who report sexual assault.[16]

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[13] "Leda Health: Our Mission." Updated 2023. https://www.leda.co/about.
[14] "'Call Me a Scammer to My Face': Madison Campbell is determined to get DIY rape kits into survivors' hands, no matter who tells her it's a bad idea." Published February 23, 2023. https://www.thecut.com/article/inside-diy-rape-kit-startup-leda-health.html.
[15] *Id.*
[16] "SU partners with Leda Health to create self-administered early evidence sexual assault kits." https://dailyorange.com/2023/09/syracuse-university-leda-health-self-administered-early-evidence-sexual-assault-kits/?fbclid=IwAR3RDZO7K3itBJDWdR-I6RMqwT0Da7I9XG9nVZSx4epfpgvFqvSZigTzauI_aem_AcbBwdUxQNDsyoO_Q7vhcyrDcl7qsGL_yLCieieYtC7XEHKm9YzGDrPF6pwVlsTPxWM&mibextid=Zxz2cZ.

After the passage of SB789, Leda Health contacted multiple organizations in Maryland to pitch the potential uses of its product. In August of 2023, the subcommittee received information that certain marketers were sharing incorrect information about commercially marketed, self-administered sexual assault kits. The subcommittee and OAG determined that a letter to correct the misinformation should be sent to stakeholders in the sexual assault community in Maryland. That letter was issued on August 24, 2023 and is attached to this report as Attachment C. After the issuance of the letter, a meeting was requested by Leda through its lobbying firm, Foley & Lardner LLP. The OAG consulted with the broader committee at its quarterly meeting in September of 2023 and it was agreed that a smaller group would meet with Leda Health.

Representatives from the OAG, GOCPYVS, MCASA, and the Montgomery County Police Department met with Leda Health and a representative from their lobbying firm, Foley & Lardner, on October 6, 2023. The representatives from the SAEK Committee that joined the call expressed their concerns including the fact that Leda's kits had not yet been successfully admitted in evidence in a criminal proceeding. The CEO of Leda Health, Madison Campbell, told her background story, her reasons for developing the MeToo kits, and her goal to provide victims with a means to take back their power. She emphasized her belief that these kits will break down barriers to reporting sexual assault for vulnerable populations, such as immigrant and/or non-English speaking victims and those who did not want to involve law enforcement. She also shared that Leda Health has a clinical team to help assist with specimen collection.

Leda's lobbyist stated they advise that the kits be used in a complimentary way to SAFEs, not instead of the exam. He stated that the kits have been admitted in other states as evidence in family court. During the meeting, Leda Health gave an example of distributing kits during COVID-19 in the Monterey County area of California. In these instances, the kit was delivered

to the victim by police or courier at a location of their choosing. Police would wait outside the location while the victim took the kit inside and completed evidence collection. In an article by KSBW Action News[17], this process was noted to include the support of a certified forensic nurse providing support and guidance to the victim through a secure video meeting platform. Once completed, the victim would seal the kit and place it back outside for the police officer to take into their possession. When pushed, Leda Health admitted that it was not their kits used; rather, this was a temporary state run program that was developed as a result of the pandemic. Additionally, Leda Health and its representatives did not have an answer that alleviated the committee's concerns on chain of custody.

At this time, Leda Health is proposing no direct consumer contact in marketing or distributing the kits. They would work through organizations like colleges and hospitals. They stated that they want victims to be informed and educated on the process of receiving a SAFE exam and the option to utilize a self-administered sexual assault kit. Leda gave the example of having a contract with the US Air Force for kit distribution to combat unreported sexual abuse in the military.[18] According to Leda Health, they are not planning on selling kits in Maryland, but had a goal of distributing them by October 1st, which they have paused while waiting for this committee's report.

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[17] Monterey County DA's office allowing victims self-administer rape kits at home. Updated April 15, 2020. https://www.ksbw.com/article/monterey-county-das-office-allowing-victims-self-administer-rape-kits-at-home/32165425.

[18] According to media reports, Leda Health received a grant from the Department of Defense to receive technical assistance from Syracuse University's Forensic and National Security Sciences Institute in developing a kit for use in military combat zones. No Air Force bases or entities have contracted with Leda Health currently. https://dailyorange.com/2023/09/syracuse-university-leda-health-self-administered-early-evidence-sexual-assault-kits/?fbclid=IwAR3RDZO7K3itBJDWdR-I6RMqwT0Da7I9XG9nVZSx4epfpgvFqvSZigTzauI_aem_AcbBwdUxQNDsyoO_Q7vhcyrDcl7qsGL_yLCieieYtC7XEHKm9YzGDrPF6pwVlsTPxWM&mibextid=Zxz2cZ.

iv. Pennsylvania State University Sexual Assault Forensic Examination - Telehealth ("SAFE-T") Center

Alternatives to commercially marketed self-collection SAEKs that support quality care and increase accessibility were also explored. Forensic nursing partners brought to the subcommittee's attention a program out of Pennsylvania State University (Penn State) that provides hospitals with technical assistance and peer review of sexual assault forensic exams in real time via live teleconferencing, often referred to as telehealth. The Penn State Sexual Assault Forensic Examination – Telehealth (SAFE-T) Program was founded in 2017 with the mission to "deliver[] the new standard of sexual assault trauma care."[19] The program was a pilot first introduced in California in 2007 and brought to Penn State by Sheridan Miyamoto, a doctor of nursing and "nurse scientist."[20] Dr. Miyamoto has published academic papers on the viability of telehealth models for both adult and adolescent sexual assault forensic treatment.[21]

Representatives from the SAFE-T Center met with members of the SB789 and Testing Subcommittees on October 10, 2023, and provided a presentation with the opportunity for the committee to ask questions. The committee was impressed with the SAFE-T Center's reach in Pennsylvania, its positive patient outcomes, and retention of forensic nursing staff in programs where it provides technical support (76% of nurses continued practicing when involved in the program versus just a 7% two-year retention rate nationwide without a TeleSAFE program).[22] Dr. Miyamoto also shared in her presentation that the SAFE-T Center program was able to accept

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[19] "SAFE-T Center Home Page." Updated 2023. https://safe-tsystem.com/.
[20] "Meet Sheridan Miyamoto." Updated 2023. https://safe-tsystem.com/about-us/sheridan-miyamoto/.
[21] "DOJ Report," Updated 2023, https://safe-tsystem.com/doj-report/, "Impact of telemedicine on the quality of forensic sexual abuse examinations in rural communities," https://www.sciencedirect.com/science/article/abs/pii/S014521341400146X, "Using Telemedicine to Improve the Care Delivered to Sexually Abused Children in Rural, Underserved Hospitals," and https://publications.aap.org/pediatrics/article-abstract/123/1/223/71918/Using-Telemedicine-to-Improve-the-Care-Delivered.
[22] "SAFE-T Center Home Page." Updated 2023. https://safe-tsystem.com/

hospitals not located in Pennsylvania for its pilot program. An informational flyer is attached to this report as Attachment D.

v. International Association of Forensic Nursing ("IAFN")

The IAFN was first formed in 1992 by 72 registered nurses, many of whom were Sexual Assault Nurse Examiners ("SANE").[23] The Association "seeks to advance forensic nursing practice and incorporate forensic nursing science into basic and graduate nursing programs in colleges and universities around the globe."[24] A member of the subcommittee informed the group of a grant-funded telehealth program through IAFN and provided contact information so the committee could request information.

The committee counsel and the IAFN representative reached agreement for a group training and information date of November 6, 2023. The presentation was provided by Diane Daiber, the Forensic Nursing Director and OVC TeleSAFE Technical Assistance Project Director. IAFN as the technical assistance provider works with programs in Texas, South Dakota, Arkansas, Alaska, and Nebraska. These five sites (known at IAFN as "hub sites") serve as peer mentor and support sites for over 50 subsidiaries (known as "spoke sites"). These hub sites employ a variety of methods for providing this support to their spoke sites, including some providing exclusively online support with no required base site for working hub site nurses, while others require the use of physical facilities for administration of peer mentorship to spoke sites. However, there are some commonalities across all sites. The National TeleNursing Center ("NTC") reported in 2019 that there was an 86% overall satisfaction rate with TeleSAFE

[23] International Association of Forensic Nurses. "History of the Association." Updated 2023. https://www.forensicnurses.org/page/AboutUS/.
[24] *Id.*

programs, with a 97% overall satisfaction rate from civilians who interacted with these systems. The NTC's Sustainability Report is attached to this report as Attachment E. Additionally, IAFN reported an overall increase in job satisfaction and provider wellness at the hub sites where it provides technical assistance.

The NTC and Ms. Daiber both cited two common challenges: funding sources and ensuring appropriate state licensure for programs that operate in multiple states, with funding acting as a continuous challenge. Some sites, like Arkansas and Texas, have set up funding through state sources, such as a line item fund or a fund distributed through their attorneys general; others, like Alaska, have privately funded the operation through their hospital system. However, all have reported to IAFN that the programs work well and are worth funding. IAFN has offered to continue to provide information and technical assistance to Maryland as it explores the option of creating its own TeleSAFE Program in the state.

e. **The Committee's Recommendations and Need for Additional Time**

Between the end of May of 2023 and the second week of November 2023, the group met thirteen (13) times for a total of fifteen and a half (15.5) hours. OAG staff additionally met internally regarding the legislation another nine (9) times totaling six (6) hours and took innumerable meetings and calls with members of the committee individually or in groups. Committee counsel and members of the committee collectively spent more than fifty (50) hours in research outside of committee meetings in the effort to formulate these recommendations and draft a final report as required by the legislation.

The committee, over the course of its meetings and research, has realized that the issues presented by self-administered sexual assault kits are even more complicated than initially thought.

Despite the committee's good faith efforts and extensive time spent on this report, the committee has not yet reached a final set of recommendations regarding the future of these kits in the state of Maryland. Even as the committee has worked to reach a final conclusion to this report in October and November, new issues have arisen that will affect the committee's final recommendations as related to self-administered sexual assault kits. When it became evident that the committee continues to see new issues even as its report deadline came to a close, the committee reached agreement that all issues presented could not be resolved in the time provided. The committee is centered on providing information that is thorough and maintains standards of excellence in its recommendations that will affect broader policy.

Because of this, the committee is planning to devote more time researching and discussing the issues presented by self-administered sexual assault kits, with a commitment to submit final recommendations to the Governor's Office and the General Assembly on or before April 1, 2024. The committee has agreed to spend the time necessary between the date of this report and the April 1 deadline to reach a final conclusion that will be thoughtful, thorough, and accommodate both stakeholders and victims across the state.

In the interim, the committee has reached agreement on the following recommendations:

i. Condemn any unfair, abusive, or deceptive trade practices from marketers of commercial, self-administered sexual assault kits;
ii. Direct the SAEK Committee to explore the creation of a free, state-issued, self-administered sexual assault evidence kit that addresses issues such as chain of custody, survivor privacy and empowerment;
iii. Launch a pilot program for telehealth forensic exams and care for victims of sexual assault in Maryland hospitals,; and
iv. In conjunction with recommendations from the Availability of Exams and Shortage of Forensic Nurse

Examiner's ("FNE") Subcommittee of the SAEK Committee, support funding mechanisms to improve access to medical forensic care, including the collection of SAEKs, and support hospital programs in the hiring and retention of forensic nursing staff.

III. Consumer Education Recommendations from CPD and OAG

SB789 directs the SAEK Committee to consult with the Consumer Protection Division of the Office of the Attorney General for recommendations about educating consumers concerning the use of self-administered kits, including information regarding the kits' admissibility in a criminal prosecution and identifying other resources for victims of sexual assault.

The Committee met with Assistant Attorney General members of the Consumer Protection Division. The CPD strongly recommends against the availability of commercially provided, self-administered kits to Maryland consumers because the potential for serious, negative ramifications from the kits' usage strongly outweighs any benefits. For example, self-collected evidence is unlikely to be admissible in a criminal trial; genetic material submitted to a third party through a commercial kit raises significant privacy concerns; and victims are not guaranteed free comprehensive medical care and associated support they would receive at a hospital with a SAFE Program. (See Appendix (A) for more details.) The subcommittee has concluded that in the current form, commercially manufactured self-collected sexual assault kits are inadequate, are not a replacement for a forensic medical exam, have potential to give victims a false sense that self-collected evidence can be utilized for criminal prosecution and in the same way evidence collected during a medical forensic examination can be, and risks re-victimizing the user by exposing their genetic material for commercial purposes. Although the CPD is sympathetic to concerns regarding the scarcity of trained forensic nurses and the lengthy waits in

hospital emergency rooms, "do it yourself" evidence kits cannot be considered a suitable alternative resource for Maryland victims.[25]

The CPD surveyed other states to determine if the commercial use of self-collected evidence kits by sexual assault victims has been considered. The issue has been addressed in at least 10 states.[26] Maryland legislators may also want to review the committee testimony provided in Washington on HB1564, prohibiting the sale of over-the-counter sexual assault kits.[27]

If such kits are made commercially available, the CPD recommends, at minimum, that the kit's container is large enough to allow for the placement on its outer wrapper a list of significant warnings related to admissibility, privacy, and the availability of free, state-specific medical forensic care and support services. Warnings should be in plain language, in both English and Spanish, and in font at least 12-point, or larger.

As this report and the CPD recommendations to the Governor and the General Assembly will be public, no commercial provider should rely on these examples of minimum legislative considerations for purposes of avoiding prosecution under Maryland's Consumer Protection Act; any unfair, abusive, or deceptive trade practice would expose a kit manufacturer to liability under Maryland's Consumer Protection Act. Additionally, the Maryland Genetic Information Privacy Act (MGIPA) requires direct-to-consumer genetic testing companies obtain consent before collecting, using, or disclosing genetic data. It would be difficult for a company offering self-administered kits in Maryland to meet these requirements. Lastly, the CPD recommends the

[25] The Committee notes that empowerment of victims and the need to support different responses by different survivors continues to be under discussion by the Committee.
[26] See https://ag.ny.gov/sites/default/files/metoo_kits_-_cease_and_desist_letter_2019_09_11.pdf as an example of one such letter which details a number of serious concerns raised by the sale of such kits, including the very term "evidence collection," which gives the misleading impression that self-collected evidence is admissible in court proceedings.
[27] https://app.leg.wa.gov/billsummary?BillNumber=1564&Initiative=false&Year=2023.

General Assembly make clear that companies may not share genetic information from commercial kits, except with law enforcement.

CONCLUSION

Upon a thorough review of all the concerns and challenges associated with self-administered sexual assault kits, the committee has determined that it will need additional time to research and discuss the future of self-administered sexual assault kits in Maryland. Additionally, any self-administered sexual assault evidence kits that may be allowed in the future should have thorough warnings that inform a potential consumer of court admissibility limitations, the availability of free forensic medical care, including follow-up care and medication access, in the community, and resources for advocacy support services. This will provide survivors of sexual assault with the ability to make an informed decision regarding their medical forensic care that fits into their needs while protecting any genetic information collected through a self-administered kit. Simultaneously with the development of these consumer protections, the Committee recommends that Maryland prioritize increasing access to forensic medical care (see discussion regarding telehealth, above), and notes the risks of misleading survivors by overstating the availability of forensic exams.

If a self-administered kit is presented by a survivor to law enforcement, law enforcement must accept the kit as evidence and retain it for a minimum of 75 years, unless otherwise determined eligible for destruction by the local State's Attorney, in accordance with MD. Crim. Pro. §11-926(d)(2)(ii).

ATTACHMENT A

1. Consumers should be warned about the following legal ramifications of using a self-administered sexual assault evidence kit:
    a. As of the date of this report, it is unclear if material collected using a commercially marketed sexual assault kit would be admissible in court as evidence in a criminal trial because, among other reasons, the material is not protected by chain of custody procedures.
    b. Commercially marketed, self-administered sexual assault kits may not be tested by law enforcement.
    c. Commercially marketed, self-administered sexual assault evidence kits do not have the same testing and tracking requirements as SAEKs collected by a qualified healthcare provider.
    d. Commercially marketed self-administered sexual assault evidence kits are not currently eligible to be entered into the FBI's Combined DNA Index System (CODIS).

2. Consumers should be warned about the following potential privacy concerns when using a self-administered sexual assault evidence kit:
    a. Direct-to-Consumer genetic testing companies that offer self-administered sexual assault kits are not medical providers. The health, genetic, or personal information obtained using self-administered sexual assault kits is not protected by the Health Insurance Portability and Accountability Act (HIPAA) of 1996.
    b. Maryland does not currently have a general privacy law that protects genetic information or any other personal information.
    c. Maryland's Personal Information Protection Act requires that companies maintain reasonable security over consumer data, but companies frequently report security breaches involving stolen data.[28]
    .
3. Consumers should be aware of the following general pitfalls of the use of a self-administered sexual assault evidence kit:
    a. A victim may not receive comprehensive free medical care and associated support when using a self-administered sexual assault kit.
    b. A survivor may not have immediate access to advocacy support services.

[28] *See, e.g.*, Franceschi-Bicchierai, "Lorenzo, Hacker Leaks Millions More 23andMe user records on Cybercrime Forum," Oct. 18, 2023, available at https://techcrunch.com/2023/10/18/hacker-leaks-millions-more-23andme-user-records-on-cybercrime-forum/ (reporting that a hacker had gained access to genetic data of millions of users and was offering it for sale online).

Leda Health

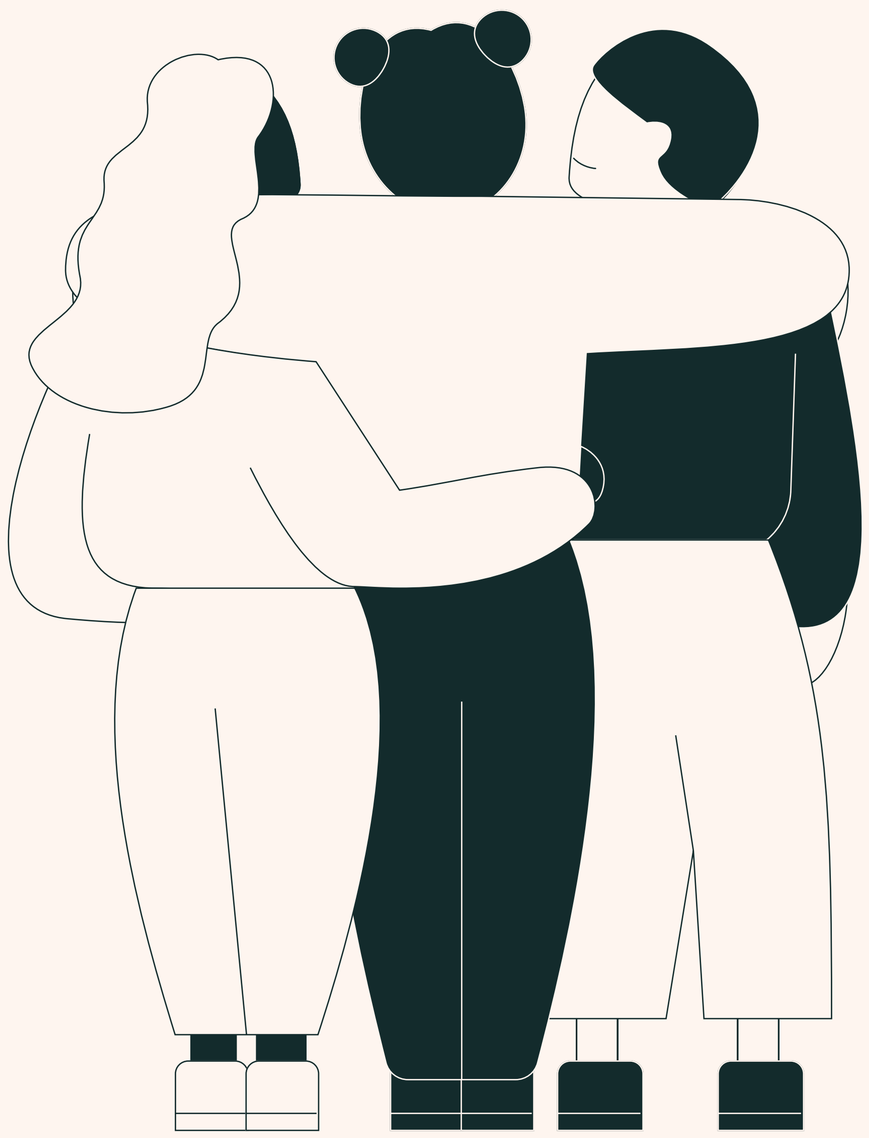
For Survivors, By Survivors

State of Maryland

“...A tool that empowers all survivors on their path to healing.”
-Baltimore Sun.

70% of sexual assault survivors do not report their assaults and at-home evidence collection kits seek to solve this shocking statistic by allowing survivors to take healing and justice into their own hands.

SB0789 is the first instance in Maryland state law that directly mentions the use of at-home sexual assault evidence kits.



At-Home Sexual Assault Evidence Kits

Sexual assault evidence kits allow survivors to collect evidence in the comfort of their own home, or with the support of medical staff or trained police officers.

Leda Health guarantees that survivors can have the kits delivered to their homes within **2 hours**, so as to collect the evidence in a timely manner, and kits can also be accessed at public access points in Maryland, i.e. some hospital locations.

- At-home sexual assault kits are equipped with step-by-step guides to allow survivors to identify where DNA might be present for collection purposes. Results from at-home sexual assault kits are available within **8 weeks.**
- Leda Health has a **24/7 Care Team** available to guide survivors through the collection process.

Care Team Members

Carrie Smith

Valerie Sievers

Laura Thomason

Kaylee Powers

Joy Rothschild

Ashley Soares

Andrea B. Ward-Wiley

Teresa Devitt-Lynch

ANTHONY G. BROWN
Attorney General

CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

August 24, 2023

To our valued community partners:

I am writing to you regarding false statements circulating about self-administered sexual assault evidence collection kits ("Self-Administered Collection Kits"). Information about these false statements was received by the Sexual Assault Evidence Kit (SAEK) Policy and Funding Committee, which I chair as Attorney General and is staffed by the Office of the Attorney General (OAG).

The SAEK Committee made the decision to advise you of these misrepresentations after receiving multiple and repeated reports that at least one manufacturer has been making false and misleading statements, both verbally and in writing, in promotion of their Self-Administered Collection Kits. Your work in our hospitals, nonprofit organizations, colleges and universities, and governmental agencies to assist victims of sexual assault is essential, and I want to ensure that you are not misled by these statements.

As background, Maryland House Bill 758/Senate Bill 789 (2023) directs the SAEK Committee to recommend guidance on the use of Self-Administered Collection Kits. In consultation with the OAG's Consumer Protection Division, the SAEK Committee will make recommendations for educating consumers about their use. These recommendations are to be reported to the General Assembly and Governor by December 1, 2023**.** I want to make clear that, as of this date, the Committee has not formally issued any recommendations, authorizations, or any other guidance related to the use of Self-Administered Collection Kits.

The misleading statements include, but may not be limited to, false claims that:

- Self-Administered Collection Kits will be available at public access points in Maryland, including in some hospitals, health departments, and colleges and universities, at the State's expense beginning October 1, 2023; and
- the State has authorized the sale of Self-Administered Collection Kits, and evidence collected by Self-Administered Collection Kits will be eligible for entry into the Combined DNA Index System ("CODIS").

The above statements are false. I urge you to notify the OAG's Consumer Protection Division of any company that makes similar claims.

In reference to these false claims, House Bill 758/Senate Bill 789 does not authorize the sale of Self-Administered Collection Kits nor the distribution of these kits at the State's expense, and claims to the contrary are patently untrue. I am not aware of any public official who has committed to endorse, purchase, or distribute a Self-Administered Collection Kit.

Furthermore, I am particularly concerned by reports of the false claim that Self-Administered Collection Kits can be entered into CODIS. CODIS is the DNA database that provides law enforcement investigative leads on a potential suspect or suspects based on DNA evidence recovered from a victim or crime scene. If a victim were to use a Self-Administered Collection Kit, the resulting evidence could not be entered into CODIS. CODIS requires, as you may be aware, proper documentation, such as hospital records and documentation of chain of custody, which is not possible with Self-Administered Collection Kits. Any company that advises that these kits can be entered into CODIS may give false hope that using a Self-Administered Collection Kit could result in a criminal prosecution and conviction, which I cannot condone and undermines the important work done by organizations like yours.

When the SAEK Committee has completed its work and provides its recommendations to the Governor and General Assembly on or before December 1, 2023, we will publicize the Committee's official recommendations. It is my priority that victims of sexual assault know their options and have information that they can trust, from providers like you who assist them through these difficult situations every day.

If you have any questions regarding this letter, please do not hesitate to reach out to either Rhea Harris, my committee chair designee, at rharris@oag.state.md.us, or to committee counsel Carisa Hatfield at chatfield@oag.state.md.us.

Sincerely,

Anthony Brown

SAFE-T SYSTEM

SEXUAL ASSAULT FORENSIC EXAMINATION TELEHEALTH (SAFE-T)

IMPROVING ACCESS TO QUALITY SEXUAL ASSAULT CARE

Sexual violence is a public health crisis. We know how to respond to trauma to help victims on a path of healing a justice from day one. Care delivered by Sexual Assault Nurse Examiners (SANEs) has been shown to improve physical and mental health outcomes for survivors. Yet many across the country, especially marginalized groups and those living in rural communities, do not have access to expert care that promotes healing and justice.

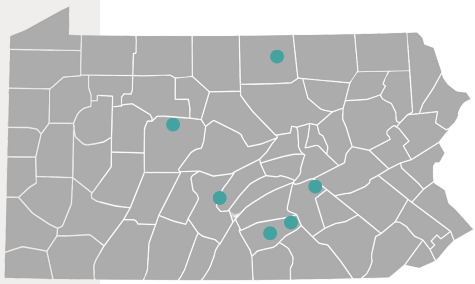
THE PROBLEM: DISPARITIES IN QUALITY SEXUAL ASSAULT CARE

- One in five women experience completed or attempted rape and nearly 25% of men experience some form of sexual violence in their lifetime, the majority of which occurs prior to age 25.[1]
- Marginalized groups are disproportionately at risk for SA.[2-9]
- The substantial impact of sexual trauma on short- and long-term health, including mental health issues, greater burden of chronic disease and premature death, is well established.[10-13]
- Sexual violence has steep societal costs with an estimated population economic burden of $3.1 trillion (in 2014 U.S. dollars).[14]

THE SOLUTION: SAFE-T SYSTEM

Healing and justice begin at the point of care. SAFE-T System enhances equitable access to expert, telehealth-enabled SANE care in marginalized, rural, and impacted communities. We know how to sustainably grow this solution so that every victim, regardless of economic status, race, or geographic location, can be assured high-quality SANEs.

INCREASE SUPPLY & DISTRIBUTION OF SANEs



700%

56 new SANES, a 700% increase across the SAFE-T System Service Area.

SAFE-T SYSTEM

SAFE-T SYSTEM

SEXUAL ASSAULT FORENSIC EXAMINATION TELEHEALTH (SAFE-T)

IMPROVING ACCESS TO QUALITY SEXUAL ASSAULT CARE

KEY EVIDENCE

SAFE-T System has a positive impact on patient recovery and healing, with 92% reporting they felt better after the examination. Hospitals can be designated as a "SAFE Place" and partner with TeleSANE solutions to ensure everyone has access to expert care.

TRIPLED PATIENT VOLUME AT PARTNER HOSPITALS

Before SAFE-T System

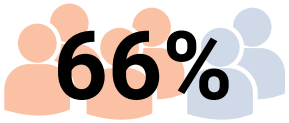
After SAFE-T System

ACCEPTABILITY OF TELEHEALTH BY PATIENTS

85% of eligible patients consented to forensic telehealth examination

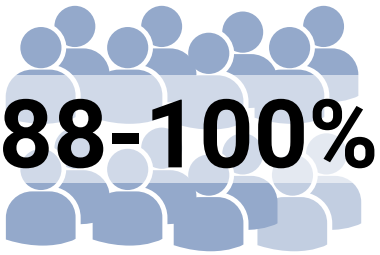
91% of patients rated their care as "excellent" or "very good"

EASING PRE-EXAMINATION WORRIES



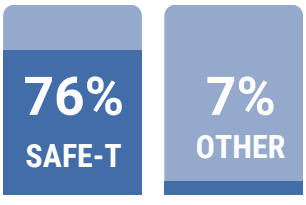
66% of patients expressed at least one worry prior to their sexual assault examination

WORRIES RESOLVED WITH SAFE-T EXAM



88-100% pre-examination worries were alleviated (not experienced) during the SAFE-T System examination

LOCAL NURSE RETENTION



76% retention of nurses trained and supported by SAFE-T System after one year (versus 2-year national retention rate of 7%)

CONTACT US

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Visit **safe-system.com/citations** for the full list of information cited here.

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NCJRS
National Criminal Justice Reference Service

Office of Justice Programs
BJA BJS NIJ OJJDP OVC SMART

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NATIONAL TELENURSING CENTER

Transforming The Care Of Sexual Assault Survivors

National TeleNursing Center (NTC) Sustainability

Joan Meunier-Sham and Wendy Walsh

2/2/2019

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As previously noted in the Evaluation Report completed by evaluators from the University of Illinois and the University of New Hampshire, the NTC pilot project demonstrated that telehealth technology: was successfully used to support the care of adult and adolescent sexual assault patients with teleSANEs providing a wide range of clinical assistance, was well accepted by patients (86% overall, 97% civilians), was well received and valued for its quality and professionalism by clinicians, increased engagement with rape crisis advocates, and experienced only minor technology issues (Cross, Walsh & Cross 2018).

Challenges

Interstate licensing requirements has been perhaps the biggest challenge in this pilot and has been a challenge for telehealth in general (Chandra, Petry & Paul, 2005). The requirement that NTC teleSANEs be licensed in the state in which patients received telehealth services presents challenges for the widespread expansion of telehealth and makes it harder for telehealth providers to capitalize on economies of scale (Cross, Walsh, & Cross, 2018). A promising direction is licensure compacts. Thirty U.S. states have enacted legislation on the Nurse Licensure Compact (NLC) to allow a nurse to have one multistate license with the ability to practice in the home state and other compact states (NCSBN n.d.). Such legislation is necessary for the expansion of telehealth, and efforts by some MA nursing organizations and the MA Hospital Association (MHA) to include MA in the NLC have been making slow but steady progress in this regard.

Second, different states have different evidence kits and the NTC teleSANEs had to master the components of the Department of Defense (DoD), Arizona and California kits, in addition to some additional protocols (such as toluidine blue dye) that are used as an exam adjunct at some pilot sites. A promising development is the Sexual Assault For Evidence Reporting Act (SAFER

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ACT) of 2013 which supports efforts to audit, test, and reduce the backlog of DNA evidence in sexual assault cases and bring perpetrators to justice (NIJ, n.d.). As part of this Act, the SAFER Working Group recommended that a national standardized evidence collection kit be implemented (NIJ, n.d,; OVW, 2013). If that were to happen, it would remove one of the obstacles facing the expansion of telehealth to support the care of adult and adolescent sexual assault patients.

Third, while telehealth offers a viable option for expanding the availability of health care to underserved populations (National Consortium of Telehealth Resource Centers, n.d.), and provides a way to offer the same quality of care to both low and high volume hospitals, a difficult question to answer in the field of telehealth in general is financial sustainability (Davalos, French, Burdick, & Simmons, 2009; Whitten, Holtz, Nguyen, 2010). Sustainability has not yet been proven in telehealth child abuse programs (MacLead et al, 2009), but as telehealth programs expand, one way of streamlining costs could be for hospitals to offer an entire platform of telehealth services that includes telehealth for sexual assault patients in addition to existing telehealth programs.

Building Capacity for Sustainability

As noted above and in the NTC Evaluation Report (Cross, Walsh, & Cross 2018) financial sustainability of telehealth services remains a challenge that will most likely require creativity and a combination of public and private funding. In MA, the SANE Program is operated out of the Department of Public Health (MDPH), and currently 30 of the state's 67 acute care hospitals are MDPH-designated as SANE sites for adult and adolescent sexual assault patients. MDPH trains and certifies SANEs to respond in person to care for adult/adolescent sexual assault patients at these sites, on a 24/7, 365 basis. During the past 2 years, 2 additional hospitals have received SANE support in the form of "teleSANE" through the NTC project.

Historically, all funding to maintain and operate the MA SANE Program has been through a state line appropriation with a small amount of funding from a Violence Against Women Act

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(VAWA) STOP grant. While state funding has historically been stable, there is an increasing demand for SANE/teleSANE services that exceeds the program's resources. Although the program has tried to engage with higher volume hospitals, approximately 50% of hospitals do not currently receive MA SANE services, and many of these are in more remote areas. MDPH is using the unique experience of the NTC project to expand access to SANE expertise to underserved hospitals, via teleSANEs, and to explore creative avenues for short and long-term program sustainability. In the short term, MPDH administration has identified state funding to continue teleSANE services at the two MA pilot sites in the NTC project (Saint Anne's Hospital and Metrowest Medical Center), and to expand teleSANE services through June 2019 to 3 additional hospitals. In January 2019, MA Governor Charlie Baker also proposed a supplemental budget for FY'19 that includes $1M to continue the NTC through FY20 (June 30, 2020), and allows further expansion of teleSANE services to 6 more hospitals across the Commonwealth, for a total of 11 MA hospitals receiving teleSANE services.

As we look toward statewide expansion and long-term sustainability of SANE/teleSANE services we will likewise need to also negotiate with hospitals who have historically received in-person SANE services at no cost. Toward this goal, MDPH is currently engaged with a strategic planning agency, Impact Catalysts, to develop strategies for engagement with hospitals interested in receiving teleSANE services. This includes developing a case statement about the importance of SANE/teleSANE services, and the benefits to patients, hospital staff and hospitals, along with a financial model and timeline. It also includes communications with key stakeholders such as the SANE Advisory Board, the MA Health and Hospital Association (MHA), and the Organization of Nurse Leaders (ONL).

As a tool for beginning engagement, on February 6, 2019, MDPH will post a Request for Information (RFI) on the state's procurement website (COMMBUYS) inviting MA hospitals and other community partners and stakeholders interested in teleSANE and SANE services to engage in

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dialogue about this collaborative process including service delivery models and cost-sharing (See Attachment A). This posted RFI will also be shared with hospitals, insurers and community partners statewide through MHA, ONL and other communication venues. We anticipate that responses to the RFI process will provide us important data to inform future decision-making and plans regarding cost-sharing and service delivery models to inform avenues for sustainability.

Building Capacity for Technical Assistance

Another avenue for sustainability of the NTC is further exploration of the potential for the NTC to become a provider of Technical Assistance (TA) for other SANE programs and states looking to implement teleSANE, and to actualize a vision to become a National Center for Excellence for teleSANE practice. The MDPH is currently a sub-recipient on a Health Resource Service Administration (HRSA) grant awarded to East Tennessee State University (ETSU) to train SANE providers for rural health centers. MDPH will provide consultation through all 3 years of this grant cycle as ETSU looks to develop a teleSANE system to support newly trained SANEs. This will be an important opportunity for MDPH to pilot its role as a TA provider, determine what challenges/limitations may be posed trying to do so within a state system, and other options that may be available through a public/private partnership. The NTC continues to receive inquiries from other states and SANE programs about teleSANE, and is developing a Frequently Asked Questions (FAQ) that will be posted to the NTC website https://www.mass.gov/national-telenursing-center.

Building Sustainability through Nursing Scholarship and Leadership

A key component of building sustainability is to establish a program that is grounded in strong clinical practice and theory. The NTC has adapted and integrated Duffy's Quality Caring Model (QCM) into the NTC Professional Practice Model (Duffy, 2009, 2018). The QCM has also been adopted by the International Association of Forensic Nurses (IAFN) as a theoretical

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framework for SANE practice (https://www.ovcttac.gov/saneguide/introduction/building-a-theoretical-framework-for-sane-practice/). Duffy's model provides a strong foundation for teleSANE practice as it outlines the essential elements of caring that translate into quality forensic nursing practice. Not only was this framework a natural fit to support care of sexual assault patients via telehealth, it likewise provides a blueprint for the support that the NTC teleSANEs provide to the remote site clinicians (Meunier-Sham et al., 2018 - under review and available upon request). The NTC has highlighted its Professional Practice Model and lessons learned at several professional nursing and forensic conferences including the IAFN Conference in 2015, 2017 and 2018, and the Emergency Nurses Association Conference in 2018. In addition, the NTC recently participated in a webinar hosted by End Violence Against Women International (EVAW) in December 2018 http://www.evawintl.org/WebinarDetail.aspx?webinarid=1071, and a webinar hosted by the IAFN in January 2019 https://www.forensicnurses.org/page/webinars.

The NTC gleaned a great deal of information regarding its impact on the delivery of patient care with the use of telehealth technology, through the evaluation conducted by the NTC project evaluation team (Cross, Walsh, & Cross, 2018). These findings will be shared to help establish standards for the delivery of teleSANE care to sexual assault patients (Walsh, Meunier-Sham & Re, 2019 – under review and available upon request). Lastly, a manuscript has been developed that will summarize published studies that utilize live telehealth support for child sexual abuse examinations, and acute sexual assault examinations for adolescents and adults. It will also outline areas for further exploration and research that should be considered when utilizing telehealth clinical support for sensitive sexual abuse/assault examinations and forensic evidence collection (Walsh & Meunier-Sham, 2019 – under review and available by request).

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The MA SANE Program has been honored to partner with OVC throughout the pilot of the National TeleNursing Center project. We are proud of improvements in care that we have accomplished for sexual assault patients and the clinical support and guidance that we have provided for their clinicians. Our goal of expanding the practice of teleSANE practice across the Commonwealth will provide opportunities for long term sustainability of the NTC model and expertise. It will also provide important opportunities for our continued contributions to the exciting and evolving fields of telehealth and forensic nursing practice.

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Attachment A - DRAFT

MA Department of Public Health Sexual Assault Nurse Examiner (SANE) Program
Request for Information (RFI)

The Department of Public Health (DPH) seeks input from a broad range of community partners and stakeholders regarding the structure of and investment in the Sexual Assault Nurse Examiner (SANE) program, including avenues to improve hospital/health care systems of response for sexual assault patients. This RFI does not pertain to the Children's Advocacy Center -based Pediatric SANE program.

DPH envisions a Commonwealth in which every sexual assault patient has access to exceptional, trauma-informed services when they present to any hospital in the Commonwealth, and that patients are provided with wrap-around aftercare services to support their healing. Untreated trauma from sexual assault can have both short-term and long-term physical and behavioral health effects. In addition to harming patients, these effects can significantly impact health care costs and quality outcomes as well as societal costs.[1] Expert SANE services, in combination with a community Rape Crisis Center advocate, help to ensure that the comprehensive needs of patients are addressed, and promote positive short-and long-term outcomes for not only for patients and their loved ones, but also for providers and the health care system.

To achieve the goals of patient access and highest quality care and to ensure system sustainability, DPH seeks input on potential innovative structural and/or cost-sharing models among the Department and hospitals/hospital systems. This RFI seeks novel ideas on partnership and service delivery models, including suggestions for advancing and supporting best practices for on-site SANE services along with access through telehealth.

Background: The Massachusetts Department of Public Health (DPH) Sexual Assault Nurse Examiner (SANE) Program (funded through the state line item 4510-0810 and any contributions to the SANE trust) trains, certifies, and coordinates deployment of nurses to provide compassionate, trauma-informed, nursing care to sexual assault patients. The structure of the acute emergency response consists of 2 components:

1. The Adult/Adolescent SANE Program provides an in-person acute emergency department response for patients 12 years and older in 30 DPH-designated hospitals and for children 11 years and younger in 4 hospitals across the Commonwealth (see Attachment A). DPH-trained SANEs respond at any and all times to care for sexual assault patients. SANEs are highly trained nurses who provide patients with:
    a. A compassionate, patient-centered experience and post-assault services that empower patients and support them in their healing.
    b. Options for their post-assault care including a head-to-toe physical assessment, documentation of exam findings and the option for forensic evidence collection.
    c. Education regarding the risk of assault-related pregnancy and Sexually Transmitted Infections including HIV, and options for medications to reduce these risks.
    d. Trauma-informed emotional support to the patient so that the patient does not feel blamed or re-victimized during the process of seeking emergency care/treatment.
    e. Linkages to rape crisis services and other critical aftercare services that promote healing and mitigate long-term consequences.

[1] Peterson, C., et.al. (2017) "Lifetime Economic Burden of Rape Among U.S. Adults," *American Journal of Preventative Medicine*, 52;6, 691-701.

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f. A well-trained and prepared provider who is able to provide court testimony about the care that they provided to the patient.

2. The DPH teleSANE program provides "real time" expert SANE support to patients and clinicians via secure, encrypted and HIPPA compliant video conferencing equipment from a central location at Newton Wellesley Hospital. TeleSANEs are available at any and all times and work with clinicians to provide clinical guidance in the delivery of trauma-informed post-assault care including the wide array of options outlined above. TeleSANEs have supported clinicians through complex situations that require critical thinking and consideration of forensic issues.

   The teleSANE program was piloted from 2016 to 2018 with federal funding, previously serving 4 hospitals nationwide and currently serving 2 hospitals in the Commonwealth. As DPH expands teleSANE services, our focus will be on maximizing capacity within the Commonwealth. The pilot of teleSANE has shown that:
   a. Acceptance of teleSANE services has been high with 97% of patients accepting the offer of teleSANE support.
   b. The majority of on-site clinicians using teleSANE services gave the highest rating possible for the quality of teleSANE consultation, and reported an extremely positive impact on their ability to provide an effective exam, feeling supported and giving best care (Cross, Walsh and Cross, 2018).
   c. On-site clinicians reported decreased feelings of anxiety when caring for sexual assault patients. As one ED clinician in a MA hospital shared, "I am telling all the other nurses, you never need to be afraid of taking care of these patients again, the TeleSANE Center is everything they promised."

Request: The SANE program is looking for input from hospitals, health systems, rape crisis centers, health insurance providers, clinical and community partners, and other stakeholders to inform our planning in the areas of: community need for SANE and teleSANE services, models for cost-sharing structures for SANE and/or teleSANE services, and what would be required to establish a public/private cost-sharing model.

We welcome information from any interested organization that would like to provide input. Please contact XXXX, by XXXX 2019 at 5pm. You may answer as many or as few questions as you would like that are relevant to your organization.

1. What is your name, and if you represent an organization, what organization do you represent and what is your title?
2. If you represent a community that is currently receiving on-site SANE or teleSANE services:
   a. How would you characterize the benefits and/or value provided by the SANE or teleSANE service?
   b. What needs remain with regard to sexual assault exams and services?
3. If you represent a community that is not currently receiving an in-person MA SANE or teleSANE response:
   a. What systems are in place to care for sexual assault patients?
   b. What are the current gaps and challenges in service delivery for these patients (including staffing and other barriers)?
4. Considering the current structure of the MA SANE Program, are there other models of service delivery that DPH should consider? Please describe.
5. The Commonwealth's goal of ensuring access to SANE services for every sexual assault patient will most likely require shared financial responsibility among the Department/hospitals/hospital

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systems/insurers. How would you recommend that DPH structure a cost-sharing model for SANE and/or teleSANE services?

6. Does your organization utilize any other telemedicine services (not SANE)? If so, how is that service financed? If yes, please describe.
7. What else should DPH consider related to the goal of providing expert SANE services across the Commonwealth?
8. Would you/your organization be willing to participate in follow-up discussions regarding this process? If yes, please provide a contact name, email and phone #.

Thank you!

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