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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"

December 1, 2023

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

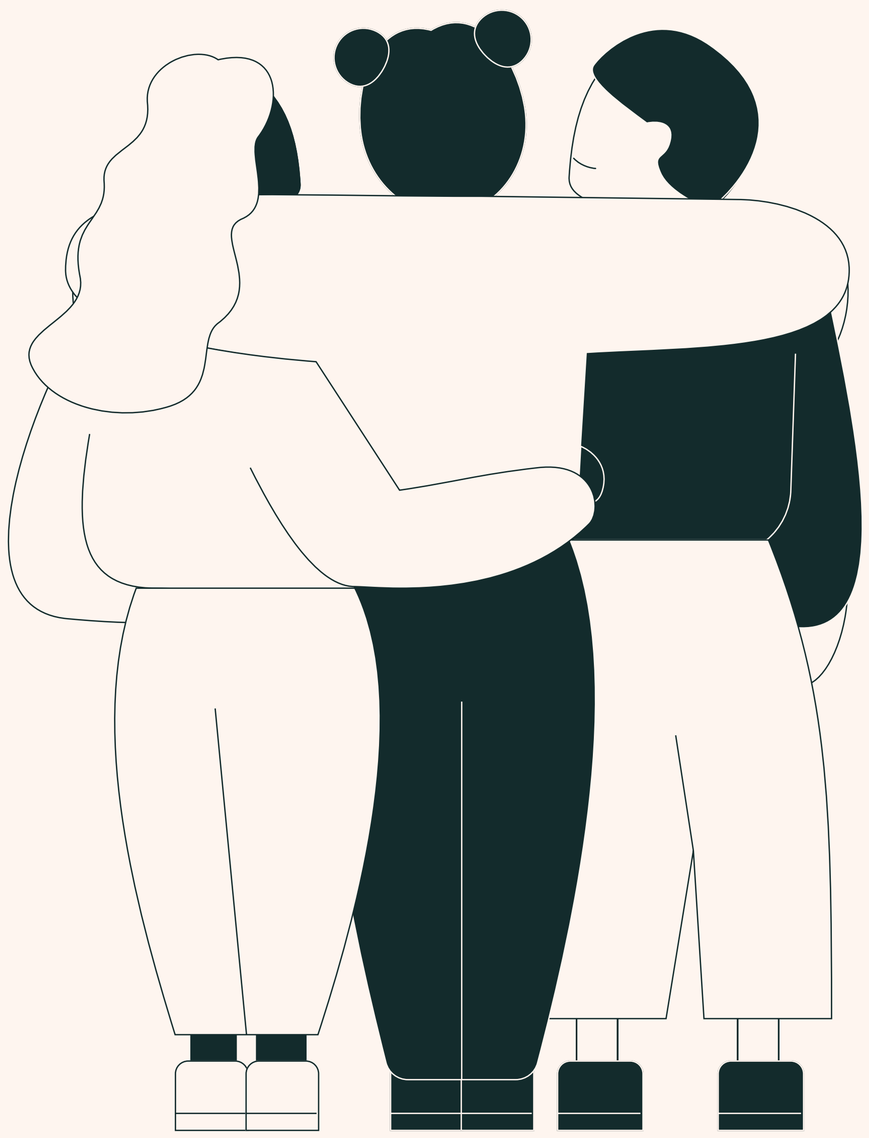
For Survivors, By Survivors

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.

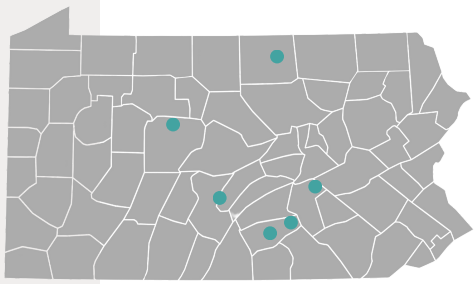
THE PROBLEM: DISPARITIES IN QUALITY SEXUAL ASSAULT CARE

- 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

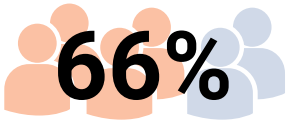
After SAFE-T System

ACCEPTABILITY OF TELEHEALTH BY PATIENTS

85% of eligible patients consented to forensic telehealth examination

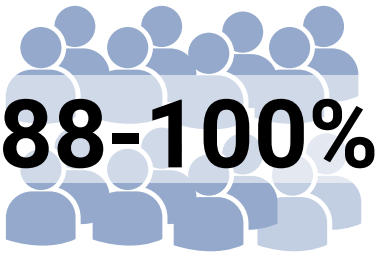
91% of patients rated their care as "excellent" or "very good"

EASING PRE-EXAMINATION WORRIES



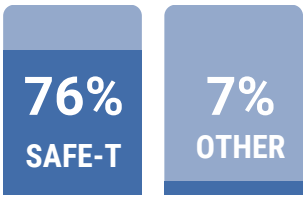
66% of patients expressed at least one worry prior to their sexual assault examination

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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Principal Investigator & Director, SAFE-T Center
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Visit **safe-system.com/citations** for the full list of information cited here.

safe-tsystem.com

NATIONAL TELENURSING CENTER

Transforming The Care Of Sexual Assault Survivors

National TeleNursing Center (NTC) Sustainability

Joan Meunier-Sham and Wendy Walsh

2/2/2019

This resource was prepared by the author(s) using Federal funds provided by the U.S. Department of Justice. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

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

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

(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

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

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).

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.

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

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!

MSAR 14957 - Supplemental Report for HB758.SB789.p
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Position: FAV

MARYLAND SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE

SUPPLEMENTAL REPORT ON HB758/SB789: "SEXUAL ASSAULT EVIDENCE KITS – PRESERVATION AND STORAGE"

February 7, 2024

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 develop and disseminate best practices and information on a variety of topics including the testing and retention of sexual assault evidence kits, increasing the availability of sexual assault forensic exams (SAFEs) for victims[1] of sexual assault, reducing the shortage of forensic nurse examiners, and increasing the availability of information to sexual assault victims regarding prosecutions, civil law remedies, sexual assault evidence kits, and victim rights.[2]

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: (1) guidance on the transfer of sexual assault evidence kits to law enforcement collected before January 1, 2000; (2) recommendations regarding the use of self-administered sexual assault kits in Maryland; and (3) a plan to educate consumers about self-administered SAEKs collaboratively developed with the Office of the Attorney General's ("OAG") Consumer Protection Division ("CPD").

[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.
[2] S.B. 734, Chapter 659 (2017).

That initial report, which was timely filed by December 1, 2023[3], advised that the subcommittee would need additional time to continue research and discussion on the issue of recommendations regarding the availability and use of self-administered sexual assault evidence kits in Maryland. The subcommittee has taken that opportunity, and based on its research and the opportunity to explore further options for victims in Maryland, makes the following recommendations.

RECOMMENDATIONS

1. Maryland should ban the sale, offer for sale, or distribution of self-administered sexual assault kits in the State unless they are state-issued.

The Committee continued the review of its prior research and the information provided by all sources noted in the original report. Upon continued discussion of this research and the evidentiary implications of allowing self-administered sexual assault kits to be sold and distributed by commercial companies, it has become clear to the Committee that the kits should be banned.

The Committee's decision is not taken lightly, nor is it taken without precedent. As noted in the December 1 report, two states—Washington and New Hampshire—have successfully enacted legislation to ban the sale of these kits.[4] Utah also considered similar legislation in 2021.[5] In addition, the Attorneys General of eight states issued either cease-and-desist or warning letters to

[3] Please see published copy of the December 1, 2023 report at https://dlslibrary.state.md.us/publications/AG/SB789Ch703HB758Ch702(3)(2023).pdf.
[4] 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; 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.
[5] https://le.utah.gov/~2021/bills/static/HB0168.html.

manufacturers of self-administered sexual assault kits.[6] Moreover, as previously noted, the Committee continues to have significant concerns regarding the admissibility of these kits, the privacy of both victims and alleged perpetrators, and the ability of victims to access all the advocacy and medical care, including follow-up care, needed after an incident of sexual assault.

One of the justifications for self-administered kits is the lack of access to Sexual Assault Forensic Exams (SAFEs). While a SAFE system is in place statewide, it is under-staffed and requires that survivors of sexual assault go only to specific hospitals to get an exam. To address this, the Committee has considered how the State can improve access to SAFEs and appropriate medical care from a Forensic Nurse Examiner ("FNE"). To that end, the Committee is supporting legislation to explore the feasibility of a telehealth SAFE Program in Maryland that would provide care where an FNE may not be either consistently available or available at all for a victim of sexual assault. This legislation will explore telehealth alternatives to self-administered sexual assault kits in addressing the gaps in SAFE availability across the State for those who wish to receive an exam but live in a historically underserved area for forensic medical services.

Due to the challenges some victims face in accessing SAFEs, the Committee proposes that any legislation banning the sale and distribution of self-administered kits leave open the possibility that the State may wish to create self-administered kits in the future. While these

[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; "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; "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; "Herring Issues Warning About Self-Administered Sexual Assault Evidence Kits." Published September 10, 2019.

solutions are not immediate, the Committee is committed to doing the work to move these ideas forward and believes these options will help to close the service gap in Maryland and serve victims for years to come.

2. Any person who sells, offers for sale, or distributes non-state issued kits should be subject to an enforcement action by the Consumer Protection Division and/or a civil fine.

The Committee further recommends that the sale, offer for sale, or distribution of a non-state issued self-administered sexual assault kits constitutes an unfair, abusive or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article, and be subject to the enforcement and penalty provisions contained in Title 13 of the Commercial Law Article.

When considering penalty options, the Committee reviewed the legislative language of both the Washington state and New Hampshire laws. Washington state's law provides that "A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act."[7] New Hampshire, on the other hand, instituted a civil fine for the sale of these kits in the state, set at $1,000 per offense.[8] Ultimately, the Committee agreed that it was interested in pursuing both options as penalties for selling these kits in Maryland. Monies collected as fines under the statute would be allocated into a special fund dedicated to providing additional educational tools, including FNE course materials, training registration fees, and more, to FNEs across the state.

[7] 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/202324/Pdf/Bills/Session%20Laws/House/1564.SL.pdf?q=20231018113822.

[8] House Bill 705, Signed by Governor Sununu on July 20, 2020. https://legiscan.com/NH/text/HB705/id/2194274/New_Hampshire-2020-HB705-Amended.html.

The Committee's intent is that these penalties are enforced against those in the commercial chain, not individual consumers. The Committee understands that an individual victim may come into possession of one of these kits in a multitude of ways, including from another person in their life who is concerned about the victim or by obtaining the kit from another state where they are not banned and returning to Maryland with the kit in their possession. Whatever their intention, the Committee urges that such activity not be considered "distribution" of the kits and subject to enforcement action under the law.

The Committee will work with the Maryland Coalition Against Sexual Assault (MCASA) to create informational documents available to victims about this legislation, if passed. These documents will include critical information related to the legislation and recommendations on how to access forensic medical and advocacy services in Maryland. Education materials for law enforcement and prosecutorial staff addressing this legislation, including admissibility of a kit obtained and used by a victim and presented to law enforcement as evidence of a sexual assault, which is addressed in more detail below, will also be developed.

3. Kits should not be excluded from use in criminal prosecution if they are brought to law enforcement or prosecutors by a victim.

The Committee also discussed what would happen to a kit should it come into the possession of a victim who chooses to then present this evidence to law enforcement or a prosecutor. While the Committee agrees that these kits should not be offered for sale or distribution in Maryland, it does not believe that should this kit come into the possession of a victim that it should be prevented from being presented as potential evidence in a criminal proceeding. A victim should have the opportunity to have their voice heard in a criminal legal proceeding about evidence in their possession. Additionally, a victim should face no legal consequences for presenting such a kit to law enforcement or a prosecutor. Any evidence that a victim presents to those individuals

investigating and prosecuting their case, including a self-administered sexual assault kit, should be thoroughly reviewed, vetted, and/or tested to determine if it is appropriate for investigation or prosecution. If determined to be appropriate evidence in a criminal trial, a self-administered sexual assault kit should not be excluded from evidence simply because it is illegal for the product to be sold or distributed in the state and information regarding the illegality of the sale and distribution of these kits should be prohibited from consideration by the factfinder.

However, it should also be made clear to victims that just because this evidence may be provided to law enforcement and prosecutors, it does not mean that the kit itself is guaranteed admission in a court of law. The legislation should include language requiring that a kit obtained and collected in this manner be evaluated by a court based on its evidentiary value if presented in a trial setting.

CONCLUSION

After continued review of the research compiled and further discussion, the Committee has made the above recommendations regarding the use of self-administered sexual assault kits in the State of Maryland. The Committee has requested a bill be drafted inclusive of the above recommendations (currently LR 3168), and will provide testimony as to the above when a bill hearing date is set.

SB949_FAV.pdf
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February 26, 2024

TO: The Honorable Will C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Carisa A. Hatfield, Esq.
Assistant Attorney General
Counsel, Maryland Sexual Assault Evidence Kit Policy and Funding Committee

RE: SB949- Consumer Protection – Self–Administered Sexual Assault Evidence Collection Kits **(Support w/Sponsor Amendments)**

The Office of the Attorney General (OAG), on behalf of the Maryland Sexual Assault Evidence Kit (SAEK) Policy and Funding Committee, urges a favorable report of Senate Bill 949 which, as amended by the sponsor, would codify the Committee's recommendations regarding self-administered sexual assault kits, which are as follows:

(1) Ban the sale, offer for sale, or distribution of self-administered sexual assault kits unless they are state-issued;
(2) Violations of the ban should be subject to an enforcement action by the Consumer Protection Division and/or a civil fine;
(3) Kits should not be excluded from use in criminal prosecution if they are brought to law enforcement or prosecutors by a victim; and
(4) Enforce a survivor's right to sue manufacturers of these kits by declaring any required arbitration, indemnification, or limited liability clauses null and void.

By way of background, the SAEK Policy and Funding Committee was created by the General Assembly in 2017 to create effective statewide policies regarding the collection, testing, and retention of medical forensic evidence in sexual assault cases and increase access to justice for sexual assault victims. Each year, the Committee is also required to submit an annual report on its activities during the prior fiscal year to the Governor and the General Assembly. Earlier this

year, the Committee issued its sixth annual report detailing its activities which included managing $2.1 million in federal Sexual Assault Kit Initiative funding, implementing recent SAEK reforms, providing guidance and training to stakeholders on State laws and policies governing SAEKs, and developing new recommendations for improving Maryland's handling of SAEKs and its support of victims.

In 2023, the General Assembly passed and the Governor signed into law HB758/SB789, which required the SAEK Committee to issue a report containing the following three components: (1) guidance on the transfer of sexual assault evidence kits to law enforcement collected before January 1, 2000; (2) recommendations regarding the use of self-administered sexual assault kits in Maryland; and (3) a plan to educate consumers about self-administered SAEKs collaboratively developed with the Office of the Attorney General's ("OAG") Consumer Protection Division ("CPD"). This report was to be issued by the Committee by the close of business on December 1, 2023. The Committee issued the report timely on December 1, 2023 as to points one and three, but asked for more time for research and discussion regarding the second point. After careful consideration, the Committee issued its supplemental report as to point two on February 8, 2024. In that report, the Committee made recommendations regarding self-administered sexual assault kits which have resulted in the introduction of SB949 and its cross-filed bill, HB1047.

The Committee's investigation began by determining if other jurisdictions had identified concerns with either the Leda Health kit itself or with any predecessor self-administered kits. The MeToo Kit, first brought to public attention in 2019, was a predecessor of the Leda Kit with at least one of the founding partners. Between 2019 and 2021, eight states' attorneys general issued warnings or cease-and-desist letters to MeToo and MeToo's predecessor, Leda Health, including New York[1], Oklahoma[2], Michigan[3], Virginia[4], New Jersey, Connecticut, and Pennsylvania[5]. In 2020, New Hampshire banned the sale of "over the counter" self-administered sexual assault evidence kits,[6] and Washington State followed suit in 2023.[7] Washington State particularly articulated concerns during the legislative practice regarding Leda Health's trade practices and its wish to protect crime victims from being misled by the company's product as marketed to university students.

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[1] "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.

[2] "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.

[3] "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.

[4] "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

[5] 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.

[6] 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.

[7] 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.

The Committee in its research identified three primary areas of concern as it related to the product and its potential uses in Maryland. First, as has been articulated by many jurisdictions, the Committee is concerned about the product's viability in a criminal legal setting. 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 pressed, they acknowledged that the Bay Area 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.

By contrast, 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 (FNE) 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 statewide SAEK Tracking System through InVita Healthcare is rolled out. Rollout for this system is anticipated between March and August of this year, and as required by 2023's SB615, every kit held by the state will be enrolled in that system. SB789 also requires all stakeholders to retain SAEKs for a minimum of seventy-five (75) years, which is the longest retention period in the United States. This means that victims will continue to have access to their kit and the opportunity to decide what to do with it for decades.

Additionally, 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 self-administered sexual assault kit to law enforcement, law enforcement has no requirement to send it in for testing. This is because commercially marketed, self-administered sexual assault evidence kits are not considered SAEKs under Maryland law. In fact, when this question was raised during the 2023 legislative session, commercially marketed, self-administered sexual assault kits were explicitly excluded 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.

In addition to criminal legal concerns, the Committee has concerns around both the privacy of data obtained in these kits and the limitation on victims' rights to pursue remedies available to them. 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 without legal recourse. 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.

In addition to the potential for a victim's private data to be exposed without the opportunity to reclaim it, the terms and conditions of the product currently on the market prohibit a victim from suing the company if there are any issues with the product. In fact, a victim would be forced to enter arbitration and denied the right to sue altogether, nor would they be allowed to join any class action against the company. They would also be required to indemnify and hold harmless Leda Health and associated entities just for using the product. A sponsor amendment has been introduced to address this issue and the OAG supports this amendment.

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 private 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 make referrals to local 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.

The Committee spent considerable time reviewing the contents of these kits, the available resources provided by them, and if these kits could be used in Maryland as a stop gap resource for survivors who either cannot or do not want to access a forensic exam at a hospital. They spoke with stakeholders and outside entities, including Leda Health, to fully understand the options available. The Committee discussed the limitation on resources for SAFE exams and the staggering percentages of victims who never come forward and receive a forensic exam and acknowledges there is much to do to close the gaps in services. Even so, the Committee's ultimate conclusion is that these kits should not be allowed in Maryland. The risks of allowing such a product into Maryland far outweigh the potential benefits.

The Committee has agreed that there should be consequences in the event that the sale, offer for sale, or distribution of these products occurs in Maryland. The Committee looked to the Washington state and New Hampshire legislation to determine what those consequences should be. Based on its research, the Committee believes that attempts to offer this product commercially are an unlawful and deceptive trade practice and therefore SB949 classifies such action as a violation of the Consumer Protection Act. Additionally, the Committee believes that a fine not exceeding $1000 per kit is appropriate. Monies from those who violate this proposed law would be deposited into a special fund that will benefit continuing education for FNEs, including but not limited to, funding tuition for FNE coursework, best practices training courses, course materials, and bringing in trainers to provide training on specialized areas in the field.

While the Committee has determined that it cannot allow the widespread sale of these kits in the state, it also does not wish to penalize individuals who may encounter these kits and choose to use them. If a victim either procures an individual kit from another state, is provided a kit by a family member or friend, or otherwise comes into possession of the kit, the Committee does not want to stop that individual from presenting their kit to law enforcement or prosecutors in a criminal proceeding. Additionally, the Committee does not want the kits to be restricted from use in a criminal process purely because it was acquired illegally. Rather, the Committee wishes to give the factfinders in such a case (i.e. law enforcement, a State's Attorney, or a judge) the ability to review the evidence and make a determination based on the circumstances of the case and the validity of the evidence.

In addition, the Committee is also pursuing legislation (SB950) to create alternatives that will increase access to SAFE exams in Maryland through a telehealth pilot program. That bill enables the Committee to fully investigate and determine feasibility for such a program in Maryland and make recommendations to the legislature regarding next steps to establish, fund, and sustain telehealth practices for SAFE examination in areas where there is limited access or no access to forensic medical services. The Committee is also continuing to work on opportunities to close the reporting gap in Maryland beyond telehealth to ensure that victims feel that they are fully informed on all options available to them and choose the option that will best suit their needs as they move forward.

In consideration of the above, the Committee requests a favorable report with the sponsor's amendments for SB949.

cc: Committee Members

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

SB949.LOS.hf.20240226.pdf
Uploaded by: Heather Forsyth
Position: FAV

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PETER V. BERNS
General Counsel

ANTHONY G. BROWN
Attorney General

WILLIAM D. GRUHN
Chief
Consumer Protection Division

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

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February 26, 2024

To: Senator William C. Smith, Jr., Chair
Senate Judicial Proceedings Committee

Fr: Heather Forsyth, Deputy Director, Health Education and Advocacy Unit
Consumer Protection Division

Re: SB 949 – Consumer Protection – Self-Administered Sexual Assault Evidence Collection Kits

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The Consumer Protection Division writes in support of SB 949. The Sexual Assault Evidence Kit Policy and Funding (SAEK) Committee, created in 2017 by the General Assembly, was directed during the 2023 session (HB758/SB789) to, among other things, issue a report making recommendations for guidance on the use of self-administered sexual assault evidence collection kits in Maryland and, in consultation with the Consumer Protection Division, educate consumers about their use, including information regarding the kits' admissibility in a criminal prosecution and identifying other resources for victims of sexual assault.

The CPD met with committee members multiple times over several months to provide input on consumer protection concerns. These concerns included (1) the commercial sale and distribution of these kits purport to provide victims with the ability to "collect evidence," without evidence that any material self-collected is admissible in Maryland courts; (2) consumers who provide physical material to purveyors of such kits lose privacy control over their genetic information; and (3) reliance on these kits means the user does not have access to all the advocacy and medical care needed after a sexual assault. As with most commercial products in the State, the CPD works to ensure consumers are not misled or otherwise deceived when making a purchase, particularly for a product such as this one with potentially significant ramifications for patient health, safety, and privacy in its use.

The CPD in Maryland is not alone in its concerns. The Attorneys General of eight states have issued cease and desist or warning letters, and the sale of so-called “over the counter” kits have been completely banned in New Hampshire and Washington.

Commercial kits are presented as if to offer an easy, do-it-yourself substitute for legal and medical intervention after an assault when such a claim is neither warranted nor supported. The CPD is aware there is a lack of access to forensic nurse examiners and other resources, particularly in rural areas, and that not all victims have comfortable relationships with law enforcement or medical establishments. However, offering do-it-yourself kits and making victims responsible for collecting evidence of a crime on their own bodies -- “evidence” that likely will not be admissible in court -- then losing all control over their private genetic information, is not an appropriate solution to the lack of forensic nurses or an effective strategy to overcome the fear marginalized communities may have to traditional legal and medical resources. The state cannot “DIY” its way out of committing necessary resources to ensure that any victim of a sexual assault, regardless of where they live or their prior interaction with law enforcement, has access to a safe, free exam by a trained health care provider, with appropriate referrals and follow-up care. Offering a DIY solution is a solution with no value, and has the potential to inflict even more harm on community members who are most vulnerable.

For these reasons, we recommend the Committee’s support of SB949 and request a favorable report.

SB 949- Consumer Protection – Self–Administered Se

Uploaded by: Jane Krienke

Position: FAV

Maryland
Hospital Association

February 27, 2024

To: The Honorable William C. Smith Jr., Chair, Senate Judicial Proceedings Committee

Re: Letter of Support - Senate Bill 949- Consumer Protection – Self–Administered Sexual Assault Evidence Collection Kits

Dear Chair Smith:

On behalf of the Maryland Hospital Association's (MHA) member hospitals and health systems, we appreciate the opportunity to comment on Senate Bill 949.

With the sponsor's amendments, SB 949 codifies the Maryland Sexual Assault Evidence Kit (SAEK) Policy and Funding Committee's recommendations regarding self-administered sexual assault kits. As a member of the SAEK Committee, MHA participated in the work group that developed these recommendations, which ensure safeguards are in place to protect survivors by banning the commercial sale of self-administered kits.

The bill provides flexibility if in the future the state creates a self-administered kit. In the work group, there were discussions pertaining to the infrastructure needed to support survivors if this option were available since they would not have evidence collected by a trained forensic nurse examiner. This would ideally involve a telehealth model of care to support survivors and help protect the integrity of the evidence and ensure chain of custody.

We thank the Attorney General for taking a firm stand to protect patients, especially survivors of sexual assault. We look forward to continuing to serve as a member of the Committee and engaging in further discussions on expanding access to SAFEs.

For these reasons, we request a ***favorable*** report on SB 949.

For more information, please contact:
Jane Krienke, Senior Legislative Analyst, Government Affairs
Jkrienke@mhaonline.org

Department of State Police Position Paper Senate B

Uploaded by: Joey Sybert

Position: FAV

State of Maryland
Department of State Police
Government Affairs Unit
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: **February 27, 2024**

BILL NUMBER: **Senate Bill 949** **POSITION:** **Support**

BILL TITLE: **Consumer Protection – Self-Administered Sexual Assault Evidence Collection Kits**

REVIEW AND ANALYSIS:

Senate Bill 949 makes it illegal for a person to sell, offer for sale, or distribute a self-administered sexual assault evidence collection kit in the State of Maryland. The concept of self-administered sexual assault evidence collection kits is one that appears at first glance to be a welcome solution to a known problem; however, the reality is that such kits just create new problems. The problem that currently exists is that there is a shortage of Forensic Nurse Examiners (FNEs) available at hospitals throughout Maryland to process sexual assault kits on survivors of sexual assault. While it may seem reasonable to address this shortage by providing a product that allows a survivor to collect evidence themselves by following a set of instructions, significant problems are created when you transfer this role from a professional with specialized expertise to an untrained layperson who has just experienced the most traumatic event of their life.

There are numerous problems associated with self-administered sexual assault evidence collection kits. These include serious physical and mental health ramifications for the survivor, but equally concerning are the implications on the downstream forensic DNA testing that is such an important aspect of bringing perpetrators of sexual assault to justice. These issues include, but are not limited to the following.

- ***Proper Collection of Evidence*** - It is well established that the neurobiology of trauma impacts a survivor's ability to think clearly and process information in the immediate aftermath of an assault. It is unreasonable for a person in such a state of mind, who has no experience processing a sexual assault kit, to reliably follow a set of detailed and complicated directions. The expertise of a trained FNE ensures the proper collection of forensic samples that can be easily missed or contaminated if not done with proper collection techniques.

- ***Informed Collection of Evidence*** - Every sexual assault is unique, and often the events of the sexual assault factor into determining the most probative samples to collect. For example, there may not be any source of DNA found on a vaginal swab, but rather a DNA link is only able to be established by the testing of a neck swab that was taken only because the trained FNE was able to elicit through trauma-informed interview techniques that the perpetrator strangled the survivor.

- ***Defensible Collection of Evidence*** - Even if the survivor is able to successfully collect DNA evidence, the fact is that the lack of time-stamped documentation of the collection in a controlled environment by an independent third party automatically brings the integrity of the evidence into question. The lack of a true chain of custody along with the potential for the compromised collection of evidence will result in any DNA results that are able to be obtained by the laboratory, not being able to be entered into the DNA Database or be admissible in a court of law.

For these reasons, the Maryland Department of State Police urges the Committee to give Senate Bill 949 a favorable report.

SAEK - DIY kits - senate testimony - 2024 - SB949
Uploaded by: Laura Jessick
Position: FAV

MCASA
Maryland Coalition Against Sexual Assault

Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 949 with Sponsor Amendments
Lisae C. Jordan, Executive Director & Counsel
Laura Jessick, Sexual Assault Kit Initiative/Sexual Assault Response Team Manager
February 27, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 949 with Sponsor Amendments.

Senate Bill 949 - Protecting Survivors of Sexual Assault from Commercial Exploitation - Commercial Purveyors of Self Administered Sexual Assault Evidence Collection Kits
Senate Bill 949 would prohibit a person from selling, offering for sale, or distributing a self-administered sexual assault evidence kit. The consumer protection division of the Attorney General's Office would be charged with enforcing these provisions and any civil penalties recovered would be used for Forensic Nurse Examiner Training. If a self-administered kit is used by a survivor, SB949 makes it clear that information about this prohibition may not be presented in a criminal or civil proceeding.

Amendments supported by the Sponsor and offered by Chair Luke Clippinger would provide additional protection for survivors and help ensure their access to justice. MCASA strongly supports these amendments.

Difficulty accessing Sexual Asssault Forensic Exams (SAFEs) is a significant problem in Maryland, but "do it yourself" rape kits are not the solution.
Sexual assault forensic exams are available to survivors at designated hospitals in Maryland. These exams are performed by expert, trained forensic nurse examiners. The exam and following care are FREE and include:

- A forensic interview, including gathering information about the assault and observations about the survivors' demeanor (including information important to hearsay exceptions and evidentiary rules);
- A head-to-toe examination with evidentiary samples based on the forensic interview. This may include photographs, including photos taken with specialized equipment known as alternate light source (ALS) to document injuries and bruises not visible to the naked eye, samples from under

fingernails and from the survivor's body to collect potential DNA left by the assailant, samples to determine if semen is present, and the use of specialized equipment to document the existence of microscopic tears in vaginal and anal areas;
- Emergency hospital treatment and follow-up medical testing performed up to 90 days after the initial physical examination;
- Treatment for injuries;
- nPEP to prevent the survivor from contracting HIV and associated labs to monitor potential contraction;
- Providing medication to prevent other sexually transmitted infections;
- Pregnancy prevention medication and counseling;
- Mental health crisis support and referrals;
- Assessing whether the patient-survivor was strangled and, if strangulation occurred, treating the patient, assessing additional risks related to strangulation, and documenting physical injuries caused by strangulation;
- Connecting survivors with local rape crisis centers to provide additional follow-up and information regarding criminal and civil justice options;
- Proper storage and preservation of evidence and compliance with chain of custody protocols;
- Expert testimony at trial if the survivor chooses to pursue criminal charges;
- Survivor centered care, focused on empowering victim/survivors and respecting their decisions.

Sexual Assault Forensic Examinations are part of a specialized and regulated medical field. The International Association of Forensic Nurse Examiners provides resources, clinical skills training, information regarding certification, assessment of educational opportunities, a Journal of Forensic Nursing, and advocacy for forensic examiners and the victims of trauma they respond to. The U.S. Department of Justice, Office of Violence Against Women, has a National Protocol for Sexual Assault Forensic Examinations (2013, currently being updated), a 144 page document detailing expert standards for conducting SAFEs. Maryland has regulations regarding both SAFEs, https://www.mcasa.org/assets/files/Maryland-Forensic-Exam-Regs-effective-12-29-08.pdf , and the qualifications of those conducting SAFEs, http://mdrules.elaws.us/comar/10.27.21

There is a crisis in access to sexual assault forensic exams in Maryland. This is a long-standing issue and has been resistant to efforts to address the problem. Structurally, the system is not as survivor-friendly as it could or should be. Survivors are required to go to specific hospitals and, if they present at the "wrong" hospital, must go elsewhere. The statewide nursing shortage exacerbates this issue and sometime survivors are sent to other hospitals even when they present at a hospital with a SAFE program because there is no forensic nurse available. This is not only unacceptable, it is now creating an opportunity for exploitation by companies seeking to profit off of sexual assault survivors.

Maryland and other states have been subject to aggressive and misleading marketing by a commercial purveyor of a product labeled as an "early evidence kit" or referred to as "do-it-yourself" rape kits. Initial outreach included misrepresentations that the for-profit enterprise was a "nonprofit organization" and incorrect statements about Maryland law and whether self-administered kits were authorized. While the language of survivor-empowerment is used, the advertised products have not been introduced in court, and it appears they have rarely even been

produced. There are, however, significant indications that financial profit is the underlying motive. This includes reports that venture capitalists have been recruited with statements that "Sexual assault" was a "multibillion-dollar industry", https://www.thecut.com/article/inside-diy-rape-kit-startup-leda-health.html , and significant information on-line seeking private equity, see, e.g., https://pitchbook.com/profiles/company/277813-45, https://www.crunchbase.com/organization/leda-health-company/company_financials.

This financial profit would come at the expense of sexual assault survivors. As reported by the Maryland Attorney General's Sexual Assault Forensic Evidence Kit Policy and Funding Committee, the self-administered kits raise significant concerns regarding the admissibility in court, the privacy of both victim/survivors and alleged perpetrators, and the ability of survivors to access all the advocacy and medical care, including follow-up care, needed after an incident of sexual assault. https://www.marylandattorneygeneral.gov/Pages/Groups/Supp_Report_HB758_SB789.pdf. See also, https://www.marylandattorneygeneral.gov/Pages/Groups/HB758_SB789_Report_2023.pdf

Senate Bill 949 is carefully balanced to ensure the actions of survivors are not restricted by prohibitions on self-administered kits. In MCASA's view, some of the most important provisions of SB949 are found on page 5, lines 6-20. These provisions ensure that if a sexual assault survivor does use a self-administered kit – perhaps after being misled by unscrupulous enterprises – the factfinder (judge or jury) may not be informed that the kit is, in essence, illegal and falls under the prohibitions found in §14-4602 of the Commercial Law Article. In other words, if a survivor uses a kit, it will be treated the same way as a blue dress with semen, bed sheets, underwear, or any other object related to the sexual assault. This is critical to ensure that survivors are not unintentionally harmed by the consumer protection provisions.

Amendments respond to efforts to prevent commercial purveyors from being held accountable by the justice system. "Terms and Conditions" of use by at least one purveyor would waive important legal rights of survivors and prevent lawsuits against the company.

These "terms and conditions" include:

> **Binding Arbitration.** In the event that a dispute arises between you and Leda Health, you agree to first contact us to seek a resolution. If we are not able to resolve the issue, then except for disputes relating to the infringement or other misuse of intellectual property rights, such dispute will be resolved through binding arbitration rather than in court. Such arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the rules of the AAA, and any arbitration hearing will be held in New York, New York. You and Leda Health agree that each may bring claims against the other only in your or its individual capacities, and not as a plaintiff or class member in any purported class, consolidated or representative proceeding. YOU UNDERSTAND THAT YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR CLAIMS HEARD IN COURT BY A JUDGE OR JURY. AN ARBITRATION AWARD IS ENFORCEABLE AS A COURT ORDER AND IS SUBJECT TO ONLY LIMITED REVIEW BY A JUDGE. YOU ALSO UNDERSTAND AND AGREE THAT THIS ARBITRATION PROVISION PREVENTS YOU FROM PARTICIPATING AS A PLAINTIFF OR AS A CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.
>
> **Indemnification.** We are not responsible or liable for any actions taken by you as a result of your use of our Services. You hereby agree to defend, indemnify and hold Leda Health, its officers, directors, employees, owners, successors, and assigns harmless against all losses, damages, or expenses of whatever form or nature, including actual attorneys' fees and other costs of legal defense, whether direct

or indirect, which they, or any of them, may sustain or incur as a result of your act or omission including, but not limited to: (i) your breach of any of the provisions of this Agreement, (ii) your negligence or other tortious conduct; or (iii) your use of the Services.

Limitation of Liability. To the maximum extent permitted by law, in no event will Leda Health, its affiliates, officers, employees, agents, suppliers, contractors, or licensors be liable for any direct, indirect, incidental, special, consequential, or punitive damages, including without limitation: loss of profits, data, use, goodwill, or other intangible losses, resulting from: (i) your access to or use of or inability to access or use the Services; (ii) any conduct or content of any third party on the Services, including without limitation, any defamatory, offensive, or illegal conduct of other users or third parties; (iii) any content obtained from the Services; (iv) unauthorized access, use or alteration of your transmissions or content; or (v) any damage to equipment caused by the Services and any cost of recovering lost data or of reprogramming, whether based on warranty, contract, tort (including negligence), product liability, personal injury, or any other legal theory, whether or not Leda Health has been informed of the possibility of such loss or damage, and even if a remedy set forth herein is found to have failed of its essential purpose. The provisions of this section apply to you to the maximum extent permitted by applicable law.

Limitation of Liability regarding Third Party Actions. To provide you with the Services, we may in some instances utilize the services of third parties, such as third-party providers of services for STI testing, Plan B contraceptives, delivery services, and laboratory testing. You acknowledge that in these circumstances, Leda cannot control the actions of the third party service providers and shall not be responsible or liable for any actions, liabilities, or damages that may arise from the actions or omissions of third party service providers. In the event that you are involved in a dispute with a third party service provider arising from actions of that third party, you agree that Leda shall not be a party to the action and shall not be responsible for damages incurred as a result of the third-party service provider's actions or omissions.

These provisions would, for example, prevent the survivor from suing if her or his privacy was violated because the kit purveyor used a third party company to conduct analysis and information was posted on the internet. They would prevent the kit purveyor from being sued in court for misleading statement. They would protect scammers from being held accountable.

Proposed amendments would make it 100% clear that Maryland's public policy does not permit enforcement of the provisions to prevent survivors' access to court. The amendment language is based on similar provisions in the code regarding enforcement of non-disclosure agreements. These are needed to prevent companies from being able to get away with exploiting survivors who have just suffered the trauma of rape.

"Early Evidence" kits are an attempt to exploit the gap in access to SAFEs for financial profit and at the expense of sexual assault survivors. Commercial "do-it-yourself" rape kits mislead sexual assault survivors at an enormously vulnerable time. They have not been used in court, do not provide the full range of medical services and supports needed by survivors, and create a false sense of hope saving swabs will somehow provide an option to seek justice in the future.

The Maryland Coalition Against Sexual Assault urges the Judicial Proceedings Committee to report favorably on Senate Bill 949 with Sponsor Amendments

SB 949 - WLCMD - FWA.pdf
Uploaded by: Laure Ruth
Position: FAV

Women's Law Center of Maryland
JUSTICE FAIRNESS EQUALITY
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phone 410-321-8761 fax 410-321-0462 www.wlcmd.org

BILL NO:	Senate Bill 949
TITLE:	Consumer Protection – Self–Administered Sexual Assault Evidence Collection Kits
COMMITTEE:	Judicial Proceedings
HEARING DATE:	February 27, 2024
POSITION:	**SUPPORT WITH AMENDMENTS**

Senate Bill 949 would prohibit a person from selling, offering for sale, or distributing a self-administered sexual assault evidence kit. The consumer protection division of the Attorney General's Office would be charged with enforcing these provisions and any civil penalties recovered would be used for Forensic Nurse Examiner Training. If a self-administered kit is used by a survivor, SB949 makes it clear that information about this prohibition may not be presented in a criminal or civil proceeding. The Women's Law Center of Maryland (WLC) supports SB949 with amendments we understand are being submitted to strengthen protections for survivors because we strongly believe that predatory private for-profit entities are seeking to take advantage of people who are experiencing trauma.

Sexual assault forensic exams are available to survivors at designated hospitals in Maryland. These exams are performed by expert, trained forensic nurse examiners and are *free*. Additionally, as reported by the Maryland Attorney General's Sexual Assault Forensic Evidence Kit Policy and Funding Committee, the self-administered kits raise significant concerns regarding the admissibility in court, the privacy of both victim/survivors and alleged perpetrators, and the ability of survivors to access all the advocacy and medical care, including follow-up care, needed after an incident of sexual assault. Prohibiting their sale in Maryland will protect survivors from the predatory practice of selling these "DIY" kits giving the false impression that they will be admitted into court in all instances and are as comprehensive as the free examinations that exist in Maryland.

As such, The Women's Law Center of Maryland urges a favorable report on SB 949.

The Women's Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.

SAEK - DIY kits - senate testimony - 2024 - SB949
Uploaded by: Lisae C Jordan
Position: FAV

MCASA
Maryland Coalition Against Sexual Assault

Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 949 with Sponsor Amendments
Lisae C. Jordan, Executive Director & Counsel
Laura Jessick, Sexual Assault Kit Initiative/Sexual Assault Response Team Manager
February 27, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 949 with Sponsor Amendments.

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fingernails and from the survivor's body to collect potential DNA left by the assailant, samples to determine if semen is present, and the use of specialized equipment to document the existence of microscopic tears in vaginal and anal areas;
- Emergency hospital treatment and follow-up medical testing performed up to 90 days after the initial physical examination;
- Treatment for injuries;
- nPEP to prevent the survivor from contracting HIV and associated labs to monitor potential contraction;
- Providing medication to prevent other sexually transmitted infections;
- Pregnancy prevention medication and counseling;
- Mental health crisis support and referrals;
- Assessing whether the patient-survivor was strangled and, if strangulation occurred, treating the patient, assessing additional risks related to strangulation, and documenting physical injuries caused by strangulation;
- Connecting survivors with local rape crisis centers to provide additional follow-up and information regarding criminal and civil justice options;
- Proper storage and preservation of evidence and compliance with chain of custody protocols;
- Expert testimony at trial if the survivor chooses to pursue criminal charges;
- Survivor centered care, focused on empowering victim/survivors and respecting their decisions.

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Maryland and other states have been subject to aggressive and misleading marketing by a commercial purveyor of a product labeled as an "early evidence kit" or referred to as "do-it-yourself" rape kits. Initial outreach included misrepresentations that the for-profit enterprise was a "nonprofit organization" and incorrect statements about Maryland law and whether self-administered kits were authorized. While the language of survivor-empowerment is used, the advertised products have not been introduced in court, and it appears they have rarely even been

produced. There are, however, significant indications that financial profit is the underlying motive. This includes reports that venture capitalists have been recruited with statements that "Sexual assault" was a "multibillion-dollar industry", https://www.thecut.com/article/inside-diy-rape-kit-startup-leda-health.html , and significant information on-line seeking private equity, see, e.g., https://pitchbook.com/profiles/company/277813-45, https://www.crunchbase.com/organization/leda-health-company/company_financials.

This financial profit would come at the expense of sexual assault survivors. As reported by the Maryland Attorney General's Sexual Assault Forensic Evidence Kit Policy and Funding Committee, the self-administered kits raise significant concerns regarding the admissibility in court, the privacy of both victim/survivors and alleged perpetrators, and the ability of survivors to access all the advocacy and medical care, including follow-up care, needed after an incident of sexual assault. https://www.marylandattorneygeneral.gov/Pages/Groups/Supp_Report_HB758_SB789.pdf. See also, https://www.marylandattorneygeneral.gov/Pages/Groups/HB758_SB789_Report_2023.pdf

Senate Bill 949 is carefully balanced to ensure the actions of survivors are not restricted by prohibitions on self-administered kits. In MCASA's view, some of the most important provisions of SB949 are found on page 5, lines 6-20. These provisions ensure that if a sexual assault survivor does use a self-administered kit – perhaps after being misled by unscrupulous enterprises – the factfinder (judge or jury) may not be informed that the kit is, in essence, illegal and falls under the prohibitions found in §14-4602 of the Commercial Law Article. In other words, if a survivor uses a kit, it will be treated the same way as a blue dress with semen, bed sheets, underwear, or any other object related to the sexual assault. This is critical to ensure that survivors are not unintentionally harmed by the consumer protection provisions.

Amendments respond to efforts to prevent commercial purveyors from being held accountable by the justice system. "Terms and Conditions" of use by at least one purveyor would waive important legal rights of survivors and prevent lawsuits against the company.

These "terms and conditions" include:

> **Binding Arbitration.** In the event that a dispute arises between you and Leda Health, you agree to first contact us to seek a resolution. If we are not able to resolve the issue, then except for disputes relating to the infringement or other misuse of intellectual property rights, such dispute will be resolved through binding arbitration rather than in court. Such arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the rules of the AAA, and any arbitration hearing will be held in New York, New York. You and Leda Health agree that each may bring claims against the other only in your or its individual capacities, and not as a plaintiff or class member in any purported class, consolidated or representative proceeding. YOU UNDERSTAND THAT YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR CLAIMS HEARD IN COURT BY A JUDGE OR JURY. AN ARBITRATION AWARD IS ENFORCEABLE AS A COURT ORDER AND IS SUBJECT TO ONLY LIMITED REVIEW BY A JUDGE. YOU ALSO UNDERSTAND AND AGREE THAT THIS ARBITRATION PROVISION PREVENTS YOU FROM PARTICIPATING AS A PLAINTIFF OR AS A CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.
>
> **Indemnification.** We are not responsible or liable for any actions taken by you as a result of your use of our Services. You hereby agree to defend, indemnify and hold Leda Health, its officers, directors, employees, owners, successors, and assigns harmless against all losses, damages, or expenses of whatever form or nature, including actual attorneys' fees and other costs of legal defense, whether direct

or indirect, which they, or any of them, may sustain or incur as a result of your act or omission including, but not limited to: (i) your breach of any of the provisions of this Agreement, (ii) your negligence or other tortious conduct; or (iii) your use of the Services.

Limitation of Liability. To the maximum extent permitted by law, in no event will Leda Health, its affiliates, officers, employees, agents, suppliers, contractors, or licensors be liable for any direct, indirect, incidental, special, consequential, or punitive damages, including without limitation: loss of profits, data, use, goodwill, or other intangible losses, resulting from: (i) your access to or use of or inability to access or use the Services; (ii) any conduct or content of any third party on the Services, including without limitation, any defamatory, offensive, or illegal conduct of other users or third parties; (iii) any content obtained from the Services; (iv) unauthorized access, use or alteration of your transmissions or content; or (v) any damage to equipment caused by the Services and any cost of recovering lost data or of reprogramming, whether based on warranty, contract, tort (including negligence), product liability, personal injury, or any other legal theory, whether or not Leda Health has been informed of the possibility of such loss or damage, and even if a remedy set forth herein is found to have failed of its essential purpose. The provisions of this section apply to you to the maximum extent permitted by applicable law.

Limitation of Liability regarding Third Party Actions. To provide you with the Services, we may in some instances utilize the services of third parties, such as third-party providers of services for STI testing, Plan B contraceptives, delivery services, and laboratory testing. You acknowledge that in these circumstances, Leda cannot control the actions of the third party service providers and shall not be responsible or liable for any actions, liabilities, or damages that may arise from the actions or omissions of third party service providers. In the event that you are involved in a dispute with a third party service provider arising from actions of that third party, you agree that Leda shall not be a party to the action and shall not be responsible for damages incurred as a result of the third-party service provider's actions or omissions.

These provisions would, for example, prevent the survivor from suing if her or his privacy was violated because the kit purveyor used a third party company to conduct analysis and information was posted on the internet. They would prevent the kit purveyor from being sued in court for misleading statement. They would protect scammers from being held accountable.

Proposed amendments would make it 100% clear that Maryland's public policy does not permit enforcement of the provisions to prevent survivors' access to court. The amendment language is based on similar provisions in the code regarding enforcement of non-disclosure agreements. These are needed to prevent companies from being able to get away with exploiting survivors who have just suffered the trauma of rape.

"Early Evidence" kits are an attempt to exploit the gap in access to SAFEs for financial profit and at the expense of sexual assault survivors. Commercial "do-it-yourself" rape kits mislead sexual assault survivors at an enormously vulnerable time. They have not been used in court, do not provide the full range of medical services and supports needed by survivors, and create a false sense of hope saving swabs will somehow provide an option to seek justice in the future.

The Maryland Coalition Against Sexual Assault urges the Judicial Proceedings Committee to report favorably on Senate Bill 949 with Sponsor Amendments

HB0949-APP-FAV.pdf
Uploaded by: Nina Themelis
Position: FAV

BRANDON M. SCOTT
MAYOR

Office of Government Relations
88 State Circle
Annapolis, Maryland 21401

HB0949

February 28, 2024

TO: Members of the House Appropriations Committee

FROM: Nina Themelis, Director of Mayor's Office of Government Relations

RE: House Bill 949 – State Employees - Cancer Screening Leave

POSITION: FAVORABLE

Chair Barnes, Vice Chair Change, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** House Bill (HB) 949.

HB 949 allows all state employees – including part-time and temporary employees – to take up to four hours of paid cancer screening leave during a 12-month period, as long as they receive approval from the appropriate authority. This bill was modeled after Baltimore City's employee Cancer Screening Program, which has allowed City employees these same permissions for nearly two decades.[i] Timely routine cancer screenings are important for detecting cancer and precancerous cells early, allowing for prompt treatment that helps prevent cancer deaths.[ii]

Cancer is the second leading cause of death in Maryland (second to heart disease). The state has a higher cancer incidence rate than the country as a whole, meaning we see higher number of new cancer cases per capita annually.[iii] The cancers that most commonly lead to deaths in Maryland are lung cancer, breast cancer (among women), and prostate cancer (among men).[iv] When detected early through routine, preventive screenings, cancer can be more effectively treated and lives can be saved.[ii] Baltimore City's cancer screening program for employees supports our population in seeking important preventive care and living longer, healthier lives. Modeling a State policy based on our proven, effective local policy will enable our State workforce to do the same.

For these reasons, the BCA respectfully requests a **favorable** report on HB 949.

[i] Baltimore City. (2018). Administrative Manual AM 203-4-1. Retrieved from https://bbmr.baltimorecity.gov/sites/default/files/upload/AM-203-4-1.pdf
[ii] Ma Z, Richardson LC. Cancer Screening Prevalence and Associated Factors Among US Adults. Prev Chronic Dis 2022;19:220063. DOI: http://dx.doi.org/10.5888/pcd19.220063

[iii] Centers for Disease Control and Prevention. (2023). National Center for Health Statistics: Maryland. Retrieved from https://www.cdc.gov/nchs/pressroom/states/maryland/md.htm

[iv] Maryland Department of Health. (2021). 2021 Cancer Data. Retrieved from https://health.maryland.gov/phpa/cancer/Documents/2021%20CRF%20Cancer%20Report_FINAL.pdf

SB 949 - Self Administered Evidence Kits.pdf
Uploaded by: Scott Shellenberger
Position: FAV

Bill Number: SB 949
Scott D. Shellenberger, State's Attorney for Baltimore County
Support

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 949
SELF ADMINISTERED EVIDENCE KITS

I am here today not only as the State's Attorney in Baltimore County, but also as a member of the Maryland Sexual Assault Evidence Kit (SAEK) Policy and Funding Committee. I write in support of Senate Bill 949 that will ban Self Administer Sexual Assault Evidence Kits. Self administered evidence kits are sold and marketed to victims of sexual assault. The sale of these kits makes victims of sexual assault believe the results derived from the kits will be admissible evidence in court. Nothing could be further from the truth.

I think it is highly probable that evidence collected by a self administered kit will never be admissible in court. This is particularly true in criminal cases. It will be a very rare circumstance where the results from such a kit will be admissible.

It is also highly unlikely that the results will be entered into CODIS which is the FBI's national database for finding suspects. Currently SAEK kits are used by a specially trained nurse who must collect the evidence in a very precise way. The kits are then turned over to a police agency, stored in secure evidence rooms and forwarded to specialty forensic labs and analyzed by experts in DNA.

Self administered kits do not provide a reliable chain of custody like I outlined above. Even the makers of the kit often acknowledge in fine print that self administered kits are not a replacement for collection by medical personnel.

To date there have been no known cases in the entire country of evidence from a self administered kit being admitted into evidence. While I acknowledge there is a lack of enough SAEK programs around the state the Bill also establishes a Forensic Nurse Examiner Training Grant Program. This will ensure more trained nurses are available making the need for self administered kits unnecessary. In addition, privacy is also a concern. Regular SAEK kits are considered medical records and are governed by HIPPA regulations. That does not apply to self administered kits, and therefore privacy is a concern.

Finally, the Bill adds that the fact that physical evidence in the case was obtained using a self administered test and is not admissible in court. This is to protect the trial so that the fact finder is not wondering where the results are and hold it against the victim.

The sale of self administered kits amounts to manufacturers taking advantage of a very vulnerable population. Do we want to lead sexual assault victims to report a crime only to find out that the evidence they collected will not be admissible in court?

I urge a favorable report.

Amendment Feb 26 SB949.pdf
Uploaded by: Shelly Hettleman
Position: FAV

SB0949/133226/1

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE SERVICES

26 FEB 24
11:53:43

BY: Senator Hettleman
(To be offered in the Judicial Proceedings Committee and the Finance Committee)

AMENDMENTS TO SENATE BILL 949
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in lines 4 and 5, in each instance, strike "a sexual crime" and substitute "sexually assaultive behavior"; and in line 5, strike the first "evidence" and substitute "information".

AMENDMENT NO. 2

On page 4, in line 3, after "**ENTITIES**" insert "**AND HIGHER EDUCATION INSTITUTIONS AND COLLEGES**".

On page 5, strike in their entirety lines 7 through 13, inclusive, and substitute:

"**(A) IN THIS SECTION, "SEXUALLY ASSAULTIVE BEHAVIOR" HAS THE MEANING STATED IN § 10–923 OF THIS SUBTITLE.**";

in line 14, strike "**EVIDENCE**" and substitute "**INFORMATION**"; and in lines 14 and 18, in each instance, strike "**A SEXUAL CRIME**" and substitute "**SEXUALLY ASSAULTIVE BEHAVIOR**".

OAG Report SB949.pdf
Uploaded by: Shelly Hettleman
Position: FAV

MARYLAND SEXUAL ASSAULT EVIDENCE KIT POLICY AND FUNDING COMMITTEE

SUPPLEMENTAL REPORT ON HB758/SB789: "SEXUAL ASSAULT EVIDENCE KITS – PRESERVATION AND STORAGE"

February 7, 2024

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 develop and disseminate best practices and information on a variety of topics including the testing and retention of sexual assault evidence kits, increasing the availability of sexual assault forensic exams (SAFEs) for victims[1] of sexual assault, reducing the shortage of forensic nurse examiners, and increasing the availability of information to sexual assault victims regarding prosecutions, civil law remedies, sexual assault evidence kits, and victim rights.[2]

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: (1) guidance on the transfer of sexual assault evidence kits to law enforcement collected before January 1, 2000; (2) recommendations regarding the use of self-administered sexual assault kits in Maryland; and (3) a plan to educate consumers about self-administered SAEKs collaboratively developed with the Office of the Attorney General's ("OAG") Consumer Protection Division ("CPD").

[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.
[2] S.B. 734, Chapter 659 (2017).

That initial report, which was timely filed by December 1, 2023[3], advised that the subcommittee would need additional time to continue research and discussion on the issue of recommendations regarding the availability and use of self-administered sexual assault evidence kits in Maryland. The subcommittee has taken that opportunity, and based on its research and the opportunity to explore further options for victims in Maryland, makes the following recommendations.

RECOMMENDATIONS

1. Maryland should ban the sale, offer for sale, or distribution of self-administered sexual assault kits in the State unless they are state-issued.

The Committee continued the review of its prior research and the information provided by all sources noted in the original report. Upon continued discussion of this research and the evidentiary implications of allowing self-administered sexual assault kits to be sold and distributed by commercial companies, it has become clear to the Committee that the kits should be banned.

The Committee's decision is not taken lightly, nor is it taken without precedent. As noted in the December 1 report, two states—Washington and New Hampshire—have successfully enacted legislation to ban the sale of these kits.[4] Utah also considered similar legislation in 2021.[5] In addition, the Attorneys General of eight states issued either cease-and-desist or warning letters to

[3] Please see published copy of the December 1, 2023 report at https://dlslibrary.state.md.us/publications/AG/SB789Ch703HB758Ch702(3)(2023).pdf.
[4] 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; 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.
[5] https://le.utah.gov/~2021/bills/static/HB0168.html.

manufacturers of self-administered sexual assault kits.[6] Moreover, as previously noted, the Committee continues to have significant concerns regarding the admissibility of these kits, the privacy of both victims and alleged perpetrators, and the ability of victims to access all the advocacy and medical care, including follow-up care, needed after an incident of sexual assault.

One of the justifications for self-administered kits is the lack of access to Sexual Assault Forensic Exams (SAFEs). While a SAFE system is in place statewide, it is under-staffed and requires that survivors of sexual assault go only to specific hospitals to get an exam. To address this, the Committee has considered how the State can improve access to SAFEs and appropriate medical care from a Forensic Nurse Examiner ("FNE"). To that end, the Committee is supporting legislation to explore the feasibility of a telehealth SAFE Program in Maryland that would provide care where an FNE may not be either consistently available or available at all for a victim of sexual assault. This legislation will explore telehealth alternatives to self-administered sexual assault kits in addressing the gaps in SAFE availability across the State for those who wish to receive an exam but live in a historically underserved area for forensic medical services.

Due to the challenges some victims face in accessing SAFEs, the Committee proposes that any legislation banning the sale and distribution of self-administered kits leave open the possibility that the State may wish to create self-administered kits in the future. While these

[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; "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; "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; "Herring Issues Warning About Self-Administered Sexual Assault Evidence Kits." Published September 10, 2019.

solutions are not immediate, the Committee is committed to doing the work to move these ideas forward and believes these options will help to close the service gap in Maryland and serve victims for years to come.

2. Any person who sells, offers for sale, or distributes non-state issued kits should be subject to an enforcement action by the Consumer Protection Division and/or a civil fine.

The Committee further recommends that the sale, offer for sale, or distribution of a non-state issued self-administered sexual assault kits constitutes an unfair, abusive or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article, and be subject to the enforcement and penalty provisions contained in Title 13 of the Commercial Law Article.

When considering penalty options, the Committee reviewed the legislative language of both the Washington state and New Hampshire laws. Washington state's law provides that "A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act."[7] New Hampshire, on the other hand, instituted a civil fine for the sale of these kits in the state, set at $1,000 per offense.[8] Ultimately, the Committee agreed that it was interested in pursuing both options as penalties for selling these kits in Maryland. Monies collected as fines under the statute would be allocated into a special fund dedicated to providing additional educational tools, including FNE course materials, training registration fees, and more, to FNEs across the state.

[7] 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/202324/Pdf/Bills/Session%20Laws/House/1564.SL.pdf?q=20231018113822.

[8] House Bill 705, Signed by Governor Sununu on July 20, 2020. https://legiscan.com/NH/text/HB705/id/2194274/New_Hampshire-2020-HB705-Amended.html.

The Committee's intent is that these penalties are enforced against those in the commercial chain, not individual consumers. The Committee understands that an individual victim may come into possession of one of these kits in a multitude of ways, including from another person in their life who is concerned about the victim or by obtaining the kit from another state where they are not banned and returning to Maryland with the kit in their possession. Whatever their intention, the Committee urges that such activity not be considered "distribution" of the kits and subject to enforcement action under the law.

The Committee will work with the Maryland Coalition Against Sexual Assault (MCASA) to create informational documents available to victims about this legislation, if passed. These documents will include critical information related to the legislation and recommendations on how to access forensic medical and advocacy services in Maryland. Education materials for law enforcement and prosecutorial staff addressing this legislation, including admissibility of a kit obtained and used by a victim and presented to law enforcement as evidence of a sexual assault, which is addressed in more detail below, will also be developed.

3. Kits should not be excluded from use in criminal prosecution if they are brought to law enforcement or prosecutors by a victim.

The Committee also discussed what would happen to a kit should it come into the possession of a victim who chooses to then present this evidence to law enforcement or a prosecutor. While the Committee agrees that these kits should not be offered for sale or distribution in Maryland, it does not believe that should this kit come into the possession of a victim that it should be prevented from being presented as potential evidence in a criminal proceeding. A victim should have the opportunity to have their voice heard in a criminal legal proceeding about evidence in their possession. Additionally, a victim should face no legal consequences for presenting such a kit to law enforcement or a prosecutor. Any evidence that a victim presents to those individuals

investigating and prosecuting their case, including a self-administered sexual assault kit, should be thoroughly reviewed, vetted, and/or tested to determine if it is appropriate for investigation or prosecution. If determined to be appropriate evidence in a criminal trial, a self-administered sexual assault kit should not be excluded from evidence simply because it is illegal for the product to be sold or distributed in the state and information regarding the illegality of the sale and distribution of these kits should be prohibited from consideration by the factfinder.

However, it should also be made clear to victims that just because this evidence may be provided to law enforcement and prosecutors, it does not mean that the kit itself is guaranteed admission in a court of law. The legislation should include language requiring that a kit obtained and collected in this manner be evaluated by a court based on its evidentiary value if presented in a trial setting.

CONCLUSION

After continued review of the research compiled and further discussion, the Committee has made the above recommendations regarding the use of self-administered sexual assault kits in the State of Maryland. The Committee has requested a bill be drafted inclusive of the above recommendations (currently LR 3168), and will provide testimony as to the above when a bill hearing date is set.

OAG SAEK Community Partners Letter SB949.pdf
Uploaded by: Shelly Hettleman
Position: FAV

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

SB949 Amendment Feb 19.pdf
Uploaded by: Shelly Hettleman
Position: FAV

SB0949/333825/1

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE SERVICES

19 FEB 24
16:03:41

BY: Senator Hettleman
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 949
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 10, after "fund" insert "; prohibiting the limitation or waiver of certain rights and warranties on certain products used to collect evidence of a sexual assault".

On page 2, after line 5, insert:

"BY adding to
Article - Criminal Procedure
Section 11-926(j)
Annotated Code of Maryland
(2018 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,
Article - Criminal Procedure
Section 11-926(j)
Annotated Code of Maryland
(2018 Replacement Volume and 2023 Supplement)".

AMENDMENT NO. 2

On page 5, after line 20, insert:

"**Article – Criminal Procedure**

11–926.

(J) (1) ANY AGREEMENT, CONDITION OF ACCESS OR USE, OR POLICY THAT LIMITS OR WAIVES ANY SUBSTANTIVE OR PROCEDURAL RIGHT OR REMEDY TO A CLAIM AGAINST ANY PERSON WHO PROVIDES A VICTIM OR ANOTHER PERSON WITH ANY SERVICE, PRODUCT, INFORMATION, OR OTHER MEANS TO COLLECT EVIDENCE OF A SEXUAL ASSAULT IS NULL AND VOID AS BEING AGAINST THE PUBLIC POLICY OF THE STATE.

(2) ANY DISCLAIMER OF ANY WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT REGARDING ANY SERVICE, PRODUCT, INFORMATION, OR OTHER MEANS TO COLLECT EVIDENCE OF A SEXUAL ASSAULT IS NULL AND VOID AS BEING AGAINST THE PUBLIC POLICY OF THE STATE.

[(j)**] (K)** The Attorney General shall adopt regulations for uniform statewide implementation of this section.".

SB949_FAV_Hettleman.pdf
Uploaded by: Shelly Hettleman
Position: FAV

SHELLY HETTLEMAN
Legislative District 11
Baltimore County

Chair
Rules Committee

Budget and Taxation Committee

Subcommittees

Health and Human Services

Pensions

THE SENATE OF MARYLAND
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TESTIMONY OF SENATOR SHELLY HETTLEMAN
SB 949 CONSUMER PROTECTION SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KITS

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

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

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

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

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

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

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

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

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

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

HB 949 - APP -LOS_ Cancer Council_FINAL_Signed (1)
Uploaded by: State of Maryland (MD)
Position: FAV

MARYLAND
State Council on Cancer Control
MARYLAND DEPARTMENT OF HEALTH & MENTAL HYGIENE

February 22, 2024

The Honorable Ben Barnes
Chair, Appropriations Committee
Room 121, House Office Building
Annapolis, MD 21401

RE: HB 949 - State Employees - Cancer Screening Leave

Dear Chair Barnes:

The Maryland State Council on Cancer Control (Council) is submitting this letter of support for House Bill 949 (HB 949), titled: "State Employees - Cancer Screening Leave." HB 949 would provide leave time for state employees to use to receive cancer screenings.

As a champion of public health and well-being, the State of Maryland should lead by example by offering its employees dedicated leave time to receive crucial cancer screenings. This action benefits not only the individual health of its workforce but also fosters a positive work environment and ultimately strengthens the state's overall economic well-being.

Prioritizing cancer screenings through dedicated leave empowers employees to take charge of their health. Early detection significantly improves survival rates and treatment outcomes, potentially saving lives and reducing future healthcare costs associated with advanced cancers. By providing paid leave, the state removes financial barriers and anxieties, allowing employees to prioritize their health at critical moments without fear of losing income or jeopardizing their job.

Offering cancer screening leave promotes a culture of well-being and employee engagement. It demonstrates the state's commitment to its workforce, fostering trust, loyalty, and a sense of value among employees. This translates to increased morale, productivity, and potentially lower turnover rates, benefiting both the employees and the state's operational efficiency.

Providing leave for cancer screenings presents a sound economic investment. Early detection and preventative care significantly reduce long-term healthcare costs by catching cancers at treatable stages before they require expensive interventions. Additionally, a healthy and engaged workforce contributes to a flourishing economy through increased productivity and reduced absenteeism.

As neighboring states like Virginia and Delaware already offer such leave programs, Maryland has the opportunity to set a new standard for employee well-being and responsible healthcare practices.

MARYLAND
State Council on Cancer Control
MARYLAND DEPARTMENT OF HEALTH & MENTAL HYGIENE

The Council urges the Committee to vote in favor of HB 949. By prioritizing cancer screening leave, the state invests in its most valuable asset - its people - while demonstrating its commitment to public health and creating a stronger, healthier Maryland for all.

Sincerely,

Kevin J Cullen, MD

Kevin Cullen, MD
Chair,
Maryland State Council on Cancer Control

SB949 Leda Health Testimony Oppose.pdf
Uploaded by: Sean Bogle
Position: UNF

Leda Health

Statement in Opposition
SB 949 "Consumer Protection - Self-Administered Sexual Assault Evidence Kits"

Chairman Smith and Members of the Judicial Proceedings Committee:

Leda Health's mission is to increase support for survivors of sexual assault. As a survivor of sexual assault working alongside a dedicated group of allies, we, at Leda Health, believe fundamental change is necessary in sexual assault prevention, care, and healing. We view the issue of sexual assault through a survivor-focused lens, and we firmly believe in empowering survivors with the tools and resources necessary to take control of their healing and justice. That is why we have developed self-administered sexual assault evidence collection kits. We believe that making this resource broadly available is critical to incidents that would otherwise go unreported, untreated, and unsolved. In line with our mission, we are writing to express our opposition to SB949, as we believe it is essential to advocate for policies that support and empower survivors.

Staggeringly, only an estimated 30% of survivors report their sexual assault to authorities, and this figure is much less for members of marginalized communities and people of color. In Maryland, over 1,800 rapes were reported in 2020-think of all the incidents that go unreported. This is an astronomical figure that deserves immediate attention, particularly in service of women of color, who are much less likely to report sexual assault than white women.

That's why it's critical that our communities, including healthcare providers, non-profit organizations, legislators, and colleges and universities, come together to empower survivors with more resources. Accordingly, over the past few months, we have been meeting with community leaders and legislators across Maryland, particularly in connection with underserved communities, to discuss incidents of sexual assault, complex problems facing survivors, and the potential benefits of self-administered sexual assault evidence collection kits. Throughout our meetings, one thing has been abundantly clear - people want access to as many resources as possible to help sexual assault survivors. We believe that providing this option to survivors is critical, and we hope to partner with healthcare stakeholders to ensure that survivors are able to find and use this tool in a way that is responsible and compliant with applicable rules and regulations.

We believe it's critical to have self-administered sexual assault evidence collection kits available at public access points, including hospitals, colleges and universities, and non-profit centers, and we are working to ensure that can happen under the current law.

Leda Health

To be clear, we understand the value of encouraging survivors of sexual assault to report these incidents through the established formal processes, including forensic care in hospitals and reporting to law enforcement. Yet, we cannot ignore the fact that many survivors will never report sexual assaults to the authorities. It is within this space that Leda Health firmly believes our test kits provide the most benefit to survivors and the community.

At Leda Health, we are deeply invested in supporting survivors of sexual assault including the loved ones of those impacted and their communities. We are encouraged that various states, including Maryland, are assessing the value and benefits of self-administered kits so that, together, we can ensure that survivors have as many resources as possible to pursue self-validation and clarity in a way that respects their individual needs.

Sincerely,

SeanB+

Sean Bogle, COO of Leda Health

2024 SB949 Opposition or Amend.pdf
Uploaded by: Deborah Brocato
Position: INFO

SB949
2024

Opposition Statement SB949
Consumer Protection – Self-Administered Sexual Assault Evidence Collection Kits
Deborah Brocato, Legislative Consultant
Maryland Right to Life

On behalf of the over 200,000 followers across the state, Maryland Right to Life strongly opposes SB949. We oppose the appropriation and use of any public funds for the purposes of abortion. The establishment of this new, nonlapsing fund for a training program is designated to fund grants to nonprofit entities. Maryland Right to Life requests an amendment to exclude from this bill any organization that promotes and provides abortions.

Planned Parenthood and other abortion providers are nonprofit entities. The program laid out in this bill, meant to help provide resources for victims of sexual assault, could easily be exploited not only to provide staff for the abortion industry and training for abortion industry staff but to provide a pipeline of clients for the abortion industry.

Maryland is subsidizing corporate abortion. Abortion is big business in Maryland at the expense of the taxpayers. Maryland taxpayers subsidize the abortion industry through Medicaid, various state grants and contracts and private health insurance carriers. This program would provide another grant that would be a pass-through for abortion funding. This would be a "nonlapsing fund" again at taxpayer expense. The majority of Americans oppose the use of taxpayer funds for abortion.

Abortion facilities have a single focus. Victims of sexual assault deserve to receive care from entities that are not in business for the singular purpose of promoting and providing abortion. Women and girls who are victims of sexual abuse and assault deserve the specialized care of highly trained physicians and therapists.

Maryland is failing to protect children. The state shields abortionists by allowing them to commit abortions unfettered and without reporting requirements to the state or the Centers for Disease Control. While abortion providers are supposed to be subject to the law as mandatory reporters of suspected child abuse, we are aware of no such report. Inspections of abortion clinics and practices are complaint driven only. But even after two women suffered near fatal injuries from botched abortion in Bethesda, the Maryland Department of Health refused to inspect the facility until after legal action was taken by the victims.

Women and girls who are victims of sexual assault deserve better than to be funneled into the abortion industry. Maryland Right to Life requests an amendment to exclude abortion purposes from this bill. Without it, we ask for an unfavorable report on SB949.