STRATEGIES *In Brief*

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Self-Collected Sexual Assault Kits: Assessing and Mitigating the Risks[1]

I. Introduction

Self-collected sexual assault kits—sometimes referred to as "do it yourself" (DIY) kits—first came into public focus in 2019 and were offered as tools of self-empowerment for victims of sexual violence, enabling victims to collect and preserve evidence of a sexual assault without receiving care from a Sexual Assault Nurse Examiner/Sexual Assault Forensic Examiners (SANEs/SAFEs) or other trained healthcare provider, or without reporting to law enforcement.[2] At the start of the COVID-19 pandemic, interest once again rose in the utilization of such kits as a way to avoid over-crowded hopsitals and minimize exposure to the virus.[3]

Prosecutors, defense attorneys, Attorneys General, advocates, and lawmakers have expressed widespead concern in response to the proliferation of self-collected kits, pointing out that such kits do not provide a substitute for professional medical care and that the companies producing the kits are charging victims for a service otherwise offered free of charge.[4] Lawyers have expressed serious doubts that evidence collected from self-administered kits would be admissible in court and raised concern that these kits would undermine law enforcement efforts to identify serial perpetrators and hold offenders accountable.[5] Several Attorneys General have even sent "cease and desist" letters to companies producing self-collected kits in order to prevent the sale of these products in their states, and one state's legislature introduced a bill to ban their sale.[6]

These concerns are legitimate; for many reasons, DIY kits pose more harm than benefits. Given the continued interest in self-collected kits, however, this article sets forth the reasons stated in favor of their appeal—and lays out legitimate concerns they present—in depth. This article will focus on self-collected kits that are self-administered post-assault and involve the collection and preservation of evidence from the body in a non-medical setting. It will examine the rationale behind self-collected kits for victims of sexual violence who state that they want to address their trauma—at least initially—outside the healthcare and criminal justice systems; the challenges self-collected kits present for prosecutors (*e.g.,* litigating defense motions to suppress, introducing evidence obtained by the victim, overcoming issues impacting chain of custody); and the limitations of self-collected kits to provide critical victim care, treatment, and support traditionally provided through the sexual assault medical forensic exam (SAMFE) process. We discuss the available alternatives for those circumstances in which self-collected kits may be perceived to be the best available option. Finally, where self-collected kits have been used, we offer strategies to mitigate the evidentiary, advocacy, and legal challenges they present.

II. The Stated Appeal of Self-Collected Sexual Assault Kits

Some survivors of sexual assault—and even some healthcare and law enforcement personnel—have publicly advocated for or supported the use of self-administered sexual assault kits.[7] To understand and properly contextualize the

appeal of these kits, it is important to understand the process by which traditional SAMFEs take place.[8] These exams focus on the healthcare of patients who have been victimized by sexual assault. During a SAMFE, sexual assault kits (SAKs) are used by SANEs/SAFEs who collect the patient's medical and assault history to provide needed healthcare to sexual assault victims and to collect evidence in a medically and forensically sound manner. While the specific contents of a SAK vary, typical contents include:

- Forms for documenting health history, assault history, post-assault actions, procedure and evidence gathered;
- Swabs for biological evidence collection;
- Envelopes, boxes and labels to package collected swabs and other evidence;
- Gloves and masks to prevent evidence contamination;
- Tubes and containers for collecting specimens such as blood and urine (which may be separate from SAK contents); and
- Evidence stickers to seal envelopes with collected evidence.

After a SAMFE is completed, and with the victim's consent, evidence that has been collected is provided to law enforcement, where it can supplement investigative efforts and be submitted for DNA and other forensic analysis. In addition to a SAK, SANEs/SAFEs can also provide for the healthcare needs of a sexual assault patient with medical instruments available to a healthcare provider, such as a speculum, colonoscope, or other medical instruments that facilitate a complete SAMFE.

Survivor Autonomy

Self-collected kits were developed as a way to support victim autonomy by expanding direct access to kits. This motivation predates COVID-19 and stems from a desire to mitigate secondary trauma sometimes faced by victims at the hands of criminal justice actors and medical professionals.[9] Self-collected kits are presented as a remedy to this problem by increasing survivor agency through the provision of instructions and supplies to self-collect and retain evidence. A survivor may not want to be touched in the aftermath of a sexual assault, or may not feel that they are prepared to face every stage of the criminal justice process, but they still may want to preserve the evidence of the assault in the event that they wish to take legal recourse at a later date.

The involvement of healthcare providers in the administration of a self-collected kit can vary widely. On one end of the spectrum, a victim may independently obtain a kit, administer the exam, and determine whether to hold onto the evidence or to immediately submit the evidence to a third party for testing without involving the healthcare or criminal justice systems. On the other end of the spectrum, a medical provider may provide a self-collected kit to a victim, who may self-administer an exam with virtual guidance from a healthcare provider, and then give the evidence to law enforcement for storage and/or forensic analysis. It is important to note that self-collected kits self-administered in coordination with a healthcare provider are distinguishable from SAMFEs administered with TeleNursing and TeleSAFE programs. Both TeleNursing[10] and TeleSAFE[11] are instances of telemedicine wherein a SANE/SAFE practitioner can provide remote assistance and guidance to a clinician administering a SAMFE in a healthcare facility that may not otherwise have access to specialized medical-forensic personnel. TeleNursing and TeleSAFE involve use of a SAK in a medical setting and as such are distinguishable from healthcare providers providing self-collected kits to victims.

Persistent COVID-19 Related Concerns

Although the acute issues presented by the onset of the COVID-19 pandemic have subsided, uncertainty about the impact of the pandemic remain and, therefore, are discussed below.

a. Fear of SAK Shortages

Some may consider self-collected kits a viable option because of a fear of SAK shortages due to COVID-19 or other impacts to the supply chain. Despite supply chain interruptions, which have impacted goods ranging from mundane household cleaning supplies to medical supplies, there have been no shortages of SAKs for programs reporting to the International Association of Forensic Nurses (IAFN). Nevertheless, there has been recurring discussion of the use of self-collected kits to address perceived limitations in the supply of SAKs.

b. Fear of COVID-19 Exposure

Some victims of sexual assault have expressed concerns that presenting at a hospital or emergency room for a SAMFE will risk their exposure to COVID-19.[12] In some jurisdictions, SAMFEs are administered in non-hospital facilities, such as exam rooms co-located with Sexual Assault Response Teams (SARTs) or advocacy organizations. Although there is less risk of exposure to COVID-19 in a non-hospital setting, it still invites some amount of health risk. Self-collected kits are seen as a way of avoiding the potential health risks of any location outside a victim's home.

c. Increased Wait Times, Prioritization of Care, and Staff Shortages

The COVID-19 pandemic disrupted healthcare systems across the country—and with infection rate spikes and the appearance of new variants, hospitals in some areas continue to be overwhelmed. In many places, the pandemic has led to shortages of hospital staff, facilities operating under more restrictive standards in terms of visitor accompaniment and access, and shortages in medical and protective equipment. In areas with particularly high infection and hospitalization rates, SANEs/SAFEs may still be on the frontlines of emergency and intensive care units, where much of the pandemic care is initially delivered.[13] During the height of the pandemic's impacts, some healthcare personnel trained to administer SAMFEs were sick or even furloughed, creating a gap in supply.[14] Burnout from work during the pandemic, as well as increased demand for nurses, has created a nursing shortage that has extended into late 2021, and is likely to continue.[15] Furthermore, hospitals that require COVID-19 pre-screening for patients seeking medical attention, while necessary, may add additional burdens onto the victim as well as the system seeking to respond to them.

III. Healthcare and Legal Challenges Posed by Self-Collected Kits

Healthcare and legal professionals should understand and carefully consider the potential implications self-collected kits pose for victims' health and well-being. Their use also raises unique legal challenges to the integrity and admissibility of physical, forensic, and medical evidence in any eventual criminal case.

Self-Collected Kits Limit Access to Healthcare and Advocacy Services

The structure of SAMFEs prioritize victim healthcare and victim advocacy support. Developed in 2004 and revised in 2013, the National Protocol for Sexual Assault Medical Forensic Examinations[16] (The Protocol) provides guidance for practitioners treating sexual assault survivors. Additional updated guidelines are contained in the *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach* released in 2017.[17] The holistic purpose of SAMFEs is articulated as follows:

> We know that effective collection of evidence is of paramount importance to successfully prosecuting sex offenders. Just as critical is performing sexual assault forensic exams in a sensitive, dignified, and victim-centered manner. For individuals who experience this horrendous crime, having a positive experience with the criminal justice and healthcare systems can contribute greatly to their overall healing.[18]

The Protocol represents best practices, which includes the prioritization of patient healthcare treatment and "timely evidence collection that is accurately and methodically gathered, so that high-quality evidence is available in court."[19] Even the forensic aspects of a SAMFE have a healthcare purpose in that they minimize duplicative and redundant collections of evidence samples from intimate areas of a victim's body by law enforcement.[20] SAMFEs also provide for medical aftercare, which can include pain management, sexually transmitted infection (STI) screening and prophylaxis, contraceptive care, safety planning, and follow-up care. While victims may still receive some virtual healthcare assistance when self-administering self-collected kits with a telehealth component, healthcare professionals will not be able to examine the patient as carefully, and may have more difficulty assessing patients and providing needed care, especially if patients are in a location where they do not feel secure.

Best practices in sexual violence response also focus on providing victims with a support network, a goal that is harder to facilitate when self-collected kits are used. Research demonstrates that many victims who do not participate in the criminal justice system commonly fear the trial process or how they will be treated by criminal justice professionals, worry about intimidation or retaliation, or buy into common myths about sexual assault and blame themselves for the assaults committed against them.[21] Victim advocates or an advocacy support network can help victims to address and overcome these concerns while helping them navigate the criminal justice system and coordinate needed services.[22] Prosecutors and law enforcement who understand and employ victim-centered and trauma-informed prosecution practices reinforce the critical support provided by advocates.

SAMFE programs are directly connected with victim advocacy services, which can be immediately available for victims. Victims using self-collected kits, however, may need to proactively and independently access virtual advocacy support. This additional step may pose obstacles to healing for some victims, who often juggle work, childcare, and household responsibilities while attempting to cope with the trauma of sexual assault. Even where the administration of the self-collected kit is supported by telehealth, victims may lack ready access to advoacy services or be overwhelmed with virtual advocacy services offered. Absent this advocacy support, many victims may not be able to actively participate in a case and a prosecution will not be able to be maintained. Dropped prosecutions, especially when they occur because victims were not supported, not only negates justice for victims, but increases risks to public safety as offenders escape accountability.

Evidence collected from a SAK can significantly strengthen a criminal prosecution for sexual violence by helping to prove the offender's identity, corroborate victim statements, or helping to prove an element of force or lack of consent. However, depending on the availability and admissibility of non-SAK evidence, prosecutors are able to proceed with a case absent evidence collected from a SAK or self-collected kit. This is necessarily a fact-dependent and case-specific inquiry. For help assessing case charges in the absence of kit evidence, call AEquitas at 202-558-0040 or email info@aequitasresource.org.

Finally, it should be noted that a self-administred kit costs roughly 30 dollars,[23] while survivors who undergo a traditional SAMFE generally do not have to pay for a sexual assault kit.[24] Many states have laws requiring that patients treated for sexual assault receive no charge for services, including the forensic exam itself and testing for STIs and emergency contraception.[25] Additionally, while there have been documented instances of victims being charged for medical-forensic exams,[26] the Violence Against Women Act requires any state that wants to be eligible for certain federal grants to certify that the state covers the cost of medical-forensic exams for people who have been sexually assaulted.[27]

Self-Administered Exams Limit Comprehensiveness of Evidence Collected

Victims self-administering self-collected kits generally do not have the training, technical skills, and experience required to properly collect evidence following a sexual assault. The complexities inherent in a SAMFE are reflected by the qualifications required: on top of baseline education and licensing requirements, healthcare professionals must undergo specialized classroom and clinical training to be certified to administer a SAMFE.[28] Education and experience inform a healthcare professional's judgment regarding the evidence that needs to be collected and the proper techniques for collection. Some of the evidence collection—*e.g.,* vaginal and anal swabs—requires technical skills in order to collect adequate samples for later forensic analysis. Moreover, training and experience enable SANEs/SAFEs and other healthcare professionals to document injuries that may not be recognized by a victim as significant but could be important for treatment, as well as relevant evidence of an assault (*e.g.,* arm bruising, vaginal trauma, petechiae). In addition, some vaginal injuries can only be observed by a SANE/SAFE through the combination of specialized techniques and equipment such as a colonoscope/digital magnification or toluidine blue.[29] While physical injuries are not commonly observed in sexual assault cases,[30] physical injuries that *do* occur are best documented by a healthcare professional.[31] Further, a victim will be using a self-collected while experiencing the traumatic impact of an assault, which may impact their ability to process information (*e.g.,* extensive instructions) at the time of the exam and recall with linear precision the steps undertaken throughout the exam.

Self-administered exams also pose additional difficulties. A complete SAMFE often involves the preservation of evidence through the use of photographs, which can be quite sensitive to lighting, angle, and perspective conditions. It includes the documentation of bodily injuries, and victims may not be able to adequately document injuries to their genitals and posterior (back) areas of the body. It could also be physically and emotionally challenging for individuals to self-administer the more invasive and uncomfortable aspects of the exam, such as vaginal or anal swabs, particularly following a traumatic event.

Unverifiable Collection and Preservation Conditions May Compromise Forensic Testing and Criminal Processing

The primary purposes of the SAMFE are to provide healthcare treatment to sexual violence patients and to collect and preserve biological evidence for later forensic DNA analysis. Healthcare professionals follow well-established protocols to limit and prevent the risk of cross-contamination in healthcare and forensic exam facilities. SANEs/SAFEs are able to document these steps through SANE reports as well as testimony to preempt any concerns about exam conditions. Most victims are not trained in practices to minimize cross-contamination. The sterility of the environment in which they perform self-exams and the integrity of the process could be called into question in cases involving a self-collected kit. If the victim holds onto self-collected kit evidence for any period of time, there may also be issues related to the location and conditions under which biological specimens were stored, especially if the kit got damp and moldy, or was stored somewhere that was extremely warm. In addition, self-collected kits could invite defense requests to examine the

environment where the self-collected kit was administered or stored before testing, a process that would be a tremendous invasion of the victim's privacy if the self-collected kit was administered at home.[32] Even absent such requests, the use of a self-collected kit provides defense attorneys with the opportunity to attack the weight, if not the admissibility, of the evidence from any results by cross-examining the victim about the collection environment.

In a similar vein, evidence collected from self-administered exams may open the door to chain of custody issues. For healthcare providers collecting evidence during SAMFEs, standard practices and protocols are focused on maintaining the integrity of the evidence and documenting transfer, which preempts or negates defense attacks on chain of custody. With self-collected kits, however, chain of custody becomes yet another potential area upon which the defense can cross-examine the victim. The depth of this defense argument may depend upon whether the victim immediately provides the self-collected kit to law enforcement or a healthcare provider or whether they maintain the kit at home or elsewhere until they are able to disclose the sexual assault.

Additional Legal and Privacy Issues Implicated by Self-Administered Examinations

Self-collected kits administered in conjunction with telehealth invite other legal issues that may implicate victim privacy. Virtual healthcare guidance during a self-collected exam would require video to have any utility. Assuming that the security of the video platform can be assured, the question then becomes whether the victim, or a third party with the victim's consent, records the video. While telemedicine appointments of all kinds are generally not recorded, victims self-administering a kit to preserve evidence of a sexual assault may choose in the moment to record their exam for later use in a criminal case. Furthermore, the technical simplicity in the ability to record a remote exam may provide the window for a defense argument that the absence of a recording should cast doubt on evidence obtained during a virtual exam. If the exam *is* recorded, the defense may move to view the video to examine the manner in which the specimens were collected and stored as well as obtain copies of memorialized statements made by the patient/victim. Although the defense would have a steep burden to establish the necessity of viewing the video, there are still risks that a self-created video will lack the protections afforded to video and photographs captured in the course of a SAMFE. If the telehealth component of a self-collected kit is *not* recorded—despite the victim's ability to do so with the push of a button—the defense has the opportunity to argue that the absence of a recording undermines the weight and credibility of any evidence collected.

Self-administered exams may also prevent prosecutors from presenting the full spectrum of evidence of the sexual assault crime at trial. Prosecutors may have strong legal arguments to admit victims' statements to a healthcare provider during a SAMFE under the medical hearsay exception.[33] These statements, often impacted by acute or longstanding trauma, can be raw and revealing and used to corroborate a victim's testimony at trial. However, such statements may only be admitted if they were given to a healthcare provider and made for the purpose of healthcare treatment or diagnosis.[34] The absence of a healthcare provider with a self-collected kit would remove the medical statement hearsay exception from a prosecution, eliminating the opportunity for the jury to hear powerful evidence.[35] This concern may possibly be ameliorated for self-collected kits administered in conjunction with telehealth, if the telehealth professional focuses on healthcare treatment and diagnosis before guiding the victim in forensic collection. Even in this circumstance, however, a defense attorney could make a cognizable argument that the primary purpose of the telehealth call is forensic rather than medical, given the limited capacity of the teleheath professional to assess the victim for medical diagnosis and treatment.

Self-collected kits also raise questions related to laboratory testing and possible bias. At least one self-collected kit company contracts directly with a lab to conduct forensic testing.[36] This may raise questions relating to the bias and any possible conflict of interest of contracted analysts. Furthermore, it is very unlikely that data from DNA collected from self-collected kits would meet standards set by the federal government to participate in the Combined DNA Index System (CODIS).[37] In order to upload DNA data into the system, there must first be verification that a crime occurred—a requirement typically fulfilled by a police report documenting the sexual assault.[38] Furthermore, CODIS requires verification that the DNA has been retrieved from the crime scene, which is impossible in the case of a self-collected kit.[39] Finally, laboratories uploading DNA data to CODIS must first verify that the DNA sample in question is from the alleged perpetrator; with self-collected kits, it would be difficult to rule out other sources of DNA, such as an intimate partner of the victim.[40] When these requirements cannot be fulfilled, DNA data cannot be submitted to CODIS, leading to missed opportunites to identify unknown offenders or to link sexual assault crimes involving the same offender.

IV. Alternatives to Self-Collected Kits

Self-collected kits may be viewed by some as the safest option for minimizing exposure during the current COVID-19 pandemic, as well as a way to give survivors who are not ready to participate in the criminal justice system an option to preserve evidence. However, professionals contemplating the use of self-collected kits in their jurisdictions have other options that could help achieve the same goals as self-collected kits without risking the challenges they present.

Even under pandemic conditions, accommodations can be made to allow for SAMFEs to safely continue. It is understandable that the pandemic may chill the willingness of some victims to go to hospitals to obtain SAMFEs. However, as healthcare providers have already made adjustments to minimize the risk of exposure in other aspects of healthcare—through drive-through testing, barriers to promote social distancing in wait rooms, cleaning, and other precautionary measures—it is reasonable to expect providers to create similar adjustments for SAMFEs going forward. As discussed earlier, these exams are already being administered in medically- and forensically- appropriate non-hospital settings. For victims who are unable to leave their homes, jurisdictions might consider the possibility of mobile SAFMEs[41] that can still provide appropriate security, sanitary, and privacy conditions. These examples represent just a few of the many innovative options that are currently in use to provide survivors with critical medical care and forensic expertise.

Jurisdictions experiencing a shortage of SANEs/SAFEs may consider offering training to more healthcare professionals to be licensed as SANEs/SAFEs. Where SANEs/SAFEs are unavailable, healthcare professionals without SANE certification may perform the SAMFEs, with virtual guidance from certified SANEs/SAFEs under a TeleNursing or TeleSafe program.[42]

Some victims may find a self-collected kit appealing because they are not ready to report their assault to law enforcement. Anonymous or “Jane Doe” SAMFEs are available precisely for this reason. During a “Jane Doe” exam, a healthcare professional provides medical care, collects and documents evidence, and anonymously preserves the evidence until such a time that the victim decides to disclose to law enforcement.[43] These anonymous SAMFEs, which are available in every jurisdiction in the United States to victims free of charge,[44] can be provided to victims alongside confidential counseling and advocacy services. It should be noted, however, that states have varying levels of regulation regarding the storage, maintenance, and preservation of such kits; some jurisdictions do not require that anonymous kits be preserved for the full period of the applicable statute of limitations.[45]

As uncertainty caused by the pandemic persists, prosecutors, law enforcement, advocacy organizations, and medical facilities can also create public awareness campaigns to ensure that communities are aware of available resources. This type of messaging can highlight alternatives to traditional care as well as raise awareness of alternatives to SAMFEs being conducted in hospitals by using public service messages, social media influence, and proactive engagement with the community. Public awareness campaigns should be made available on multiple platforms (*e.g.,* radio, TV, social media, digital), and be accessible to all communities, including persons with limited English proficiency and persons who have vision or hearing loss.

V. Addressing Legal Challenges When Self-Collected Kits Are Utilized

When self-collected kits have been used, there are ways to mitigate the legal challenges they present, as well as the potential negative psychological and healthcare risks to victims.

Keep Healthcare Paramount

Healthcare professionals who provide telehealth while victims self-administer exams should keep healthcare paramount. Prior to evidence collection, SANEs/SAFEs and other healthcare professionals should identify and address victim injuries—both physical and psychological—and assess for risks of STIs and other threats to the victim's health and safety. There should also be a mechanism to provide victims with immediate access to advocacy services and support that might be needed before, during, and after any self-administered exam.

In a criminal case involving a self-administered kit, the defense may cross-examine the victim in a way that highlights their lack of training to collect evidence or that implies the victim's bias in collecting evidence favorable to the prosecution. For example, the defendant may bring up how the victim collected some, but not all, evidence, or argue that the victim erroneously preserved biological specimens not relevant to the assault. Prosecutors can minimize these attempts in the following ways. First, where applicable, prosecutors should emphasize that many victims availing themselves of self-collected kits are doing so out of a real or perceived absence of other options during the current pandemic or similar circumstance. Second, victims experiencing the trauma of sexual assault are possibly not aware of the nature of holistic support provided by SAMFEs and the need for healthcare intervention, especially when the assault does not leave visible or otherwise detectable injury. By drawing out evidence of the victim's state of mind, particularly in the context of the COVID-19 pandemic, prosecutors can help underscore the victim's credibility and rebut defense arguments that attack the victim's intentions.

Prosecutors responding to challenges to chain of custody should determine whether the applicable jurisdiction's law deems chain of custody to be a threshold issue for admissibility of evidence, or rather, an issue going to the weight of the evidence. In the latter circumstance, the jury would determine the validity and reliability of the self-collected kit evidence as well as how seriously such evidence should weigh into a verdict. In either case, when a self-collected kit has been conducted and there is no longer a window for an in-person SAMFE or a victim does not choose an additional examination, investigators should make every effort to track the preservation and transfer of self-collected kit evidence. This helps ensure that prosecutors are properly informed when responding to defense requests for discovery and motions to suppress this evidence. Like all other areas of trial advocacy, methodically laying out the timeline and the details that are known can help support the testimony of the victim, and any other relevant witnesses, to establish a clear chain of custody.

VI. Conclusion

For professionals weighing the choice between self-collected kits and SAMFEs, it is important to consider the fact that victims of other types of violent crime—such as homicide, shootings, robberies, and burglaries—are never expected to assume the responsibilities of the investigation, including medical evaluation and evidence collection. Victims of sexual violence should not be held to a more onerous standard than victims of any other type of crime. This is not to say that victims of sexual violence or of any other crime should not submit evidence relevant to the case in which they are involved—rather, they should not be burdened with responsibilities normally undertaken by the investigators in conjunction with other professionals.

Furthermore, while the legal and healthcare challenges posed by self-collected kits should not be minimized, it is important to remember that proving sexual assault and achieving justice for victims is not solely dependent on a SAMFE or a self-collected kit. Many victims of sexual violence are not in a position to report or disclose until a time after forensic evidence can be effectively collected, but that does not mean their cases are not viable for prosecution. Regardless of whether a SAMFE or self-collected kit is conducted, a case can be successfully prosecuted by adhering to victim-centered and offender-focused practices. Close collaborations with systems- and community-based advocates can help eliminate barriers to victim participation. Healthcare experts can still be called to educate the jury about relevant medical issues related to sexual violence. And, as with any other case, other experts can be called to help potential jurors understand victim behaviors and responses to the trauma of sexual violence. These, and countless other strategies,[46] can help prosecutors uphold offender accountability and achieve victim-centered justice—absent a sexual asault kit of any type.

Endnotes

1 This article was developed by AEquitas staff, including Jon Kurland, Holly Fuhrman, Patti Powers, Jennifer Long, and Jennifer Newman, with significant contributions from Dr. Julie Valentine, Associate Professor at Brigham Young University School of Nursing, and Dr. Patricia Melton, Dr. Hannah Feeney, and Dr. Kevin Strom from RTI International.

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3 *See, e.g.*, Madison Pauly, *DIY Rape Kit Companies See the Coronavirus as Their Chance for a Comeback*, Mother Jones (April 10, 2020), https://www.motherjones.com/politics/2020/04/diy-remote-rape-kit-coronavirus/; *see also* Evan Sernoffsky, *California counties turning to at-home rape kits among COVID-19 Threat*, Fox KTVU (April 17, 2020), https://www.ktvu.com/news/california-counties-turning-to-at-home-rape-kits-amid-covid-19-threat.

4 *See, e.g.*, Becky Jacobs, *Bill to ban sale of DIY rape kits in Utah stalls after early momentum in Legislature*, Salt Lake Trib. (Feb. 24, 2021), https://www.sltrib.com/news/2021/02/27/bill-ban-sale-diy-rape/; *see also* Press Release, N.Y. State Off. of the Att'y Gen., Attorney General James Orders Sexual Assault Evidence Kit Companies to Cease and Desist Operations (Sept. 12, 2019), https://ag.ny.gov/press-release/2019/attorney-general-james-orders-sexual-assault-evidence-kit-companies-cease-and; *see also* Press Release, Mich. Dep't of the Att'y Gen., AG Nessell Blasts "Me Too" Sexual Assault Kits (Aug. 29, 2019), https://www.michigan.gov/ag/0,4534,7-359-92297_47203-506020--,00.html.

5 *Id.*

6 Press Release, N.Y. State Off. of the Att'y Gen., *supra* note 4; *see also* Press Release, Mich. Dep't of the Att'y Gen., *supra* note 4; *see also* Jacobs, *supra* note 4.

7 *See* Jacobs, *supra* note 4.

8 Sexual Assault Forensic Examiners can be doctors, nurses, or physician assistants who have received some additional education and clinic experience treating survivors. *See* U.S. Dep't of Just. Off. of Violence Against Women, National Training Standards for Sexual Assault Medical Forensic Examiners, Second Edition (Aug. 2018), https://www.justice.gov/ovw/page/file/1090006/download.

9 *See generally* Melissa S. Morabito, Linda M. Williams & April Pattavina, Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Case Attrition in the United States 37 (2019), https://www.ncjrs.gov/pdffiles1/nij/grants/252689.pdf; *see also* Melissa Morabito, April Pattavina, and Linda M. Williams, *It All Just Piles Up: Challenges to Victim Credibility Accumulate to Influence Sexual Assault Case Processing*, 34(15) J. Interpersonal Violence 3151-70 (2019).

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12 *See, e.g.*, *Alison Bowen, Sexual assault victims fear going to ER during a pandemic. New legislation could allow rape kits at health clinics instead*, Chi. Trib. (May 28, 2020), https://www.chicagotribune.com/coronavirus/ct-life-coronavirus-sexual-assault-victims-crime-emergency-rooms-20200528-augpx75yyzcotlhk2ii3zeyh4i-story.html.

13 *See, e.g.*, Assoc. Press, *Missouri hospitals required to offer rape kits,* WPSD Local (May 14, 2020), https://www.wpsdlocal6.com/newsletter_stories/missouri-hospitals-required-to-offer-rape-kits/article_adb8eaa4-9501-11ea-9a0d-8b32258d7d7d.html; *see also* Webinar recording, Dr. Julie Valentine et al., *Impacts of COVID-19: Sexual Assault Forensic Exams* (April 28 2020), https://sakitta.org/webinars/webinar-view.cfm?id=64.

14 Soumya Karlamangla and Melanie Mason, *Thousands of healthcare workers are laid off or furloughed as coronavirus spreads*, L.A. Times (May 2, 2020), https://www.latimes.com/california/story/2020-05-02/coronavirus-california-healthcare-workers-layoffs-furloughs.

15 Univ. of St. Augustine for Health Sci., The 2021 American Nursing Shortage: A Data Study (May 2021), https://www.usa.edu/blog/nursing-shortage/.

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17 U.S. Dep't of Just. Nat'l Inst. of Just., National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach (2017), https://nij.ojp.gov/topics/articles/national-best-practices-sexual-assault-kits-multidisciplinary-approach.

18 *Id.*

19 *Id.* at 24. Best practices allows for SAKs to be collected up to 120 hours after an assault; some states allow for evidence to be collected seven days after an assault.

20 The "healthcare-first" model for SAMFEs, is underscored by laws—and by practices in jurisdictions where laws are not in place—requiring state agencies to cover the payment of anonymous kits (see discussion *infra*) in order to encourage victims who may not be ready to engage the criminal justice system to seek healthcare.

21 AEquitas, Urban Inst., and Just. Mgmt. Inst., Model Response to Sexual Violence for Prosecutors Vol. II: Measuring the Impact 23-29 (2020), https://aequitasresource.org/wp-content/uploads/2020/01/RSVP-Vol.-II-1.10.20.pdf.

22 Sharon Wasco, et al., *A Statewide Evaluation of Services Provided to Rape Survivors*, 19(2) J. Interpersonal Violence 252-63 (March 2004).

23 Rape Recovery Ctr., Open Letter to Legislators on At-Home Kits and Survivors (Sept. 2019) https://www.raperecoverycenter.org/at-home-kits-and-survivors.

24 *See, e.g.*, Or. Admin. R. 137-084-0010; Ga. Code Ann., § 16-6-1(c); Ala. Admin. Code r. 262-X-11-.01; Cal. Health & Safety Code § 1491, Va. Code Ann. § 19.2-165.1, Or. Rev. Stat. § 147.397 (2011); N.D. Cent. Code §12.1-34-07; N.C. Gen. Stat. Ann. § 143B-480.1.

25 *See, e.g.*, Cal. Health & Safety Code § 1491, Va. Code Ann. § 19.2-165.1; 940 Mass. Code Regs. 14.06.

26 Michelle Andrews, *Years After Sexual Assault, Survivors Hounded To Pay Bills for The Rape Kit Exam*, NPR (July 10, 2019), https://www.npr.org/sections/health-shots/2019/07/10/739925186/years-after-sexual-assault-survivors-hounded-to-pay-bills-for-the-rape-kit-exam.

27 34 U.S.C.A. § 10449.

28 Registered nurses must take a 40-hour Sexual Assault Examiner class followed by an average of 40 hours of clinical training in order to become a SANE. The International Association of Forensic Nurses emphasizes that these requirements represent the minimum experience necessary for a SANE, and certifications and highly encourages ongoing training and certifications. *See* Int'l Ass'n of Forensic Nurses, Sexual Assault Nurse Examiner (SANE) Education Guidelines 10 (2018), https://cdn.ymaws.com/www.forensicnurses.org/resource/resmgr/education/2018_sane_edguidelines.pdf.

29 Jeffrey S. Jones et al., *Assailants' Sexual Dysfunction During Rape: Prevalence and Relationship to Genital Trauma in Female Victims*, 38(4) J. Emerg. Med. (2010).

30 Malene Hilden, Berit Schei, & Katrine Sidenius, *Genitoanal Injury in Adult Female Victims of Sexual Assault*, 154 Forensic Sci. Int'l 200 (2005).

31 When there is no physical injury, a SANE can educate the victim—and eventually jurors—why this is not expected given the history of the assault and is not dispositive of whether a rape occurred; the former can be essential in helping survivors manage trauma after an incident of sexual assult, and the latter may aid judges and juries in managing assumptions about what to look for in making a determination on the facts of a given case.

32 In other circumstances, it may be impossible for the defense to examine the environment where the DIY kit was administered if the victim no longer resides in the same home or has made substantial changes to the home.

33 F.R.E 803(4) or the state equivalent.

34 Law enforcement professionals are discouraged from being present during a SAMFE in part because their presence can open doors to defense arguments that the SAMFE is being conducted primarily for forensic—as opposed to healthcare—purposes. In such a case, defense could argue that victim statements to a healthcare provider during a SAMFE do not fall under the medical hearsay exception. Law enforcement are also discouraged from attending SAMFEs in order to protect victim privacy and to avoid exacerbation of the victim's trauma.

35 Victims who self-administer exams with self-collected kits may disclose their assault to family or friends. Sometimes, these disclosures may be admitted into evidence if they fall under an applicable hearsay exception—for example, a present sense impression (F.R.E. 803(1) or state equivalent) or an excited utterance (F.R.E. 803(2) or state equivalent). To discuss methods for admitting these disclosures, contact AEquitas at info@aequitasresource.org.

36 One self-collected kit company, Leda Health, states on its website that it has "partnered with accredited labs" and gives victims the option of sending their completed self-collected kits directly to the lab, without first submitting to law enforcement. See *About our lab,* LedaHealth.com, https://www.leda.co/lab.

37 *Frequently Asked Questions on CODIS and NDIS (2021)*, FBI.gov, https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet.

38 Written correspondence with Amy Jeanguenat, Principal Consultant, Mindgen, LLC.

39 *Id.*

40 *Id.*

41 *See e.g.,* W. Va. Found. for Rape Info. & Serv., *West Virginia Regional Mobile Sane Program*, https://www.fris.org/SpecialProjects/MobileSANE.html.

42 Wendy A. Walsh et al., *Using Telehealth for Sexual Assault Forensic Examinations: A Process Evaluation of a National Pilot Project*, 15(3) J. Forensic Nursing 152-62 (2019).

43 Professionals should take special care to inform victims of their rights when undergoing Jane Doe exams, including the right to be notified prior to the destruction of SAK evidence. For an analysis of state laws on the retention of sexual assault kit evidence, contact AEquitas at info@aequitasresource.org.

44 2 U.S.C. § 3796gg-4(d).

45 *See, e.g.*, Ga. Code Ann., § 17-5-71(b) (requiring law enforcement agencies to preserve anonymous kits for at least one year, while kits accompanying a report to law enforcement must be maintained for up to 50 years). Every sexual assault crime in Georgia has a statute of limitations longer than the one-year period law enforcement are required to preserve anonymous SAKs. *See* Ga. Code Ann., §§ 17-3-1, 17-3-2, 17-3-2.1.

46 *See generally* AEquitas, Urban Inst., and Just. Mgmt. Inst., Model Response to Sexual Violence for Prosecutors Vol. I: An Invitation to Lead (2020), https://aequitasresource.org/wp-content/uploads/2020/01/RSVP-Vol.-I-1.8.20.pdf.

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