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Bill Analysis
Legislative Service Commission

H.B. 560

127th General Assembly
(As Introduced)

**Reps. D. Stewart, Skindell, Foley, R. Hagan, Strahorn, Boyd, Brady, Letson,
Yuko, Slesnick, Sykes, Celeste**

BILL SUMMARY

- Establishes a standard of care for each hospital with organized emergency services to meet when caring for victims of sexual assault, and specifies that the types of care provided by the hospital must include providing information on emergency contraception, offering to provide emergency contraception, assessing the risk of sexually transmitted diseases, and counseling on disease treatment.
- Requires a hospital to comply with the standard of care for sexual assault victims without regard to the ability of a particular victim to pay for the care provided.
- Requires hospitals to discuss and offer prophylactic treatment to victims of sexual assault who are minors, and permits a victim who is a minor to consent to an examination without requiring the hospital to notify the minor's parent or guardian.
- Authorizes an individual to file a complaint with the Department of Health if the individual believes a hospital has failed to comply with the bill's standard of care for victims of sexual assault.
- Prohibits any law enforcement officer, state or local government official, or agent of the officer or official from asking or requiring a victim of certain alleged sex offenses to submit to a polygraph examination or from failing or refusing to investigate an alleged violation because the victim refused to submit to a polygraph examination.
- Prohibits disclosing in any court proceeding that a sex offense victim refused to submit to a polygraph examination.

- Designates the bill's provisions as the "Compassionate Assistance for Rape Emergency Act."

CONTENT AND OPERATION

Hospital emergency services for victims of sexual offenses

Current law

(R.C. 2907.29)

Under current law, all hospitals with organized emergency services must ensure that a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife is on call at all times to examine reported victims of the following sexual offenses: rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, and sexual imposition. Upon the request of a peace officer, a prosecuting attorney, or the victim, and with the victim's consent, the health professional on call must examine the victim for the purposes of gathering physical evidence and complete any written documentation of the physical examination. Victims must also be informed of available venereal disease, pregnancy, medical, and psychiatric services.

A minor is authorized to consent to the examination as a victim of a sexual offense, regardless of any other provision of law. The consent is not subject to disaffirmance because of minority, and the consent of the minor's parent, parents, or guardian is not required, but the hospital must give written notice to the parent, parents, or guardian that an examination has taken place. The parent, parents, or guardian are not liable for payment for any services provided to the minor without their consent.

The bill

(R.C. 3727.50 and 3727.501(A))

For Ohio hospitals that offer organized emergency services, the bill establishes a standard of care pertaining to victims of sexual assault or individuals believed to be such victims.¹ "Sexual assault" is defined by the bill as rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, and sexual

¹ An amendment may be necessary to coordinate the bill's standard of care provisions with the provisions of current law pertaining to examinations of sexual assault victims conducted for purposes of gathering physical evidence for possible prosecution.

imposition without regard to a victim's ability to pay, a hospital is required by the bill to provide the following types of care to sexual assault victims:

Emergency contraception information: The hospital must provide the victim with medically and factually accurate, unbiased, and clear and concise written and oral information about emergency contraception.² The bill specifies that the information must explain the following:

--That emergency contraception has been approved by the United States Food and Drug Administration for use by women of all ages with a prescription and as an over-the-counter medication for women age 18 or older as a safe and effective means to prevent pregnancy after unprotected sexual intercourse or contraceptive failure if taken in a timely manner;

--That emergency contraception is more effective the sooner it is taken following unprotected sexual intercourse or contraceptive failure;

--That emergency contraception does not cause an abortion and studies have shown that it does not interrupt an established pregnancy.

² Under the bill, "emergency contraception" means any drug or device intended to prevent pregnancy after unprotected sexual intercourse or contraceptive failure (R.C. 3727.50).

"Drug" means an article (1) recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them, (2) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, (3) intended to affect the structure or any function of the body of man or other animals (other than food), (4) intended for use as a component of any article specified in (1), (2), or (3) (21 U.S.C. 321(g)(1)).

"Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is (1) recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them, (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (3) intended to affect the structure or any function of the body of man or other animals. The device must not achieve its primary intended purposes through chemical action within or on the body of man or other animals and must not be dependent upon being metabolized for the achievement of its primary intended purposes. (21 U.S.C. 321(h).)

Offer to provide emergency contraception: The hospital must promptly offer the victim emergency contraception and provide the emergency contraception if the victim accepts the offer.

Assessment of risk of sexually transmitted disease: The hospital must promptly provide the victim with an assessment of the victim's risk of contracting a sexually transmitted disease. The assessment is to be conducted by a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife. The assessment is to be based on the following:

--The available information regarding the sexual assault;

--The established standards of risk assessment, including consideration of any recommendations established by the United States Centers for Disease Control and Prevention (CDC), peer-reviewed clinical studies, and appropriate research using invitro and nonhuman primate models of infection;

Counseling on disease treatment and follow-up care: The hospital must provide the victim with counseling concerning sexually transmitted diseases and follow-up care. The counseling is to be provided in clear and concise language and conducted by a physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife. Specifically, the counseling must include information concerning the following:

--The significantly prevalent sexually transmitted diseases for which effective post-exposure treatment exists and for which deferral of treatment would either significantly reduce treatment efficacy or pose substantial risk to the victim's health, including for adults, the diseases for which prophylactic treatment is recommended based on guidelines from the CDC;

--The bill's requirement that treatment for diseases be provided to the victim on request, regardless of the victim's ability to pay for the treatment;³

--The physical and mental health benefits of seeking follow-up care from the victim's primary care physician or from another medical care provider capable of providing follow-up care to victims of sexual assault;

--The local organizations and relevant health providers capable of providing either follow-up medical care or other health services to victims of sexual assault.

³ An amendment may be necessary to clarify this provision since the bill does not expressly require a hospital to provide a sexual assault victim with treatment for sexually transmitted diseases, unless the victim is a minor.

Victims who are minors

(R.C. 3727.501(B) and (C))

For victims of sexual assault who are minors, the bill requires hospitals to discuss and offer prophylactic treatment for sexually transmitted diseases, including gonorrhea, chlamydia, syphilis, and hepatitis. The bill specifies that the treatment and testing of minors is to be at the discretion of the treating physician and in accordance with CDC guidelines.

In a manner similar to the existing law under which sexual assault victims who are minors may consent to an examination that is conducted to gather physical evidence, the bill authorizes a minor to consent to an examination conducted by a hospital under the bill's provisions.⁴ Specifically, the bill permits the minor to consent to the examination, regardless of any other provision of law, and the consent is not subject to disaffirmance because of minority. The consent of the minor's parent, parents, or guardian is not required for the examination, but unlike existing law, the bill does not require the hospital to notify a parent or guardian that services have been provided to the minor. As under existing law, the bill specifies that the parent or guardian is not liable for payment for any services provided to the minor without the consent of the parent or guardian.

Effect of the hospital standard of care

(R.C. 2907.28 (not in the bill) and 3727.501(D))

The bill specifies that its provisions on the standard of care in hospitals for victims of sexual assault are not to be construed to mean any of the following:

- (1) That a hospital is required to provide treatment if the treatment goes against recommendations established by the CDC;
- (2) That a victim of sexual assault is required to submit to testing or treatment;
- (3) That a hospital is prohibited from seeking reimbursement for the costs of services provided from the victim's health insurance or Medicaid, if applicable. The bill specifies, however, that the hospital continues to be subject to the existing prohibition on billing a victim or the victim's insurer for costs incurred in

⁴ An amendment may be necessary to (1) coordinate the bill's provisions with existing law regarding a minor's authority to consent to care and (2) clarify the types of care that the minor may receive since the bill does not expressly require a hospital to provide examinations.

performing a medical examination for purposes of gathering physical evidence for possible prosecution. Payments for such examinations are made by the Attorney General through the state treasury's Reparations Fund.

Complaints, fines, and injunctions

(R.C. 3727.502)

In addition to other remedies under common law, the bill authorizes an individual to file a complaint with the Department of Health if the individual believes a hospital has failed to comply with the bill's standard of care in hospitals for victims of sexual assault. The Department must investigate the complaint in a timely manner.

If the Department determines that a violation has occurred, it must impose a civil penalty of not less than \$10,000 for each violation. If the hospital has previously committed a violation, the Department may ask the Attorney General to bring an action for injunctive relief. On filing an appropriate petition in a court of competent jurisdiction, the court must conduct a hearing. If it is demonstrated in the proceedings that the hospital failed to provide the care or services, the court must grant a temporary or permanent injunction enjoining the hospital's operation.

Polygraph examination of sexual offense victims

(R.C. 2907.10 (not in the bill) and 2907.12)

Current law prohibits certain officials from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination under certain circumstances. The bill creates a similar prohibition. The chart below explains the differences between current law and the bill.⁵

TOPIC	CURRENT LAW (R.C. 2907.10)	THE BILL (R.C. 2907.12)
Prohibitions	Prohibits certain officials from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination ⁶ as a	Same as current law, except that the bill specifies that the victim of an alleged sexual offense is not required to submit to a

⁵ An amendment may be necessary to coordinate the bill with current law.

⁶ "Polygraph examination" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question an individual for the purpose of determining the individual's truthfulness (R.C. 2907.10(B)(2)).

TOPIC	CURRENT LAW (R.C. 2907.10)	THE BILL (R.C. 2907.12)
	<p>condition to the investigation of the alleged sex offense.</p> <p>Prohibits the refusal of the victim of an alleged sex offense to submit to a polygraph examination from being used to prevent the investigation of the alleged sex offense, the filing of criminal charges with respect to the alleged sex offense, or the prosecution of the alleged perpetrator of the alleged sex offense.</p> <p>No provision.</p>	<p>polygraph examination <i>or other truth telling device</i>; also specifies that submission to the examination is not a condition the investigation <i>and prosecution</i> of the offense.</p> <p>Prohibits certain officials from failing or refusing to investigate or prosecute the alleged offense because the victim refused to submit to a polygraph or truth telling device examination.</p> <p>Prohibits commenting on the failure of a victim to submit to a polygraph or similar examination at trial or in any court proceeding.</p>
Officials subject to current law/the bill	Peace officers, prosecutors, or public officials.	Law enforcement officers, state or local government officials, or agents of the officers or officials.
Sex offenses relating to prohibitions	Defines "sex offense" as rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, and public indecency.	Same as current law.

Short title

(Section 2)

The bill specifies that its provisions are to be known as the "Compassionate Assistance for Rape Emergencies Act."

HISTORY

ACTION	DATE
Introduced	05-15-08

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