



**House
Legislative
Analysis
Section**

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SEXUAL ASSAULT EVIDENCE KITS

House Bill 4623 as introduced
First Analysis (6-3-87)

Sponsor: Rep. Nelson W. Saunders
Committee: Public Health

THE APPARENT PROBLEM:

Since 1977, the Michigan State Police have been making available to hospitals sexual assault evidence kits in an attempt to standardize the methods used in gathering, handling, and shipping evidence collected in cases of alleged rape or other sexual assaults. Although most hospitals reportedly use these kits provided by the state police, some hospitals have refused to do so. As a result, efforts to prosecute sexual assault cases sometimes have failed because of the absence or poor quality of the medical evidence gathered in the hospitals not using such kits. In order to ensure that the best possible evidence for prosecution in sexual assault cases is consistently obtained legislation has been proposed that would mandate the use of the state police kits by hospitals.

THE CONTENT OF THE BILL:

The bill would define "sexual assault evidence kit" as a set of equipment and written procedures approved by the Department of State Police and designed to be administered to collect the kind of evidence offered by the Forensic Science Division of the Department of State Police in the prosecution of criminal sexual conduct cases.

The bill would require whenever someone told a hospital staff member that she or he had been sexually assaulted within the previous 24 hours, the staff member would have to inform the patient of the availability of a sexual assault evidence kit and, with the patient's consent, perform the procedures required by the kit.

The bill also would specify that the administration of a sexual assault kit would not be a medical procedure.

(Note: The bill would amend Article 17 of the Public Health Code, which deals with health facilities and agencies. That article contains a general penalty provision for individuals (section 20199) that makes a violation of the article a misdemeanor punishable by a fine of not more than \$1,000 per day of violation. In addition, section 20165 provides for the possible revocation of the license of a facility that violates the article or rules promulgated under the article.)

MCL 333.21527

BACKGROUND INFORMATION:

The Michigan State Police have developed and distributed a standardized evidence kit to gather the information needed for prosecution of criminal sexual assault cases. The kits are available from the Michigan State Police at no cost; the budget for the department appropriates funds for the kits. The kit was developed in 1975 by the University of Michigan Medical Center and Wayne County General Hospital. Following field testing, the kit was modified and input was received from prosecutors, police officers, rape counselors, and physicians for its further development and implementation. The kit has received national attention and is being considered as a model for other jurisdictions.

The kit consists of an envelope which contains slides, swabs, a comb, a set of forms detailing questions designed to establish the evidence necessary for a rape prosecution, and a lock-seal envelope.

House Bill 4623 is similar to the legislation (House Bill 4210) which was reported out of the House Public Health Committee and passed by the Michigan House of Representatives in the last legislative session. The bill was not acted upon by the Senate.

FISCAL IMPLICATIONS:

The State Police initially put together the kits with volunteer help at a cost of about \$3.00 each, but now are having the kits put together at a cost of about \$4.75 each. Last year, the department distributed 3,000 kits, an increase from the previous year, at a total cost to the department of \$14,670. The department estimates that passage of the bill would mean that an additional 1,500 kits would have to be made and distributed. Funding for this program has been through a \$10,000 allocation to the Forensic Science Division of the department, so passage of the bill would mean that this amount would have to be doubled in order to meet the bill's requirements. (6-1-87)

ARGUMENTS:

For:

The bill would require all hospitals to use a standardized sexual assault evidence kit approved by the state police. Most hospitals already use these kits, but some do not. It is crucial to the successful prosecution of sexual assault cases that medical evidence be collected competently and completely and labeled properly and that the integrity of the evidence be maintained from the time of collection until it reaches a police laboratory. The state police, who handle the bulk of the evidence for sexual assault cases statewide, say experience shows that the quality of evidence suffers when procedures other than those prescribed by the kit are employed. Sometimes, for example, samples are sent to the police lab in inadequate containers so that they are moldy when they arrive, or the samples are labeled and documented so poorly that they would be inadmissible in court. Mandating the use of a standardized evidence kit would encourage proper statewide evidence collection procedures in sexual assault cases by examining hospital staff. The kit would help insure that the quality of evidence gathered was high and would contribute to subsequent successful prosecutions of the responsible criminal offenders.

For:

Although the kits are available at no cost from the Michigan State Police, not all hospitals have availed themselves of this free service. Some have explicitly refused such kits, while some of those accepting such kits nevertheless still do not advise sexual assault victims of the availability of the kits. In addition, there also are pseudo-kits being

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offered by vendors or produced in-house by hospitals, the use of which encourages and promotes the non-standardized collection of evidence. Passage of the bill would ensure that all hospitals not only would have the same, standardized kits but also routinely would make them available to sexual assault victims.

Against:

Although input was received from physicians in developing the kit, some still feel that it requires too much time and that evidence gathering does not come within the purview of hospital personnel.

Response: Given the physical and emotional trauma associated with criminal sexual assault, it seems incredible that a medical professional would object to taking the time to properly gather the medical evidence necessary to prosecute such cases. But it also would seem that the physician's professional responsibility to assure the well-being of the patient would itself suffice to motivate physicians to take the time to adequately administer to sexual assault victims.

In the second place, however, like it or not, physicians are necessary witnesses in the prosecution of sexual assault crimes. Lack of medical evidence in the prosecution of such crimes can result in reasonable doubt among juries and dismissals of these cases. Without the use of the kit, sloppy procedures can result in contaminated specimens, poorly or improperly labeled containers, and a lack of evidence of documentation.

Finally, even though the kit is an evidence-gathering kit, the sexual assault victim also is a patient undergoing medical treatment, and the evidence that is being gathered is medical evidence.

Against:

If the state is going to foist yet another requirement on physicians, the least it can do is to protect physicians from malpractice lawsuits should the physician fail to perform the procedures properly, perhaps by including a provision to the effect that physicians could not be sued if they had made a good faith effort in administering the sexual assault evidence kit. After all, administering the kit is an evidence-gathering procedure, not a medical procedure. Improper administration should not be a violation of the medical standard of care.

Response: The bill partially addresses the concern that physicians could be sued for malpractice if they did not perform the procedures required by the bill by stipulating that these procedures are not to be considered medical procedures.

Reply: Since some of the procedures performed on sexual assault victims are medical procedures (such as pelvic exams), the force of the stipulation that these procedures are not medical procedures is unclear. In addition, some people object to the legislature, and not the medical profession, deciding what is and is not a medical procedure.

Against:

Since most hospitals already are doing this voluntarily, this bill is yet another example state coercion and unnecessary governmental interference.

Response: The reason the bill is needed is because not all hospitals are collecting the necessary medical evidence in sexual assault cases, and not all of them are doing it properly even when they do attempt to collect evidence. It is callous and unnecessarily cruel to subject sexual assault victims to the possibility that, should they wish to press charges against their assailants, their ability to successfully do so depends in part on the whim of the hospital where

they happen to go for treatment following such an assault. The bill is needed to assure that justice is available to all citizens, not just those lucky enough to go to hospitals who voluntarily take this civic responsibility upon themselves.

SUGGESTED AMENDMENTS:

The Sexual Assault Information Network of Michigan suggests that the mandate provided in the bill be extended to include physicians seeing victims of criminal sexual assault in medical settings other than hospitals—including student health centers, women's health centers, public health clinics, and the private physician's office. Victims do not always decide to report their assaults to the police and may not go to a hospital emergency room, and requiring the use of such kits in other medical settings would increase the likelihood that more victims of criminal sexual assault would benefit from the bill.

POSITIONS:

The Department of State Police supports the bill. (6-1-87)

The Office of Criminal Justice in the Department of Management and Budget supports the bill. (5-29-87)

The Sexual Assault Information Network of Michigan supports the bill. (5-28-87)