

2019 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 81

BY REPRESENTATIVE DUPLESSIS

A CONCURRENT RESOLUTION

To urge and request the Louisiana Department of Health, in collaboration with the Louisiana Sexual Assault Oversight Commission, to study the investigation, treatment, and evaluation of victims of sexual assault, specifically forensic examinations, and to develop guidelines for the 2020 Regular Session of the Louisiana Legislature.

WHEREAS, there is a need to provide guidelines for the investigation, treatment, evaluation, and the collection of evidence of victims of sexual assault; and

WHEREAS, every patient has a right to make informed decisions about their care including participation in or denial of any or all portions of the sexual assault evidence collection kit; and

WHEREAS, there may be situations where there is a high degree of suspicion that a sexual assault has occurred and the patient is unable to provide informed consent due to unconsciousness for reasons that may be permanent or temporary with causes such as head trauma or psychoactive substances; and

WHEREAS, there is a need to establish guidelines that are targeted to preserve all possible evidence without jeopardizing the medical and psychological care and stabilization of the patient which is a paramount priority; and

WHEREAS, such guidelines should be targeted to initiate immediate, compassionate, knowledgeable, and sensitive care in a private environment for patients who describe being sexually assaulted; and

WHEREAS, when treating unconscious patients believed to be victims of sexual assault, forensic examiners are faced with the choice between conducting an examination on a patient who cannot legally consent or losing potential evidence before the patient regains the ability to consent; and

WHEREAS, existing law on informed consent in Louisiana does not explicitly state whether a forensic medical examination is included.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana Department of Health (department), in collaboration with the Louisiana Sexual Assault Oversight Commission (commission), to study the investigation, treatment, and evaluation of victims of sexual assault, specifically forensic examinations, and to develop guidelines for the 2020 Regular Session of the Louisiana Legislature.

BE IT FURTHER RESOLVED that the department, in collaboration with the commission, shall develop recommendations on any policy changes, which shall be submitted to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare not later than sixty days prior to the convening of the 2020 Regular Session of the Louisiana Legislature.

BE IT FURTHER RESOLVED that the department, in collaboration with the commission, shall study and consider guidelines that address:

(1) The application of forensic medical exams and additional forensic services to all alleged sex crime victims who apply for forensic medical exams and additional forensic services in relation to injuries or trauma resulting from the alleged sex crime.

(2) That the provision of services may not be dependent on a victim's reporting to or cooperating with law enforcement.

(3) What crimes are considered sex crimes.

(4) The care and services sexual assault patients should receive.

(5) The consent required for forensic medical exams and additional forensic services.

(6) The requirements to consent for such examinations and the appropriateness of implied consent in situations of unconsciousness or other mental incapacity and inability to give consent.

(7) The choice that patients may decline evidentiary exam care without effect to other care and treatment provided.

(8) Which providers may conduct a forensic medical examination without the consent of the person who is the subject of the examination, or the consent of another person authorized to give consent when certain conditions are met.

BE IT FURTHER RESOLVED that the department, in collaboration with the commission, develop guidelines for the care and treatment of patients under the age of majority reporting for post-sexual assault that address the following:

(1) Special protocols necessary to treat adolescent patients such as notifying the Department of Children and Family Services when a patient is under the age of majority as mandated by law.

(2) The appropriate procedures for care of patients under the age of majority.

(3) The duties of a provider including but not limited to:

(a) Requiring the victim to sign a form that notifies the victim of his or her rights.

(b) Providing a copy of the signed form to the victim.

(c) Informing law enforcement that a sample is available.

BE IT FURTHER RESOLVED that such guidelines discuss issues surrounding the collection of evidence, including but not limited to:

(1) Specimen collection.

(2) Evidence exam.

(3) Sealing evidence.

(4) Evidence collection kit.

(5) Storage of evidence and chain of custody including but not limited to the storage and transfer of photographs depicting the victim's breasts, buttocks, or genitalia.

(6) Documentation.

(7) Medications.

(8) Patient release.

BE IT FURTHER RESOLVED that such guidelines discuss the duty of law enforcement to transport a sample to secured storage and the time frame of such; the circumstances under which such evidence may be destroyed; and any notice required to inform the victim that such evidence may be destroyed.

BE IT FURTHER RESOLVED that such guidelines discuss the payment or reimbursement of forensic medical exams and the conditions that must be met in order to receive such reimbursement.

BE IT FURTHER RESOLVED that such guidelines discuss what services, if any, will be provided without charge.

BE IT FURTHER RESOLVED that such guidelines identify stakeholders needed to assist in the development and operation of forensic services.

BE IT FURTHER RESOLVED that such guidelines discuss the necessity of a sexual assault response team; under whose authority such teams shall be appointed and assembled; the mission of such teams; and the duties of such teams.

BE IT FURTHER RESOLVED that the department, in collaboration with the commission, discuss any other guidelines related to the investigation, treatment, and evaluation of victims of sexual assault, specifically forensic examinations; consent of such victims and when implied consent is appropriate and deemed necessary; and services and treatment of victims under the age of majority.

BE IT FURTHER RESOLVED that the Louisiana Department of Health shall submit its findings and recommendations in the form of a written report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare not later than sixty days prior to the 2020 Regular Session of the Louisiana Legislature.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the secretary of the Louisiana Department of Health and the attorney general.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE