

ACT 27

H.B. NO. 411

A Bill for an Act Relating to Hospital Emergency Compassionate Care for Sexual Assault Victims.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Rape is the most under-reported violent crime. In the aftermath of rape, victims find themselves dealing with a host of reproductive and sexual health issues. The physical and emotional trauma suffered by victims is compounded by the possibility of an unwanted pregnancy as a result of the rape. The average rate of pregnancy resulting from rape is between five and eight per cent with an estimated thirty-two thousand rape-related pregnancies occurring each year in the United States. However, the Department of Justice National Crime Victimization Surveys indicate that over half of all rapes are not reported to the police.

Emergency contraception is not an abortion pill, nor does it cause any abortive process to take place. Emergency contraception is a safe and effective means of preventing pregnancy after a sexual assault. In fact, the provision of emergency contraception to sexual assault victims is the most widely recognized and accepted standard of care for sexual assault victims. The American Medical Association and the American College of Obstetricians and Gynecologists have stated that sexual assault victims should be informed about and provided emergency contraception. However, a 2010 survey of emergency facilities in Hawaii revealed a lack of clear policy on the issue.

The purpose of this Act is to ensure that sexual assault victims are provided information about and access to emergency contraception when receiving emergency medical care at Hawaii's hospitals.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . COMPASSIONATE CARE FOR SEXUAL ASSAULT VICTIMS

§321-A Definitions. As used in this part, unless the context otherwise requires:

“Compulsion” means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.

“Department” means the department of health unless otherwise specified in this part.

“Emergency contraception” means one or more prescription drugs used separately or in combination that are:

- (1) Used postcoitally within a recommended amount of time;
- (2) Used for the purposes of preventing pregnancy; and
- (3) Approved by the United States Food and Drug Administration.

“Hospital” means any institution with an organized medical staff, regulated under sections 321-11(10) and 321-14.5, that admits patients for inpatient care, diagnosis, observation, and treatment.

“Sexual assault” means vaginal penetration without the person’s consent, by compulsion or strong compulsion.

“Sexual assault victim” means a person who alleges or is alleged to have been sexually assaulted and as a result of the sexual assault presents as a patient at a hospital.

“Strong compulsion” means the use of or attempt to use one or more of the following to overcome a person:

- (1) A threat, express or implied, that places a person in fear of bodily injury to the person or another person, or in fear that the person or another person will be kidnapped;
- (2) A dangerous instrument; or
- (3) Physical force.

§321-B Compassionate care. (a) Any hospital at which a female sexual assault victim presents for emergency services shall:

- (1) Provide any female sexual assault victim with medically and factually accurate and unbiased written and oral information about emergency contraception;
- (2) Orally inform each female sexual assault victim of the option to receive emergency contraception at the hospital;
- (3) When medically indicated, offer emergency contraception to each female sexual assault victim;
- (4) Dispense a complete course of emergency contraception to each female sexual assault victim who accepts or requests it; and
- (5) Ensure that providers who may prescribe or administer emergency contraception shall be trained to provide a female sexual assault victim with medically and factually accurate and unbiased written and oral information about emergency contraception and sexual assault treatment options and access to emergency contraception.

(b) No hospital shall deny a female sexual assault victim emergency contraception based on a refusal to undergo a forensic examination or a refusal to report the alleged sexual assault to law enforcement.

(c) No hospital shall be required to dispense emergency contraception to a female sexual assault victim who has been determined to be pregnant through the administration by the hospital staff of a pregnancy test approved by the United States Food and Drug Administration.

(d) If private insurance is not or cannot be utilized for payment, the cost of any emergency contraception dispensed pursuant to this part shall be paid by the department of human services.

§321-C Enforcement; administrative penalties. (a) The department may set, charge, and collect administrative fines and recover administrative fees and costs, including attorney's fees and costs, resulting from a violation of this part or any rule adopted under this part.

(b) The department shall:

(1) Establish a policy and procedures to monitor compliance with this part, including a complaint process;

(2) Respond to any complaint received by the department concerning noncompliance by a hospital with the requirements of section 321-B; and

(3) Provide written notice to any hospital that the department determines is in violation of this part or any rule adopted under this part, including notice of an opportunity to take corrective action.

(c) Any hospital that violates this part or any rule adopted under this part after receiving written notice and an opportunity to take corrective action pursuant to subsection (b)(3) shall be fined not more than \$1,000 for each separate offense.

(d) All enforcement processes shall comply with section 321-20.

(e) Sanctions under this section shall not be issued for violations occurring before July 1, 2014.

§321-D Rules. The department may adopt rules under chapter 91 for the purposes of this part.”

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 22, 2013.)