

**Michigan House of Representatives**  
**Health Policy**

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To: Members of the House Health Policy Committee  
Chair: Julie Rogers

From: Dr. Kelly Berishaj, DNP, RN, ACNS-BC, AFN-C, SANE-A, DF-AFN  
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Subject: Senate Bills 44(S-2) and 45

Date: February 13, 2024

Good afternoon Chairwoman Rogers, and other members of the House Health Policy Committee. I appreciate the opportunity to testify before this committee in regards to Senate Bills 44(S-2) and 45. My name is Kelly Berishaj and I am the Forensic Nursing Program Director at Oakland University (OU). I am also a forensic nurse which means that I have received specialized education to conduct medical-forensic exams for patients following sexual assault. At OU, I oversee the academic program and provide education to nurses pursuing their graduate degree in forensic nursing. We collaborate with Turning Point of Macomb County, a community-based agency that empowers survivors of domestic violence, sexual violence, and human trafficking through comprehensive services and resources while advocating for community action to end oppression and violence.

As part of an academic-practice partnership, our organizations commend your efforts in bringing forward legislation to help protect those who would otherwise be unable to advocate for themselves from having invasive examinations conducted without their consent and solely for the purposes of medical training.

The first three conditions outlined in the bill that must be met prior to conducting an invasive exam require informed consent and/or the need for emergency diagnosis or treatment. **These conditions are in-alignment with the Universal Declaration of Human Rights<sup>1</sup> as well as Healthcare Ethics.<sup>2</sup>** The fourth condition, "a court had ordered the performance of the invasive bodily examination for the purposes of collecting evidence", falls outside these principles as there is no medical indication for such a procedure and informed consent has not been obtained. **For this reason, we ask to strike the language "A court has ordered the performance of the invasive bodily examination for the purposes of collecting evidence" section 2(d).**

**Informed consent to medical treatment is fundamental from an ethical and legal perspective<sup>3</sup>.**

Informed consent means that the patient, or their legal surrogate, has received information from the clinician who will be performing the procedure. They understand the purpose of the procedure, have had the opportunity to ask questions, hear alternatives, and learn about benefits and potential risks. **Only then, after they are informed, can consent be obtained.<sup>3</sup>**

An invasive bodily examination requires informed consent because **there are inherent risks; physically, psychologically, and legally**. As a forensic nurse, I have received specialized education and training in conducting a medical-forensic exam for patients following sexual assault, this includes invasive bodily examinations with specimen collection that holds potential evidentiary value. Unfortunately, this education is not part of routine healthcare provider curriculum. Without proper training, there is an increased risk of harm to the patient, including physical injury to genital tissue, pain, and possible dysfunction and psychological injury, such as anxiety, depression, and/or PTSD. Further, lack of provider training related to the collection of samples with evidentiary value could result in improper collection or cross-contamination leading to a miscarriage of justice.

Despite a forensic nurse having specialized education to conduct medical-forensic exams, we are ethically and legally only allowed to conduct this exam when **two conditions are met: 1) the patient's history dictates that an exam is warranted, and 2) informed consent is obtained from the patient**. Conducting an invasive exam on an unconscious patient who is unable to provide a history, has not given consent, and is receiving the exam solely for the purpose of collecting "evidence" does not align with ethical and legal practice, and in fact **constitutes assault**.

It is of great concern that a court, without a medical foundation, could "order" a forensic nurse or other healthcare provider to perform an invasive exam on an unconscious patient strictly for the purposes of collecting evidence. In addition to the inherent risks just described, **it would be tantamount to treating this victim as a perpetrator**.

When there is no medical rationale, there is no indication to consult a healthcare provider, and in these instances, the clinician would be functioning as an extension of law enforcement, not as a healthcare provider. When healthcare providers do not practice within their scope, it is considered malpractice. Additionally, we lose our ability to testify within the medical exception to hearsay.

In cases where forensic nurses do collect samples of potential evidentiary value, after obtaining patient consent and in alignment with the patient's history, it is important to note that legal justice is not always an outcome. Historically, a large portion of persons who have been sexually assaulted do not report their assault, and if they do, they may choose to not have a medical-forensic exam, evidence collected, or to release their evidence to law enforcement. In 2022 only about 21% of victims reported their sexual assault to law enforcement.<sup>4</sup> Thus collecting samples from an unconscious patient who may or may not have been assaulted, and simply for the pursuit of justice, neglects the individual's right to determine what happens to their body.

Research indicates the evidence may be collected **outside of the 120 hour timeframe** followed in Michigan. In fact, evidence may be viable for **up to 7-10 days in some cases**.<sup>5,6</sup> This allows for additional time to locate the patient's next of kin or seek guardianship to ensure that someone is making decisions in the best interest of the patient when they are unable to do so for themselves.

It is evident that the intent of Senate Bill 44 is meant to protect patient autonomy. This would be achieved by eliminating the condition in which a court can order an invasive bodily examination without a medical purpose on an unconscious patient.

Thank you for the time to address the committee, and I would be happy to answer any questions.

Sincerely,

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Forensic Nursing Program Director, Oakland University School of Nursing

### References

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