

# House Concurrent Resolution 81 of the 2019 Regular Session

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## Executive Summary

Sexual violence is one of the most severe and complicated public health issues facing the world. The CDC defines sexual violence as “sexual activity when consent is not obtained or not freely given.”<sup>1</sup> The statistics surrounding sexual violence in our country are staggering and unforgiving. It has been reported that on average 433,648 Americans over the age of 12 years old are sexually assaulted each year.<sup>2</sup> Although hundreds of thousands of people are victims of sexual violence each year, only 230 per 1,000 victims will report the incident to the police.<sup>3</sup> Out of those 230 reported incidences, only 46 will lead to arrest, and only 4.6 per 1,000 rapists will ever be incarcerated.<sup>4</sup>

Unconscious victims of sexual violence face additional challenges. Since they were unconscious at the time of the sexual assault, it can be difficult or impossible for them to remember details. Many unconscious victims rely solely on eyewitnesses, pain or discomfort the following day, or “just a bad feeling.” These victims are not always able to name their assailant, the time or place the crime occurred, or any other details that would make for a successful report. Because of this, unconscious victims are sometimes ignored or not believed.

Health care providers seek to do no harm to patients. There are situations where ethical decisions must be made by providers, such as collecting potential evidence from unconscious patients. Currently, there are no clear guidelines that health care professionals can follow related to conducting forensic medical examinations on patients who lack the capacity to consent due to being unconscious or otherwise incapacitated.

This report aims to identify the gaps in Louisiana’s legislation meant to protect victims of sexual violence, especially unconscious victims and make recommendations to improve victim centered response. Every jurisdiction in the United States has legislation or case law in place that clarifies unconsciousness renders a person incapable of giving consent to sexual acts. Although Louisiana also has legislation that makes sexual violence on an unconscious victim a crime, those laws can be improved to include additional safeguards. Health care providers would like clear guidance on examining and treating victims of sexual violence who are unable to otherwise consent to medical care.

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<sup>1</sup> Preventing Sexual Violence | Violence Prevention | Injury Center | CDC. (2019, March 12). Retrieved from [https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html?CDC\\_AA\\_refVal=https://www.cdc.gov/violenceprevention/sexualviolence/consequences.html](https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html?CDC_AA_refVal=https://www.cdc.gov/violenceprevention/sexualviolence/consequences.html)

<sup>2</sup> Victims of Sexual Violence: Statistics. (2019). Retrieved from <https://www.rainn.org/statistics/victims-sexual-violence>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

## Consent and Forensic Examinations

In Louisiana, forensic medical exams are governed by La. R.S. §15:622<sup>5</sup>, which provides that health care providers responsible for appropriate care. Under La. R.S. §40:1216.1<sup>6</sup>, the patient is the only one who decides when/if the incident is reported to law enforcement. The patient also determines whether a forensic medical exam should be conducted. Louisiana law additionally provides for the procedures for how evidence should be collected, records should be maintained and how the evidence should be transferred to the appropriate law enforcement jurisdiction.

La. R.S. § 40:1159.4<sup>7</sup>, known as the “Louisiana Medical Consent Law,” provides for a hierarchal class of persons who may consent to surgical and medical treatment or procedures, including autopsy. The statute does not specifically list forensic medical exams as a procedure covered under law. In addition, La. R.S. 40:1159.5 provides for emergency situations where consent for “surgical or medical treatment or procedures suggested, recommended, prescribed, or directed by a duly licensed physician” will be implied. However, “forensic medical exams” are not specifically delineated in either of these statutes which resulted in health care providers being unwilling to conduct a forensic medical exam when a patient lacks the capacity to expressly consent. In some instances, the performance of medical procedures can destroy potential evidence and this has the potential to place health care providers in a possible ethical dilemma.

## Recommendations

In order to improve victim-centered response to sexually oriented criminal offenses, it is recommended to consider amending current law to specially delineate “forensic medical examinations” in the Louisiana Medical Consent Law. However, it should be clear that it remains the patient’s choice to report the crime to law enforcement. Upon regaining consciousness, the patient should be given the option of reporting or not reporting to law enforcement, and of having the forensic evidence gathered while they were unconscious destroyed, if they do not wish it preserved.

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<sup>5</sup> La. R.S. §15:622

<sup>6</sup> La. R.S. §40:1216.1

<sup>7</sup> La. R.S. 40:1159.4

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