

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 488**

Introduced by Hunt, 8.

Read first time January 17, 2023

Committee: Health and Human Services

- 1    A BILL FOR AN ACT relating to sexual assault; to adopt the Sexual Assault
- 2              Emergency Care Act; and to provide severability.
- 3    Be it enacted by the people of the State of Nebraska,

1       Section 1. Sections 1 to 4 of this act shall be known and may be  
2 cited as the Sexual Assault Emergency Care Act.

3       Sec. 2. For purposes of the Sexual Assault Emergency Care Act:

4       (1) Department means the Department of Health and Human Services;  
5       (2) Director means the Director of Public Health of the Division of  
6 Public Health or the director's designee;

7       (3) Emergency care for a sexual assault survivor means a medical  
8 examination, procedure, or service provided by a hospital to a sexual  
9 assault survivor following a sexual assault;

10     (4) Emergency contraception means a federal Food and Drug  
11 Administration-approved drug administered after sexual intercourse that  
12 prevents pregnancy but which does not disrupt an existing pregnancy;

13     (5) Hospital means a hospital licensed under the Health Care  
14 Facility Licensure Act;

15     (6) Medically and factually accurate and objective means verified or  
16 supported by the weight of research conducted in compliance with accepted  
17 scientific methods and standards, the currently accepted professional  
18 standards of care and established protocols for medical care following  
19 sexual assault as established in section 29-4311, and recognized as  
20 accurate and objective by leading professional organizations and agencies  
21 with relevant expertise in the field of obstetrics and gynecology;

22     (7) Sexual assault means any sexual assault that involves sexual  
23 penetration as defined in section 28-318 or substantially similar  
24 conduct; and

25     (8) Sexual assault survivor means an individual who is a victim of  
26 sexual assault and who reports such sexual assault to a hospital,  
27 including anonymous reporting pursuant to section 28-902.

28       Sec. 3. (1) A hospital which provides emergency care for a sexual  
29 assault survivor shall:

30       (a) Provide the sexual assault survivor with medically and factually  
31 accurate and objective written and oral information about emergency

1     contraception;

2       (b) Provide the sexual assault survivor with written and oral  
3 information in a language the sexual assault survivor understands about  
4 the option to receive emergency contraception at the hospital; and

5       (c) Dispense a complete course of emergency contraception, in  
6 accordance with the currently accepted professional standards of care and  
7 established protocols for sexual assault forensic medical examinations,  
8 to the sexual assault survivor, unless refused by the survivor.

9           (2) A hospital which provides emergency care for a sexual assault  
10 survivor shall provide training for all personnel involved in such care  
11 regarding the provision of medically and factually accurate and objective  
12 information about emergency contraception.

13           (3) A hospital which provides emergency care for a sexual assault  
14 survivor shall ensure compliance with the Sexual Assault Emergency Care  
15 Act and shall develop policies and procedures, as necessary, to ensure  
16 compliance with the act in the case of moral or religious objections by  
17 individual health care providers.

18       Sec. 4. (1) Any complaint regarding compliance with the Sexual  
19 Assault Emergency Care Act may be filed with the department.

20       (2)(a) The department shall review complaints received regarding  
21 failure of a hospital to provide services in compliance with the Sexual  
22 Assault Emergency Care Act to determine the action to be taken to satisfy  
23 the complaint. In making a determination as to whether or not to conduct  
24 an investigation, the department may consider factors such as:

25           (i) Whether the complaint pertains to a matter within the authority  
26 of the department to enforce;

27           (ii) Whether the circumstances indicate that a complaint is made in  
28 good faith and is not malicious, frivolous, or vexatious;

29           (iii) Whether the complaint is timely or has been delayed too long  
30 to justify present evaluation of its merit;

31           (iv) Whether the complainant may be a necessary witness if action is

1   taken and is willing to identify himself or herself and come forward to  
2   testify if action is taken; or

3       (v) Whether the information provided or within the knowledge of the  
4   complainant is sufficient to provide a reasonable basis to believe that a  
5   violation has occurred or to secure necessary evidence from other  
6   sources.

7       (b) A complaint submitted to the department shall be confidential. A  
8   person submitting a complaint shall be immune from criminal or civil  
9   liability of any nature, whether direct or derivative, for submitting a  
10   complaint or for disclosure of documents, records, or other information  
11   to the department pursuant to this section.

12      (3) The department shall retain all complaints it receives regarding  
13   failure of a hospital to provide services in compliance with the Sexual  
14   Assault Emergency Care Act. The department shall provide a report  
15   electronically to the Clerk of the Legislature by December 1 of every  
16   even-numbered year that includes, but is not limited to, the annual  
17   number of complaints, the nature of each complaint, and the hospitals for  
18   which those complaints were made. The report shall also include the  
19   determination of the department's investigation and any disciplinary  
20   action or penalties applied. The report shall not include any personal  
21   health or identifying information.

22      (4)(a) If the department determines after investigation of a  
23   complaint that a hospital has failed to provide services in compliance  
24   with the Sexual Assault Emergency Care Act, the department shall send to  
25   the hospital, by certified mail to the last address shown on the records  
26   of the department, a notice setting forth the determination, the  
27   particular reasons for the determination, including a specific  
28   description of the nature of the violation and the provision of law  
29   violated, and the type of disciplinary action which is pending, which may  
30   include the penalties described in subsection (5) of this section. Within  
31   fifteen days after service of the notice, the hospital shall notify the

1    department in writing that the hospital (i) desires to contest the notice  
2    and requests an informal conference with a representative of the  
3    department in person or by other means at the request of the hospital,  
4    (ii) desires to contest the notice and requests an informal conference  
5    with a representative of a peer review organization with which the  
6    department has contracted, (iii) desires to contest the notice and  
7    requests a hearing, or (iv) does not contest the notice. If the  
8    department does not receive such notification within such fifteen-day  
9    period, the action of the department shall be final.

10        (b) If an informal conference is requested pursuant to subdivision  
11        (4)(a)(i) or (ii) of this section, the director shall assign to conduct  
12        the informal conference, respectively, a representative of the department  
13        other than the individual who did the investigation upon which the notice  
14        is based or a representative of the peer review organization. The  
15        representative shall hold an informal conference with the hospital within  
16        thirty days after the department's receipt of such request. Within twenty  
17        working days after the conclusion of the conference, the representative  
18        shall report in writing to the department the representative's conclusion  
19        regarding whether to affirm, modify, or dismiss the notice and the  
20        specific reasons for the conclusion and shall provide a copy of the  
21        report to the director and the hospital.

22        (c) Within ten working days after receiving a report under  
23        subdivision (4)(b) of this section, the department shall consider such  
24        report and affirm, modify, or dismiss the notice and shall state the  
25        specific reasons for such decision, including, if applicable, the  
26        specific reasons for not adopting the conclusion of the representative as  
27        contained in such report. The department shall provide the hospital with  
28        a copy of such decision by certified mail to the last address shown in  
29        the records of the department. If the hospital desires to contest an  
30        affirmed or modified notice, the hospital shall notify the director in  
31        writing within five working days after receiving such decision that the

1    hospital requests a hearing.

2        (d) If a hospital successfully demonstrates during an informal  
3 conference or a hearing that the deficiencies should not have been cited  
4 in the notice, (i) the deficiencies shall be removed from the notice and  
5 the deficiency statement and (ii) any sanction imposed solely as a result  
6 of those cited deficiencies shall be rescinded.

7        (e)(i) If the hospital requests a hearing under subdivision (4)(a)  
8 (iii) of this section, the department shall hold a hearing and give the  
9 hospital the right to present such evidence as may be proper. On the  
10 basis of such evidence, the director shall affirm, modify, or set aside  
11 the determination. A copy of such decision setting forth the findings of  
12 facts and the particular reasons upon which the decision is based shall  
13 be sent by either registered or certified mail to the hospital. The  
14 decision shall become final thirty days after the copy is mailed unless  
15 the hospital, within such thirty-day period, appeals the decision under  
16 subdivision (4)(f) of this section.

17        (ii) The procedure governing hearings authorized by this section  
18 shall be in accordance with rules and regulations adopted and promulgated  
19 by the department. A full and complete record shall be kept of all  
20 proceedings. Witnesses may be subpoenaed by either party and shall be  
21 allowed fees at a rate prescribed by rule and regulation.

22        (f) Any party to a decision of the department under the Sexual  
23 Assault Emergency Care Act may appeal such decision. The appeal shall be  
24 in accordance with the Administrative Procedure Act.

25        (5) The department shall:

26            (a) For the first substantiated complaint:

27              (i) Issue a written warning to the hospital stating that it has  
28 failed to provide services in compliance with the Sexual Assault  
29 Emergency Care Act; and

30              (ii) Require the hospital to correct the deficiency that led to the  
31 complaint; and

1       (b) For the second and subsequent substantiated complaints, impose a  
2 fine of one thousand dollars on the hospital:

3       (i) Per sexual assault survivor who the department finds to have  
4 been denied medically and factually accurate and objective written and  
5 oral information about emergency contraception or who the department  
6 finds was not offered emergency contraception in violation of subsection  
7 (1) of section 3 of this act; or

8       (ii) Per month from the date of the complaint alleging noncompliance  
9 until the hospital provides training in compliance with subsection (2) of  
10 section 3 of this act.

11       Sec. 5. If any section in this act or any part of any section is  
12 declared invalid or unconstitutional, the declaration shall not affect  
13 the validity or constitutionality of the remaining portions.