

2001 DRAFTING REQUEST

Bill

Received: **06/14/2001**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Pocan (608) 266-8570**

By/Representing: **Tim O'Brien (aide)**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **ISR**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Emergency contraception for sexual assault victims

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/3	kenneda 11/15/2001	jdyer 11/15/2001	pgreensl 11/15/2001	_____	lrb_docadmin 11/15/2001	lrb_docadminS&L 11/15/2001	

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FE Sent For:

↳ At Intro.

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FE Sent For:

13 11/15 jld
11/15 pg 1
2001

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Extra Copies: ISR

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Requester's email:

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Topic:

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Instructions:

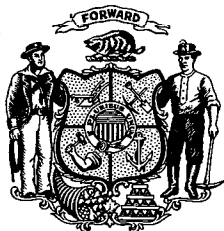
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FE Sent For:

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MARK POCAN

WISCONSIN STATE REPRESENTATIVE

BILL DRAFT REQUEST:

Date: June 14, 2001

Requested By: Representative Mark Pocan

Re: Emergency Care for Rape Survivors Act

Contact: Tim O'Brien (266-8570)

Issue Summary:

- Emergency contraceptives (ECs) have been available for 25 years—they are safe, effective and cost-efficient.
- ECs are designed to be used for a limited time period after intercourse if routine contraception fails, couples do not use contraceptives, or a woman is sexually assaulted.
- Every year, more than 300,000 women are raped and one in ten—about 32,000—will become pregnant by her attacker. Half of those pregnancies end in abortion.
- Despite their benefits, most Americans do not know about ECs. Nearly 9 in 10 women of reproductive age have either not heard of or do not know key facts about ECs.
- Many hospitals do not provide ECs—even to victims of sexual assault. This flies in the face of American Medical Association (AMA) recommended practices.
- New legislation has been introduced in Illinois and New York, and is being considered elsewhere, to require hospitals to make ECs available to sexual assault survivors.
- Currently Wisconsin has no law requiring hospitals to inform rape victims of her option to be provided ECs or to provide basic information on ECs.

Legislative Action: Bill draft request:

The legislation would require hospitals to:

- Give each rape survivor accurate and unbiased information about emergency contraceptives.
- Inform each survivor of her option to receive ECs.
- Provide ECs immediately to each survivor who requests them.

A copy of draft legislation for your reference is attached

Please do not share this information with others.

Model Bill:

Emergency Contraceptives for Rape Survivors

SECTION 1: SHORT TITLE

This Act shall be called the "Emergency Care for Rape Survivors Act."

SECTION 2: FINDINGS

The legislature finds that—

One out of every five women in the U.S. has been raped.

NOTE: This statistic is based on women's response to a question by interviewers for the National Survey of Family Growth asking whether they had been forced by a man to have intercourse against their will at some time in their life. Joyce C. Abma, Anjani Chandra, William D. Mosher, Linda S. Peterson, and Linda J. Piccinino, "Fertility, Family Planning, and Women's Health: New Data from the 1995 National Survey of Family Growth," Vital Health Statistics, vol. 23, no. 19 (May 1997): 5
<http://www.cdc.gov/nchs/data/sr23_19.pdf> (8/22/00).

Each year, over 300,000 women are raped in the U.S.

NOTE: This estimate is limited to women 18 years or older and is not based on whether the rape is reported. Patricia Tjaden and Nancy Thoennes, "Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey," Research in Brief (Washington, DC: U.S. Department of Justice, National Institute of Justice, Nov. 1998, NCJ 172837), 4
<<http://ncjrs.org/pdffiles/172837.pdf>> (8/22/00).

Somewhere in America, a woman is raped—and reports the incident to law enforcement officials—every six minutes.

NOTE: Federal Bureau of Investigation (FBI), "Crime in the United States 1998: Uniform Crime Reports," 1999, 4 <http://www.fbi.gov/ucr/Cius_98/98crime/98cius04.pdf> (8/22/00).

In 1998, [number] women were raped in [state].

NOTE: For state data collection systems, see "Domestic and Sexual Violence Data Collection: A Report to Congress Under the Violence Against Women Act," Research

Report (Washington, DC: U.S. Department of Justice, National Institute of Justice, July 1996, NCJ 161405) <<http://www.ncjrs.org/pdffiles/alldom.pdf>> (8/22/00). For state government contact information, also see Appendix V: Directory of State Uniform Crime Reporting Programs of the FBI's "Crime in the United States 1998: Uniform Crime Reports," 1999 <http://www.fbi.gov/ucr/Cius_98/98crime/98cius35.pdf> (8/22/00). Some of the statistics represent only reported rapes which account for only a fraction of actual rapes.

E. After a woman is raped, she may face the additional trauma of an unwanted pregnancy by the rapist. NOTE: Melisa M. Holmes, Heidi S. Resnick, Dean G. Kilpatrick, and Connie L. Best, "Rape-Related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women," *American Journal of Obstetrics and Gynecology*, vol. 175, no. 2 (Aug. 1996): 320-5.

F. Each year, over 32,000 women become pregnant as a result of rape and approximately 50 percent of these pregnancies end in abortion. NOTE: Melisa M. Holmes, Heidi S. Resnick, Dean G. Kilpatrick, and Connie L. Best, "Rape-Related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women," *American Journal of Obstetrics and Gynecology*, vol. 175, no. 2 (Aug. 1996): 322.

Approved for use by the federal Food and Drug Administration (FDA), emergency contraception prevents pregnancy after unprotected intercourse. NOTE: FDA, "Prescription Drug Products: Certain Combined Oral Contraceptives for Use as Postcoital Emergency Contraception, *Federal Register*, vol. 62, no. 37 (Feb. 25, 1997): 8609-12.

Emergency contraception cannot and does not cause abortion. FDA, "Prescription Drug Products: Certain Combined Oral Contraceptives for Use as Postcoital Emergency Contraception, *Federal Register*, vol. 62, no. 37 (Feb. 25, 1997): 8611. See also Editorial, "Emergency Contraception—Expanding Opportunities for Primary Prevention," *New England Journal of Medicine*, vol. 337, no. 15 (Oct. 9, 1997): 1078-9.

Emergency contraceptive pills (ECPs) are the most commonly used method of emergency contraception and are ordinary birth control pills. NOTE: James Trussell, Charlotte Ellertson and Felicia Stewart, The Effectiveness of the Yuzpe Regimen of Emergency Contraception, *Family Planning Perspectives*, vol. 28, no. 2 (Mar./Apr. 1996): 58, 64; Women's Capital Corporation, A New Generation of Emergency Contraception Has Arrived, July 28, 1999 (press release); see also Task

Force on Postovulatory Methods of Fertility Regulation, "Randomised Controlled Trial of Levonorgestrel Versus the Yuzpe Regimen of Combined Oral Contraceptives for Emergency Contraception," *Lancet*, vol. 352 (Aug. 8, 1998): 431.

ECPs reduce the risk of pregnancy following unprotected intercourse by between 75 and 89 percent.

NOTE: James Trussell, Charlotte Ellertson, and Felicia Stewart, "The Effectiveness of the Yuzpe Regimen of Emergency Contraception," *Family Planning Perspectives*, vol. 28, no. 2 (Mar./Apr. 1996): 64; Women's Capital Corporation, "A New Generation of Emergency Contraception Has Arrived," July 28, 1999 (press release).

Delaying the first dose of ECPs 12 hours increases the odds of pregnancy by almost 50 percent.

NOTE: G. Piaggio, H. von Hertzen, D. A. Grimes, and P. F. A. Van Look, "Timing of Emergency Contraception with Levonorgestrel or the Yuzpe Regimen," *Lancet*, vol. 353 (Feb. 27, 1999): 721.

Standards of emergency care established by the American Medical Association (AMA) require that rape survivors be counseled about their risk of pregnancy and offered emergency contraception.

NOTE: American Medical Association, "Strategies for the Treatment and Prevention of Sexual Assault," 1995, 18.

One statewide study found that nearly one in three hospitals fail to offer emergency contraception to rape survivors. An additional 23 percent have no clear policy on the issue. [Or insert state specific information about availability of emergency contraception in emergency rooms.]

NOTE: New York State Affiliate of the National Abortion and Reproductive Rights Action League Foundation, "Preventing Pregnancy After Rape: Does Your Hospital Provide Emergency Contraception to Rape Survivors?" Dec. 1999, 9-11.

Most women of reproductive age do not know enough about emergency contraception to ask for it—only 11 percent have heard of it, are aware of its availability, and know that treatment must be initiated within 72 hours.

NOTE: Kaiser Family Foundation, "Emergency Contraception: Is the Secret Getting Out?" Dec. 1997, 3.

SECTION 3: EMERGENCY CONTRACEPTIVES FOR RAPE SURVIVORS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS--in this section:

"Emergency contraception" means any drug or device approved by the FDA that prevents pregnancy after sexual intercourse.

"Emergency care to rape survivors" means medical examinations, procedures, and services provided by a hospital [health care facility] to a rape survivor following an alleged rape.

"Rape" means [as defined by state statute].

"Rape survivor" means a female who alleges or is alleged to have been raped and who presents as a patient.

(B) EMERGENCY CARE TO RAPE SURVIVORS—It shall be the standard of care for hospitals [health care facilities] that provide emergency care to rape survivors to:

Provide each rape survivor with medically and factually accurate and unbiased written and oral information about emergency contraception;

Orally inform each rape survivor of her option to be provided emergency contraception at the hospital [health care facility]; and

Provide emergency contraception immediately at the hospital [health care facility] to each rape survivor who requests it. The provision of emergency contraception must include the initial dose which the rape survivor can take at the hospital as well as the follow up dose which the rape survivors can self-administer 12 hours later.

(C) TRAINING—Each hospital [health care facility] shall ensure that each person who provides care to rape survivors is provided with medically and factually accurate and unbiased information about emergency contraception.

(D) ENFORCEMENT—In addition to any remedies at common law, the department of health shall respond to complaints and shall periodically determine whether hospitals [health care facilities] are complying with sections 1 through 9 of this Act. The department of health may use all investigative tools available to it to verify compliance with sections 1 through 9 of this Act. If the department of health determines that a hospital is not in compliance with sections 1 through 9, the department shall:

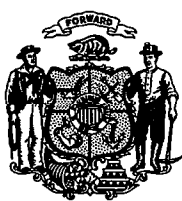
Impose a fine of \$5,000 per woman who is denied medically and factually accurate and unbiased information about emergency contraception or who is not offered or provided emergency contraception.

Impose a fine of \$5,000 for failure to comply with Section 5 of this Act. For every 30 days that a hospital [health care facility] is not in compliance with Section 5, an additional fine of \$5,000 shall be imposed.

After two violations, suspend or revoke the certificate of authority or deny the hospital's [health care facility's] application for certificate of authority.

(E) SEVERABILITY--If any provision, word, phrase or clause of this Act, or the application thereof, to any person, entity or circumstance should be held invalid, such invalidity shall not affect the remaining provisions, words, phrases or clauses of this Act which can be given effect without the invalid provision, word, phrase, clause or application, and to this end, the provisions, words, phrases or clauses of this Act are declared severable.

(F) CONFLICT—All laws and parts of laws in conflict with this Act are repealed.



D-NOTE

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS - please
fix request
sheet

Gen

1 AN ACT **relating to:** requiring a hospital to provide to an alleged victim of
2 sexual assault, with consent, information and emergency contraception. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided for a subsequent version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 50.375^x of the statutes is created to read:

4 **50.375 Emergency contraception for alleged victims of sexual assault.** ✓

5 (1) In this section: ✓

6 (a) "Emergency contraception" means a drug, medicine, oral hormonal
7 compound, mixture, preparation, instrument, article, or device that is approved by
8 the federal food and drug administration[✓] for use to prevent a pregnancy after sexual
9 intercourse, that is prescribed by a licensed health care provider for use to prevent

1 a pregnancy after sexual intercourse, and that may not be obtained without a
2 prescription from a licensed health care provider. "Emergency contraception" does
3 not include a drug, medicine, oral hormonal compound, mixture, preparation,
4 instrument, article, or device of any nature that is prescribed for use in terminating
5 the pregnancy of a woman who is known by the prescribing licensed health care
6 provider to be pregnant.

7 (b) "Sexual assault" means a violation of s. 940.225 (1), (2), or (3).[✓]

8 (2) A hospital that provides emergency services to an alleged victim of sexual
9 assault shall, after obtaining the consent of the victim, do all of the following:

10 (a) Provide to the victim medically and factually accurate and unbiased written
11 and oral information about emergency contraception.[✓]

12 (b) Orally inform the victim of her option to receive emergency contraception
13 at the hospital.

14 (c) Provide emergency contraception immediately at the hospital to each victim
15 who requests it. The provision shall include any follow-up dose, for
16 self-administration[✓] by the alleged victim, that is necessary for the efficacy of the
17 emergency contraception.

18 (3) A hospital that provides emergency care shall ensure that each hospital
19 employee who provides care to an alleged victim of sexual assault has available
20 medically and factually accurate and unbiased information about emergency
21 contraception.

22 (4) The department shall respond to any complaint received by the department
23 concerning noncompliance by a hospital with the requirements of sub. (2) and (3) and
24 shall periodically review hospital procedures to determine if a hospital is in
25 compliance with the requirements.

1 SECTION 2. 50.38 (1) of the statutes is renumbered 50.38 (1) (a).

2 SECTION 3. 50.38 (1) (b) of the statutes is created to read:

3 50.38 (1) (b) Whoever violates a requirement under s. 50.375 (2) or (3) may be
4 required to forfeit not more than \$5,000 for each violation. Every 30 days of
5 continued violation constitutes an additional offense. If a hospital violates s. 50.375
6 (2) twice, the department may, after providing notice to the hospital, suspend or
7 revoke the hospital's certificate of approval and may deny application for a new
8 certificate of approval.

9 SECTION 4. 50.38 (2) of the statutes is amended to read:

10 50.38 (2) The department may directly assess forfeitures provided for under
11 sub. (1) (a) or (b). If the department determines that a forfeiture should be assessed
12 for a particular violation, the department shall send a notice of assessment to the
13 hospital. The notice shall specify the amount of the forfeiture assessed, the violation
14 and the statute or rule alleged to have been violated, and shall inform the hospital
15 of the right to a hearing under sub. (3).

16 History: 1999 a. 9.

(END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3438/P1dn

DAK:.....

JK

To Representative Pocan:

I have drafted this bill in preliminary form because I need to ascertain your intent with respect to some issues, because it differs from the proposed language in several respects, and because it intersects with current law in some intricate ways that require explanation.

Changes from the proposed language

1. I did not draft the proposed title and legislative findings; the policy of the Legislative Reference Bureau is not to draft titles and only to draft legislative findings to assist in sustaining the constitutionality of a potentially unconstitutional bill, or in a recodification bill, neither of which is present in this bill.

2. Instead of using the proposed definition of "emergency contraception," I used a modified definition for "contraceptive article" that was in 2001 Assembly Bill 296 and that is more specific.

* 3. I referred to ~~ss.~~ ^{s.} 940.225 (1), (2), and (3), stats., in a definition of "sexual assault"; please also look at ss. 948.02, 948.025, and 948.09, stats., to see if you would like reference to these crimes to be included in the definition.

3. I placed the provisions in chapter 50 (the licensing chapter), because the violations ultimately jeopardize a hospital's certificate of authority.

* 4. I changed the wording of s. 50.375 (2) (c), because some medications now and as developed in the future might not require an additional dose.

5. The forfeiture specified in s. 50.38 (1) (b) specifies a maximum (\$5,000), but not a minimum; do you want a minimum? In addition, in conformity with the language proposed, the forfeiture specifies that 30 days of additional violation constitutes an additional offense; I can find no precedent in the statutes for this kind of a structure—the usual mode is "Each day of continued violation constitutes an additional offense." However, since two violations may result in suspensions or revocations of a certificate of authority, that may be the reason behind the more lenient second offense language.

Current law

This redraft does not include reference to ~~ss.~~ 20.927 (2) (a), 20.9275, 48.375 (4) (b) 1g., 253.09 (1) and (2), 253.10 (3m) (a), 441.06 (6), or 448.03 (5) (a), stats., because the definition of "emergency contraception" specifically does not include a drug, medicine, oral hormonal compound, mixture preparation, instrument, article, or device for use in terminating a pregnancy of a woman who is known by the prescribing licensed health care provider to be pregnant. However, please note the following:

1. Section 253.09 (1), stats., prohibits requiring a hospital to admit a patient or allow the use of hospital facilities to remove a human embryo or fetus. Section 253.09 (2), stats., precludes civil liability for a hospital or hospital employee resulting from a refusal to remove a human embryo or fetus from a person, if the refusal is based on religious or moral precepts; similarly, s. 441.06 (6), stats., precludes this liability for a registered nurse, and s. 448.03 (5) (a), stats., precludes this liability for physicians and physician assistants. Whether a fertilized ovum that is not implanted in the womb is an embryo is not completely clear; *Webster's Third New International Dictionary (Unabridged)* defines "embryo" as: 1.a. *archaic*: a human or other animal offspring at any stage of development prior to birth or hatching as a young individual fundamentally similar to the adult. b.: an animal organism in the early stages of growth and differentiation that are characterized by cleavage, the laying down of fundamental tissues, and the formation of primitive organs and organ systems and that in higher forms (as mammals) merge insensibly into fetal stages but in lower forms are terminated by commencement of larval life, often with a form markedly different from that of the adult—compare fetus, zygote. c.: the developing human individual *from the time of implantation* to the end of the eighth week after conception—compare fetus, ovum." (Emphasis mine.) Given the fact that definitions 1.a. and b. appear to be in conflict with definition 1.c. and in the absence of an explicit statutory clarification, the outcome of a court that is faced with such an issue is unpredictable. You might wish to amend ss. 253.09, 441.06 and 448.03, stats., to define "embryo" using definition 1.c. from *Webster's* or to notwithstanding them in s. 50.375.

2. The standard "known by the prescribing licensed health care provider to be pregnant" that is used in the definition of "emergency contraception" is somewhat different from the standard used in definition "abortion" under s. 20.9275, stats. (which prohibits receipt of various funds, including family planning funds, if a hospital provides abortion services) and under s. 253.10, stats. (the 24-hour requirement for consent prior to performance of an abortion; for these statutes, the definition refers to "... the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant...") This difference may make these statutes applicable; to achieve complete clarity, you might want to notwithstanding them.

If you would like to discuss the bill or if I can otherwise provide assistance, please let me know.

Debra A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debra.kennedy@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3438/P1dn
DAK:jld:jf

September 4, 2001

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Current law

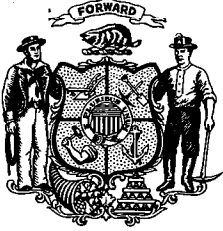
This redraft does not include reference to s. 20.927 (2) (a), 20.9275, 48.375 (4) (b) 1g., 253.09 (1) and (2), 253.10 (3m) (a), 441.06 (6), or 448.03 (5) (a), stats., because the definition of "emergency contraception" specifically does not include a drug, medicine, oral hormonal compound, mixture preparation, instrument, article, or device for use in terminating a pregnancy of a woman who is known by the prescribing licensed health care provider to be pregnant. However, please note the following:

1. Section 253.09 (1), stats., prohibits requiring a hospital to admit a patient or allow the use of hospital facilities to remove a human embryo or fetus. Section 253.09 (2), stats., precludes civil liability for a hospital or hospital employee resulting from a refusal to remove a human embryo or fetus from a person, if the refusal is based on religious or moral precepts; similarly, s. 441.06 (6), stats., precludes this liability for a registered nurse, and s. 448.03 (5) (a), stats., precludes this liability for physicians and physician assistants. Whether a fertilized ovum that is not implanted in the womb is an embryo is not completely clear; *Webster's Third New International Dictionary (Unabridged)* defines "embryo" as: 1.a. *archaic*: a human or other animal offspring at any stage of development prior to birth or hatching as a young individual fundamentally similar to the adult. b.: an animal organism in the early stages of growth and differentiation that are characterized by cleavage, the laying down of fundamental tissues, and the formation of primitive organs and organ systems and that in higher forms (as mammals) merge insensibly into fetal stages but in lower forms are terminated by commencement of larval life, often with a form markedly different from that of the adult—compare fetus, zygote. c.: the developing human individual *from the time of implantation* to the end of the eighth week after conception—compare fetus, ovum." (Emphasis mine.) Given the fact that definitions 1.a. and b. appear to be in conflict with definition 1.c. and in the absence of an explicit statutory clarification, the outcome of a court that is faced with such an issue is unpredictable. You might wish to amend ss. 253.09, 441.06 and 448.03, stats., to define "embryo" using definition 1.c. from *Webster's* or to notwithstanding them in s. 50.375.

2. The standard "known by the prescribing licensed health care provider to be pregnant" that is used in the definition of "emergency contraception" is somewhat different from the standard used in definition "abortion" under s. 20.9275, stats. (which prohibits receipt of various funds, including family planning funds, if a hospital provides abortion services) and under s. 253.10, stats. (the 24-hour requirement for consent prior to performance of an abortion; for these statutes, the definition refers to "... the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant...") This difference may make these statutes applicable; to achieve complete clarity, you might want to notwithstanding them.

If you would like to discuss the bill or if I can otherwise provide assistance, please let me know.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us



MARK POCAN

WISCONSIN STATE REPRESENTATIVE

Date: October 1, 2001

To: Debora Kennedy
From: Tim O'Brien,
Re: Emergency Contraceptive Bill

In regards to your drafter's notes of September 4, 2001:

1. No title is necessary
2. Please delete in lines 3 & 4 "and that may not be obtained without a prescription from a licensed health care provider".
3. Please add "alleged victims of non-consensual sexual intercourse" ?
4. Ok
5. Delete in lines 17-19 "The provision shall include any follow up dose, for self-administration by the alleged victim, that is necessary for the efficacy of the emergency contraception". ?
6. A minimum of \$2,500

Any questions please give me a call.

Tim O'Brien
Office of Rep. Mark Pocan

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3438/P1dn
DAK:jld:jf

September 4, 2001

To Representative Pocan:

I have drafted this bill in preliminary form because I need to ascertain your intent with respect to some issues, because it differs from the proposed language in several respects, and because it intersects with current law in some intricate ways that require explanation.

Changes from the proposed language

1. I did not draft the proposed title and legislative findings; the policy of the Legislative Reference Bureau is not to draft titles and only to draft legislative findings to assist in sustaining the constitutionality of a potentially unconstitutional bill, or in a recodification bill, neither of which is present in this bill. (OK)
2. Instead of using the proposed definition of "emergency contraception," I used a modified definition for "contraceptive article" that was in 2001 Assembly Bill 296 and that is more specific. - *Delete prescribed by many health care providers or subscribers*
3. I referred to s. 940.225 (1), (2), and (3), stats., in a definition of "sexual assault"; please also look at ss. 948.02, 948.025, and 948.09, stats., to see if you would like reference to these crimes to be included in the definition. *→ alleged victim of non-consensual sexual intercourse*
4. I placed the provisions in chapter 50 (the licensing chapter), because the violations ultimately jeopardize a hospital's certificate of authority. (OK)
5. I changed the wording of s. 50.375 (2) (c), because some medications now and as developed in the future might not require an additional dose. *Delete 2nd sentence*
6. *2, 500* ← The forfeiture specified in s. 50.38 (1) (b) specifies a maximum (\$5,000), but not a minimum; do you want a minimum? In addition, in conformity with the language proposed, the forfeiture specifies that 30 days of additional violation constitutes an additional offense; I can find no precedent in the statutes for this kind of a structure—the usual mode is "Each day of continued violation constitutes an additional offense." However, since two violations may result in suspensions or revocations of a certificate of authority, that may be the reason behind the more lenient second offense language. *→ Potentially Person*

Current law

This redraft does not include reference to s. 20.927 (2) (a), 20.9275, 48.375 (4) (b) 1g., 253.09 (1) and (2), 253.10 (3m) (a), 441.06 (6), or 448.03 (5) (a), stats., because the definition of "emergency contraception" specifically does not include a drug, medicine, oral hormonal compound, mixture preparation, instrument, article, or device for use in terminating a pregnancy of a woman who is known by the prescribing licensed health care provider to be pregnant. However, please note the following:

1. Section 253.09 (1), stats., prohibits requiring a hospital to admit a patient or allow the use of hospital facilities to remove a human embryo or fetus. Section 253.09 (2), stats., precludes civil liability for a hospital or hospital employee resulting from a refusal to remove a human embryo or fetus from a person, if the refusal is based on religious or moral precepts; similarly, s. 441.06 (6), stats., precludes this liability for a registered nurse, and s. 448.03 (5) (a), stats., precludes this liability for physicians and physician assistants. Whether a fertilized ovum that is not implanted in the womb is an embryo is not completely clear; *Webster's Third New International Dictionary (Unabridged)* defines "embryo" as: 1.a. *archaic*: a human or other animal offspring at any stage of development prior to birth or hatching as a young individual fundamentally similar to the adult. b.: an animal organism in the early stages of growth and differentiation that are characterized by cleavage, the laying down of fundamental tissues, and the formation of primitive organs and organ systems and that in higher forms (as mammals) merge insensibly into fetal stages but in lower forms are terminated by commencement of larval life, often with a form markedly different from that of the adult—compare fetus, zygote. c.: the developing human individual *from the time of implantation to the end of the eighth week after conception—compare fetus, ovum.*" (Emphasis mine.) Given the fact that definitions 1.a. and b. appear to be in conflict with definition 1.c. and in the absence of an explicit statutory clarification, the outcome of a court that is faced with such an issue is unpredictable. You might wish to amend ss. 253.09, 441.06 and 448.03, stats., to define "embryo" using definition 1.c. from *Webster's* or to notwithstanding them in s. 50.375.

2. The standard "known by the prescribing licensed health care provider to be pregnant" that is used in the definition of "emergency contraception" is somewhat different from the standard used in definition "abortion" under s. 20.9275, stats. (which prohibits receipt of various funds, including family planning funds, if a hospital provides abortion services) and under s. 253.10, stats. (the 24-hour requirement for consent prior to performance of an abortion; for these statutes, the definition refers to "... the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant...." This difference may make these statutes applicable; to achieve complete clarity, you might want to notwithstanding them.

If you would like to discuss the bill or if I can otherwise provide assistance, please let me know.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to renumber 50.38 (1); to amend 50.38 (2); and to create 50.375 and**
2 **50.38 (1) (b) of the statutes; relating to:** requiring a hospital to provide to an
3 alleged victim of sexual assault, with consent, information and emergency
4 contraception.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided for a subsequent version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 50.375 of the statutes is created to read:
6 **50.375 Emergency contraception for alleged victims of sexual assault.**
7 **(1)** In this section:
8 (a) "Emergency contraception" means a drug, medicine, oral hormonal
9 compound, mixture, preparation, instrument, article, or device that is approved by

1 the federal food and drug administration for use to prevent a pregnancy after sexual
2 intercourse, that is prescribed by a licensed health care provider for use to prevent
3 a pregnancy after sexual intercourse, ^{Delete} [and that may not be obtained without a
4 prescription from a licensed health care provider.] "Emergency contraception" does
5 not include a drug, medicine, oral hormonal compound, mixture, preparation,
6 instrument, article, or device of any nature that is prescribed for use in terminating
7 the pregnancy of a woman who is known by the prescribing licensed health care
8 provider to be pregnant.

9 (b) "Sexual assault" means a violation of s. 940.225 (1), (2), or (3).

10 (2) A hospital that provides emergency services to an alleged victim of sexual
11 assault shall, after obtaining the consent of the victim, do all of the following:

12 (a) Provide to the victim medically and factually accurate and unbiased written
13 and oral information about emergency contraception.

14 (b) Orally inform the victim of her option to receive emergency contraception
15 at the hospital.

16 (c) Provide emergency contraception immediately at the hospital to each victim
17 who requests it. The provision shall ~~include any follow-up dose, for~~
18 ~~self-administration by the alleged victim, that is necessary for the efficacy of the~~
19 ~~emergency contraception.~~

20 (3) A hospital that provides emergency care shall ensure that each hospital
21 employee who provides care to an alleged victim of sexual assault has available
22 medically and factually accurate and unbiased information about emergency
23 contraception.

24 (4) The department shall respond to any complaint received by the department
25 concerning noncompliance by a hospital with the requirements of subs. (2) and (3)

1 and shall periodically review hospital procedures to determine if a hospital is in
2 compliance with the requirements.

3 **SECTION 2.** 50.38 (1) of the statutes is renumbered 50.38 (1) (a).

4 **SECTION 3.** 50.38 (1) (b) of the statutes is created to read:

5 50.38 (1) (b) Whoever violates a requirement under s. 50.375 (2) or (3) may be
6 required to forfeit not more than \$5,000 for each violation. Every 30 days of
7 continued violation constitutes an additional offense. If a hospital violates s. 50.375
8 (2) twice, the department may, after providing notice to the hospital, suspend or
9 revoke the hospital's certificate of approval and may deny application for a new
10 certificate of approval.

11 **SECTION 4.** 50.38 (2) of the statutes is amended to read:

12 50.38 (2) The department may directly assess forfeitures provided for under
13 sub. (1) (a) or (b). If the department determines that a forfeiture should be assessed
14 for a particular violation, the department shall send a notice of assessment to the
15 hospital. The notice shall specify the amount of the forfeiture assessed, the violation
16 and the statute or rule alleged to have been violated, and shall inform the hospital
17 of the right to a hearing under sub. (3).

18 (END)



~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

1 AN ACT to renumber 50.38 (1), to amend 50.38 (2); and to create 50.375 and
2 50.38 (1) (b) of the statutes; relating to: requiring a hospital to provide to an
3 alleged victim of sexual assault, with consent, information and emergency
4 contraception. and providing a penalty ✓

Analysis by the Legislative Reference Bureau

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ANAL
1

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7 (1) In this section:
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9 compound, mixture, preparation, instrument, article, or device that is approved by

and ✓

1 the federal food and drug administration for use to prevent a pregnancy after sexual
 2 intercourse, that is prescribed by a licensed health care provider for use to prevent
 3 a pregnancy after sexual intercourse, ~~and that may not be obtained without a~~
 4 ~~prescription from a licensed health care provider.~~ "Emergency contraception" does
 5 not include a drug, medicine, oral hormonal compound, mixture, preparation,
 6 instrument, article, or device of any nature that is prescribed for use in terminating
 7 the pregnancy of a woman who is known by the prescribing licensed health care
 8 provider to be pregnant.

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(b) Orally inform the victim of her option to receive emergency contraception at the hospital.

(c) Provide emergency contraception immediately at the hospital to ~~each~~ ^{the} victim

~~who~~ ^{is she} requests it. The provision shall include any follow-up dose, for self-administration by the alleged victim, that is necessary for the efficacy of the emergency contraception.

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5 50.38 (1) (b) Whoever violates a requirement under s. 50.375 (2) or (3) may be
6 required to forfeit not ^{(less than \$2,500 nor} more than \$5,000 for each violation. ~~Every 30 days of~~
7 ~~continued violation constitutes an additional offense.~~ If a hospital violates s. 50.375
8 (2) twice, the department may, after providing notice to the hospital, suspend or
9 revoke the hospital's certificate of approval and may deny application for a new
10 certificate of approval.

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13 sub. (1) (a) or (b). If the department determines that a forfeiture should be assessed
14 for a particular violation, the department shall send a notice of assessment to the
15 hospital. The notice shall specify the amount of the forfeiture assessed, the violation
16 and the statute or rule alleged to have been violated, and shall inform the hospital
17 of the right to a hearing under sub. (3).

18

(END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3438/lins
DAK:jld:jf

ANAL 1

Under current law, the department of health and family services issues certificates of approval to hospitals that meet DHFS requirements and otherwise regulates approved hospitals.

This bill requires a hospital to do all of the following if it provides emergency services to an alleged victim of sexual assault and has obtained the victim's consent: (1) provide her with medically and factually accurate and unbiased written and oral information about emergency contraception; (2) orally inform her of her option to receive emergency contraception; and (3) provide emergency contraception immediately to her if she requests it. "Emergency contraception" is defined in the bill to be a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device that is approved by the federal food and drug administration for use to prevent a pregnancy after sexual intercourse and that is prescribed by a licensed health care provider for this use. The definition specifically excludes a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device of any nature that is prescribed for use in terminating the pregnancy of a woman who is known by the prescribing health care provider to be pregnant.

The bill also requires that a hospital that provides emergency care ensure that each hospital employee who provides care to an alleged victim of sexual assault have available medically and factually accurate and unbiased information about emergency contraception. DHFS must respond to complaints about violations of these requirements and must periodically review procedures of hospitals to determine if they are in compliance. Violators of the requirements are subject to forfeitures. DHFS may, after providing notice to a hospital that has violated the requirements twice, suspend or revoke the hospital's certificate of approval and deny application for a new certificate of approval.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

(DHFS)

of "emergency
contraception"

Kennedy, Debora

From: OBrien, Tim
Sent: Friday, October 05, 2001 11:07 AM
To: Kennedy, Debora
Subject: One final change to the EC draft

Debora,

We want the following deleted in lines 3 and 4 "and that may not be obtained without a prescription from a licensed health care provider."

Thanks

Tim O'Brien
Office of Rep. Mark Pocan



2001 BILL

Regen

1 AN ACT to renumber 50.38 (1); to amend 50.38 (2); and to create 50.375 and
 2 50.38 (1) (b) of the statutes; relating to: requiring a hospital to provide to an
 3 alleged victim of sexual assault, with consent, information and emergency
 4 contraception and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS) issues certificates of approval to hospitals that meet DHFS requirements and otherwise regulates approved hospitals.

This bill requires a hospital to do all of the following if it provides emergency services to an alleged victim of sexual assault and has obtained the victim's consent: 1) provide her with medically and factually accurate and unbiased written and oral information about emergency contraception; 2) orally inform her of her option to receive emergency contraception; and 3) provide emergency contraception immediately to her if she requests it. "Emergency contraception" is defined in the bill to be a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device that is approved by the federal food and drug administration for use to prevent a pregnancy after sexual intercourse ~~and that is prescribed by a licensed health care provider for this use.~~ The definition of "emergency contraception" specifically excludes a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device of any nature that is prescribed for use in terminating the pregnancy of a woman who is known by the prescribing health care provider to be pregnant.

BILL

The bill also requires that a hospital that provides emergency care ensure that each hospital employee who provides care to an alleged victim of sexual assault have available medically and factually accurate and unbiased information about emergency contraception. DHFS must respond to complaints about violations of these requirements and must periodically review procedures of hospitals to determine if they are in compliance. Violators of the requirements are subject to forfeitures. DHFS may, after providing notice to a hospital that has violated the requirements twice, suspend or revoke the hospital's certificate of approval and deny application for a new certificate of approval.

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3 (1) In this section:

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5 compound, mixture, preparation, instrument, article, or device that is approved by
6 the federal food and drug administration for use to prevent a pregnancy after sexual

7 intercourse ~~and that is prescribed by a licensed health care provider for use to~~
8 ~~prevent a pregnancy after sexual intercourse.~~ "Emergency contraception" does not

9 include a drug, medicine, oral hormonal compound, mixture, preparation,
10 instrument, article, or device of any nature that is prescribed for use in terminating
11 the pregnancy of a woman who is known by the prescribing licensed health care
12 provider to be pregnant.

13 (b) "Sexual assault" means a violation of s. 940.225 (1), (2), or (3).

14 (2) A hospital that provides emergency services to an alleged victim of sexual
15 assault shall, after obtaining the consent of the victim, do all of the following:

BILL

1 (a) Provide to the victim medically and factually accurate and unbiased written
2 and oral information about emergency contraception.

3 (b) Orally inform the victim of her option to receive emergency contraception
4 at the hospital.

5 (c) Provide emergency contraception immediately at the hospital to the victim
6 if she requests it.

7 (3) A hospital that provides emergency care shall ensure that each hospital
8 employee who provides care to an alleged victim of sexual assault has available
9 medically and factually accurate and unbiased information about emergency
10 contraception.

11 (4) The department shall respond to any complaint received by the department
12 concerning noncompliance by a hospital with the requirements of subs. (2) and (3)
13 and shall periodically review hospital procedures to determine if a hospital is in
14 compliance with the requirements.

15 **SECTION 2.** 50.38 (1) of the statutes is renumbered 50.38 (1) (a).

16 **SECTION 3.** 50.38 (1) (b) of the statutes is created to read:

17 50.38 (1) (b) Whoever violates a requirement under s. 50.375 (2) or (3) may be
18 required to forfeit not less than \$2,500 nor more than \$5,000 for each violation. If
19 a hospital violates s. 50.375 (2) twice, the department may, after providing notice to
20 the hospital, suspend or revoke the hospital's certificate of approval and may deny
21 application for a new certificate of approval.

22 **SECTION 4.** 50.38 (2) of the statutes is amended to read:

23 50.38 (2) The department may directly assess forfeitures provided for under
24 sub. (1) (a) or (b). If the department determines that a forfeiture should be assessed
25 for a particular violation, the department shall send a notice of assessment to the

BILL

1 hospital. The notice shall specify the amount of the forfeiture assessed, the violation
2 and the statute or rule alleged to have been violated, and shall inform the hospital
3 of the right to a hearing under sub. (3).

4 (END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

October 5, 2001

MEMORANDUM

To: Representative Pocan

From: Debora A. Kennedy, Managing Attorney

Re: LRB-3438/2 Emergency contraception for sexual assault victims

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0137 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

Barman, Mike

From: Barman, Mike
Sent: Friday, October 26, 2001 9:35 AM
To: Rep.Pocan
Subject: LRB-3438/2 (attached) (requested by Tim)



01-3438/2

Kennedy, Debora

From: OBrien, Tim
Sent: Thursday, November 15, 2001 1:15 PM
To: Kennedy, Debora
Subject: EC Changes

Debora,

Thanks for taking a look at this. Please call with any questions.

Thanks

Tim O'Brien

(1) Definition of EC: Currently the definition applies only to dedicated EC products -- Preven and Plan B. It would exclude using regular birth control packets and dividing them up. Many pharmacies/hospitals do not carry the dedicated products. I would suggest changing the definition in the following way:

"Emergency contraception" means a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device approved by the FDA that prevents pregnancy after sexual intercourse.

(2) Definition of what EC is not: Here, I think the definition is over inclusive. It would prohibit the use of drugs that could be used for both EC and abortion (i.e. someday, we know that mifepristone will also be used as a contraceptive). Here is how I would suggest changing the bill:

"Emergency contraception" does not include a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device of any nature that is prescribed to terminate the pregnancy of woman who is known by the prescribing licensed health care provider to be pregnant.



2001 BILL

Regen

1 AN ACT *to renumber* 50.38 (1); *to amend* 50.38 (2); and *to create* 50.375 and
 2 50.38 (1) (b) of the statutes; **relating to:** requiring a hospital to provide to an
 3 alleged victim of sexual assault, with consent, information and emergency
 4 contraception and providing a penalty.

that prevents

Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS) issues certificates of approval to hospitals that meet DHFS requirements and otherwise regulates approved hospitals.

This bill requires a hospital to do all of the following if it provides emergency services to an alleged victim of sexual assault and has obtained the victim's consent: 1) provide her with medically and factually accurate and unbiased written and oral information about emergency contraception; 2) orally inform her of her option to receive emergency contraception; and 3) provide emergency contraception immediately to her if she requests it. "Emergency contraception" is defined in the bill to be a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device that is approved by the federal food and drug administration ~~for use to prevent~~ a pregnancy after sexual intercourse. The definition of "emergency contraception" specifically excludes a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article, or device of any nature that is prescribed ~~for use in terminating~~ the pregnancy of a woman who is known by the prescribing health care provider to be pregnant.

to terminate

BILL

The bill also requires that a hospital that provides emergency care ensure that each hospital employee who provides care to an alleged victim of sexual assault have available medically and factually accurate and unbiased information about emergency contraception. DHFS must respond to complaints about violations of these requirements and must periodically review procedures of hospitals to determine if they are in compliance. Violators of the requirements are subject to forfeitures. DHFS may, after providing notice to a hospital that has violated the requirements twice, suspend or revoke the hospital's certificate of approval and deny application for a new certificate of approval.

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3 (1) In this section:

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5 compound, mixture, preparation, instrument, article, or device that is approved by
6 the federal food and drug administration ~~to prevent~~ ^{that prevents} a pregnancy after sexual
7 intercourse. "Emergency contraception" does not include a drug, medicine, oral
8 hormonal compound, mixture, preparation, instrument, article, or device of any
9 nature that is prescribed ~~for use in terminating~~ ^{to terminate} the pregnancy of a woman who is
10 known by the prescribing licensed health care provider to be pregnant.

11 (b) "Sexual assault" means a violation of s. 940.225 (1), (2), or (3).

12 (2) A hospital that provides emergency services to an alleged victim of sexual
13 assault shall, after obtaining the consent of the victim, do all of the following:

14 (a) Provide to the victim medically and factually accurate and unbiased written
15 and oral information about emergency contraception.

BILL

1 (b) Orally inform the victim of her option to receive emergency contraception
2 at the hospital.

3 (c) Provide emergency contraception immediately at the hospital to the victim
4 if she requests it.

5 (3) A hospital that provides emergency care shall ensure that each hospital
6 employee who provides care to an alleged victim of sexual assault has available
7 medically and factually accurate and unbiased information about emergency
8 contraception.

9 (4) The department shall respond to any complaint received by the department
10 concerning noncompliance by a hospital with the requirements of subs. (2) and (3)
11 and shall periodically review hospital procedures to determine if a hospital is in
12 compliance with the requirements.

13 **SECTION 2.** 50.38 (1)^X of the statutes is renumbered 50.38 (1) (a).

14 **SECTION 3.** 50.38 (1) (b)[✓] of the statutes is created to read:

15 50.38 (1) (b) Whoever violates a requirement under s. 50.375 (2) or (3) may be
16 required to forfeit not less than \$2,500 nor more than \$5,000 for each violation. If
17 a hospital violates s. 50.375 (2) twice, the department may, after providing notice to
18 the hospital, suspend or revoke the hospital's certificate of approval and may deny
19 application for a new certificate of approval.

20 **SECTION 4.** 50.38 (2)^X of the statutes is amended to read:

21 50.38 (2) The department may directly assess forfeitures provided for under
22 sub. (1) (a) or (b). If the department determines that a forfeiture should be assessed
23 for a particular violation, the department shall send a notice of assessment to the
24 hospital. The notice shall specify the amount of the forfeiture assessed, the violation

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1 and the statute or rule alleged to have been violated, and shall inform the hospital
2 of the right to a hearing under sub. (3).

3 (END)