December 21, 1993

OPINION NO. 93-069

The Honorable Alan R. Mayberry
Wood County Prosecuting Attorney
One Courthouse Square
Bowling Green, Ohio 43402

Dear Prosecutor Mayberry:

You have requested an opinion concerning the assessment and payment of the costs of gathering physical evidence in a rape case. Specifically, you wish to know whether a county or municipal corporation is responsible for paying the costs incurred by a private facility in conducting a medical examination of a rape victim for the purpose of gathering physical evidence for a possible prosecution if no criminal complaint[1] is filed by the victim.

Medical Assistance for a Rape Victim

The payment of the costs incurred in gathering physical evidence by conducting a medical examination of the victim of the sexual offense of rape is provided for in R.C. 2907.28(A), which states as follows:

> Any cost incurred by a hospital or other emergency medical facility in conducting a medical examination of a victim of an offense under sections 2907.02 to 2907.06 or section 2907.12 of the Revised Code[2] for the purpose of gathering physical evidence for a possible prosecution shall be charged to and paid by the appropriate local government as follows:
> (1) Cost incurred by a county facility shall be charged to and paid by the county;
> (2) Cost incurred by a municipal facility shall be charged to and paid by the municipal corporation;
> (3) *Cost incurred by a private facility shall be charged to and paid by the*

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[1] Pursuant to R. Crim. P. 3, a complaint constitutes the basic charging instrument in all criminal proceedings in the State of Ohio. *State v. Wood*, 48 Ohio App. 2d 339, 343, 357 N.E.2d 1106, 1109 (Cuyahoga County 1976); *see also* R.C. 2935.05; R.C. 2935.09; R. Crim. P. 4.

[2] R.C. 2907.02-.06 and R.C. 2907.12 set forth the criminal offenses of rape, sexual battery, corruption of a minor, gross sexual imposition, sexual imposition, and felonious sexual penetration.

> *municipal corporation in which the alleged offense was committed, or charged to and paid by the county, if committed within an unincorporated area.* If separate counts of an offense or separate offenses under sections 2907.02 to 2907.06 or section 2907.12 of the Revised Code took place in more than one municipal corporation or more than one unincorporated area, or both, the local governments shall share the cost of the examination. (Footnote and emphasis added.)

Thus, pursuant to R.C. 2907.28(A)(3), the costs incurred by a private facility in providing medical examinations of rape victims for the purpose of gathering physical evidence for possible prosecution are to be charged to the municipal corporation wherein the alleged rape occurred, or to the county if the alleged rape was committed within an unincorporated area. *See Physicians' Services, Inc. v. Willoughby*, 37 Ohio App. 3d 130, 524 N.E.2d 515 (Lake County 1987); 1980 Op. Att'y Gen. No. 80-021.

Nothing in R.C. 2907.28 suggests that a county or municipal corporation may shift to a rape victim who does not file a criminal complaint the costs incurred by a private facility in conducting a medical examination of that rape victim for the purpose of gathering physical evidence for a possible prosecution. Rather, the use of the word "shall" throughout R.C. 2907.28(A)(3) indicates "that there is a clear legislative intent that sexual assault victims be spared from paying the cost of a medical examination performed for the purpose of gathering evidence for prosecution, and that such cost be borne, instead, by either the county or municipality in accordance with R.C. 2907.28." Op. No. 80-021 at 2-88; *see also Physicians' Services, Inc. v. Willoughby*; 1989 Op. Att'y Gen. No. 89-017; 1976 Op. Att'y Gen. No. 76-072. *See generally State ex rel. Niles v. Bernard*, 53 Ohio St. 2d 31, 34, 372 N.E.2d 339, 341 (1978) (the word "shall" appearing in a statute is generally interpreted so as to make mandatory the provisions contained therein). The plain language of R.C. 2907.28 thus makes it clear that the provision of R.C. 2907.28(A)(3) requiring a county or municipal corporation to pay the costs incurred by a private facility in conducting a medical examination of a rape victim for the purpose of gathering physical evidence for a possible prosecution is mandatory, regardless of whether the victim has filed a criminal complaint pertaining to the rape offense.

Moreover, under applicable rules of statutory construction, R.C. 2907.28 must be construed so as to give effect to the legislative intent expressed therein. *See* Op. No. 80-021. As noted in Op. No. 80-021, the primary purpose of R.C. 2907.28 is to alleviate part of the financial burden on the victim of a sexual assault, and to aid the state in its prosecution of sex offenders by reimbursing doctors for services rendered. Op. No. 80-021 at 2-88 and 2-89. Because the primary purpose when interpreting a statute is to determine and give effect to the intent of the General Assembly, *Henry v. Central Nat'l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph two), construing R.C. 2907.28(A)(3) as requiring a county or municipal corporation to pay these costs, regardless of whether the victim has filed a criminal complaint, serves to promote the clear legislative intent of the General Assembly.

Conclusion

In light of the foregoing, it is my opinion, and you are hereby advised that under R.C.

2907.28(A)(3), payment of costs incurred by a private facility in conducting a medical examination of a rape victim for the purpose of gathering physical evidence for a possible prosecution is the responsibility of the county or municipal corporation in which the alleged offense of rape was committed, regardless of whether the victim has filed a criminal complaint pertaining to that offense.

Respectfully,

LEE FISHER
Attorney General

December 21, 1993

The Honorable Alan R. Mayberry
Wood County Prosecuting Attorney
One Courthouse Square
Bowling Green, Ohio 43402

SYLLABUS: 93-069

Under R.C. 2907.28(A)(3), payment of costs incurred by a private facility in conducting a medical examination of a rape victim for the purpose of gathering physical evidence for a possible prosecution is the responsibility of the county or municipal corporation in which the alleged offense of rape was committed, regardless of whether the victim has filed a criminal complaint pertaining to that offense.