

OPINION NO. 89-017**Syllabus:**

1. The cost of medical treatment of a prisoner is the responsibility of the law enforcement agency in physical control of the prisoner. Liability for the cost of medical treatment arises with the arrest of a person.
2. The cost of medical treatment of a victim of a crime who is transported to a medical facility at the order of a law enforcement agency is not the responsibility of the law enforcement agency.
3. Absent statutory authority otherwise designating the obligation to pay costs incurred, the law enforcement agency which orders the collection of physical evidence from a suspect or victim of a crime is responsible for the costs of such collection procedures.
4. The costs incurred in gathering physical evidence by conducting a medical examination of the victim of the sexual offenses of rape, sexual battery, corruption of a minor, gross sexual imposition, sexual imposition or felonious sexual penetration are not the responsibility of the victim or law enforcement agency ordering such collection; the responsibility for such costs is controlled by R.C. 2907.28.

To: William M. Denihan, Director, Department of Highway Safety, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, February 23, 1989

I have before me your request for my opinion concerning the liability of the Ohio State Highway Patrol for the expenses of medical treatment of victims and suspects taken directly from a crime scene to a hospital at the direction of the Ohio State Highway Patrol. You have also requested my opinion concerning the liability

of the Ohio State Highway Patrol for the expenses of the collection of physical evidence from these victims and suspects. I have restated your inquiry as follows:

1. Is the Ohio State Highway Patrol responsible for the costs of medical treatment of a suspect in custody who is transported to a hospital at the direction of the Ohio State Highway Patrol?
2. Is the Ohio State Highway Patrol responsible for the costs of medical treatment of a victim of a crime who is transported to a hospital at the direction of the Ohio State Highway Patrol?
3. Is the Ohio State Highway Patrol responsible for the costs of the collection of physical evidence from a suspect or victim of a crime where such collection of evidence was ordered by the Ohio State Highway Patrol?

As additional factual background, you have related that the particular situation prompting you to seek my opinion involved a sexual assault.

Costs for the care and sustenance of prisoners is the responsibility of the agency which has physical custody of the prisoner. The general rule was stated in *Cuyahoga County Hospital v. City of Cleveland*, 15 Ohio App. 3d 70, 71, 472 N.E.2d 757, 759 (Cuyahoga County 1984), *motion to certify record overruled*, No. 84-744 (Ohio S. Ct. September 12, 1984), as follows:

The responsibility for the care and sustenance of a prisoner falls upon the one who exerts actual, physical dominion and control over the prisoner. When physical control is transferred, the responsibility is transferred along with it and the cost of care can be properly prorated. The care the prisoner receives is not incident to the crime, but to the custody.

Accord, University Hospitals of Cleveland v. City of Cleveland, 28 Ohio Misc. 134, 276 N.E.2d 273 (C.P. Cuyahoga County 1971). See 1985 Op. Att'y Gen. No. 85-054; 1982 Op. Att'y Gen. No. 82-007; 1980 Op. Att'y Gen. No. 80-084. See also 1988 Op. Att'y Gen. No. 88-060. *University Hospitals*, at syllabus 5, extends coverage of the general rule to all persons under the legal restraint of a police officer, but implies that the responsibility for medical treatment attaches by arrest. However, under the facts of *University Hospitals*, prior to arrest no liability attaches. The court found:

In this case there is no evidence that the patient was a prisoner of either the county or the municipality during the period of his hospitalization at plaintiff's hospital from December 3, 1963, to December 24, 1963. No arrest was made during that time with or without a warrant. The Cleveland police transported the injured indigent to the plaintiff's hospital and no liability attaches to the city merely as a result of such transportation unless there was a warrant or restraint of the injured party by the Cleveland police. The fact that the injured man was taken into custody on December 24, 1963, does not make the city retroactively liable for his medical care prior to his arrest.

28 Ohio Misc. at 139, 276 N.E.2d at 277. I conclude, therefore, that the obligation to pay the cost of medical treatment of a prisoner who has been arrested is that of the law enforcement agency in physical custody of the prisoner. The obligation set forth in *University Hospitals* attaches upon arrest.

Your second question requires me to apply the analysis of the *University Hospitals* and *Cuyahoga County Hospital* cases to the circumstance where an injured victim of a crime is ordered transported to medical treatment by the Ohio State Highway Patrol. While the law enforcement agency which exerts physical dominion and control over a prisoner obligates that governmental entity for the costs, *University Hospitals* makes it clear that the assistance by a law enforcement agency in merely ordering a victim of a crime transported to medical treatment does not obligate the law enforcement agency for such costs. The court

in *University Hospitals* found that without the arrest of an injured person, the obligation for payment of the medical treatment provided, after the person was transported by a law enforcement agency to a hospital, was primarily that of the injured party and not that of the law enforcement agency. The victim of a crime is, thus, responsible for the costs of medical treatment; the law enforcement agency which assists such victim is not responsible for the victim's medical expenses.

You have also asked who is obligated to pay the costs of collecting evidence. No statutory provision expressly obligates a law enforcement agency to pay for the costs of collection of physical evidence of a crime. In an analogous situation, under R.C. 4511.19 and R.C. 4511.191, a police officer may request the collection and chemical analysis of physical evidence to prove that a person was "driving under the influence of alcohol or drugs" as specified in R.C. 4511.19. One of my predecessors determined that the costs of collection of physical evidence under those circumstances are the obligation of the law enforcement agency ordering the tests. He stated:

Inasmuch as the statute states that the test or tests shall be administered at the direction of a police officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways of this state while under the influence of alcohol and the law enforcement agency by which such officer is employed shall designate which of the tests shall be administered, it would appear logical for the law enforcement agency designating the test or tests to bear the expense thereof. In the actual operation of the taking and analyzing of bodily substance, it seems clear that the agency through use of its own equipment and personnel or by arrangement with other governmental organizations, hospitals, or private associations would incur the legal obligation for the expense, and it would seem to be a normal item of budget for the agency. (Emphasis added).

1968 Op. Att'y Gen. No. 68-037 at 2-46. The State Highway Patrol was specifically included as a law enforcement agency and Op. No. 68-037 left no doubt that as a "law enforcement agency" which designates the administration of blood alcohol tests under R.C. 4511.19(A), the State Highway Patrol is responsible for the costs of such tests administered at its direction. Op. 68-037 may properly be read as establishing a general rule that, where the collection of physical evidence is part of the law enforcement duties of an agency, that agency is responsible for the costs of the collection of evidence which it orders.

A significant exception to this general rule that the law enforcement agency that orders the collection of physical evidence bears the cost of such collection exists in the case of a sexual offense. R.C. 2907.28 states:

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 2907.12¹ of the Revised Code for the purpose of gathering physical evidence for a possible prosecution shall be charged to and paid by the appropriate local government as follows:

(A) Cost incurred by a county facility shall be charged to and paid by the county;

(B) Cost incurred by a municipal facility shall be charged to and paid by the municipality;

(C) Cost incurred by a private facility shall be charged to and paid by the municipality in which the alleged offense was committed, or charged to and paid by the county, if committed within an

¹ R.C. 2907.02 to 2907.06 and R.C. 2907.12 comprise the statutory crimes of rape, sexual battery, corruption of a minor, gross sexual imposition, sexual imposition and felonious sexual penetration.

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 municipality or more than one unincorporated area, or both, the local governments shall share the cost of the examination. (Footnote added).

R.C. 2907.29, further, requires most hospitals to offer the medical examination provided in R.C. 2907.28, by stating, in relevant part:

Every hospital of this state which offers organized emergency services shall provide that a physician is available on call twenty-four hours each day for the examination of persons reported to any law enforcement agency to be victims of sexual offenses cognizable as violations of sections 2907.02 to 2907.06 or section 2907.12 of the Revised Code. The physician shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the reported victim, or upon the request of the reported victim, examine such person for the purposes of gathering physical evidence. The public health council shall establish procedures for gathering evidence under this section.

The plain language of R.C. 2907.28 makes it clear that neither the victim of a sexual offense nor the arresting law enforcement agency pays for the collection of physical evidence in sexual assault cases. *See also Physicians' Services, Inc. v. City of Willoughby*, 37 Ohio App. 3d 130, 524 N.E.2d 515 (Lake County 1987); 1980 Op. Att'y Gen. No. 80-021; 1976 Op. Att'y Gen. No. 76-072.

R.C. 2907.28 shifts the cost of the collection of physical evidence of a sexual offense from the victim and the arresting law enforcement agency *as to the costs incurred in conducting a medical examination of the victim*. No language in R.C. 2907.28 or other provisions of the Revised Code, however, shifts the cost of a medical examination of a suspect believed to have committed a sexual offense for the purpose of gathering physical evidence for a possible prosecution from the law enforcement agency ordering such examination or collection. In the absence of statutory language shifting the obligation, the general rule controls and the law enforcement agency ordering such examination or collection of evidence from a suspect bears the resulting costs.

Therefore, it is my opinion, and you are hereby advised, that:

1. The cost of medical treatment of a prisoner is the responsibility of the law enforcement agency in physical control of the prisoner. Liability for the cost of medical treatment arises with the arrest of a person.
2. The cost of medical treatment of a victim of a crime who is transported to a medical facility at the order of a law enforcement agency is not the responsibility of the law enforcement agency.
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