

2015 Regular Session

HOUSE BILL NO. 311

BY REPRESENTATIVE MORENO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/VICTIMS: Provides relative to sexual assaults

1 AN ACT

2 To amend and reenact R.S. 15:622(A)(2) and (4) and R.S. 46:1802(4), (7) through (10),  
3 1806(B), (C), and (D), 1809(B)(3) and (4)(a), and 1817(A) and to enact R.S.  
4 46:1802(10.1), (11), (12), and (13), 1806(E), and 1807(B)(7), relative to crime  
5 victims reparations; to provide relative to forensic medical examinations; to provide  
6 for certain application requirements for reparations relative to victims of sexually-  
7 oriented criminal offenses; to require the Crime Victims Reparations Board to  
8 promulgate rules and regulations; to provide for certain eligibility provisions; to  
9 provide for notification requirements; to provide for definitions; and to provide for  
10 related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 15:622(A)(2) and (4) are hereby amended and reenacted to read as  
13 follows:

14 §622. Sexual assault collection kits

15 A. As used in this Section:

16 \* \* \*

17 (2) "Forensic medical examination" means an examination provided to the  
18 victim of a sexually-oriented criminal offense by a health care provider for the  
19 purpose of gathering and preserving evidence of a sexual assault for use in a court  
20 of law. A forensic medical examination shall only include the following:

- 1           (a) Examination of physical trauma.
- 2           (b) Determination of penetration or force.
- 3           (c) Patient interview, including medical history, triage, and consultation.
- 4           (d) Collection and evaluation of evidence, including but not limited to the
- 5           following:
- 6           (i) Photographic documentation.
- 7           (ii) Preservation and maintenance of chain of custody.
- 8           (iii) Medical specimen collection.
- 9           (iv) When determined necessary by the healthcare provider, an alcohol and
- 10          drug facilitated sexual assault assessment and toxicology screening.

\* \* \*

12           (4) "Sexually-oriented criminal offense" includes any sexual assault offense  
13 as defined in R.S. 44:51 and any sexual abuse offense as defined in R.S. 14:403 R.S.  
14 15:541(24).

\* \* \*

16           Section 2. R.S. 46:1802(4), (7) through (10), 1806(B), (C), and (D), 1809(B)(3) and  
17 (4)(a), and 1817(A) are hereby amended and reenacted and 46:1802(10.1), (11), (12), and  
18 (13), 1806(E), and 1807(B)(7) are enacted and to read as follows:

19           §1802. Definitions

20           As used in this Chapter:

\* \* \*

22           (4) "Claimant" means a victim or a dependent of a deceased victim, or the  
23 legal representative of either, an intervenor, the healthcare provider who provides  
24 healthcare services associated with a forensic medical examination as defined in R.S.  
25 15:622, or in the event of a death, a person who legally assumes the obligation or  
26 who voluntarily pays the medical or the funeral or burial expenses incurred as a  
27 direct result of the crime.

\* \* \*

1           (7) "Healthcare provider" means either of the following:

2           (a) A physician or other healthcare practitioner licensed, certified, registered,  
3           or otherwise authorized to perform specified healthcare services consistent with state  
4           law.

5           (b) A facility or institution providing healthcare services, including but not  
6           limited to a hospital or other licensed inpatient center, ambulatory surgical or  
7           treatment center, skilled nursing facility, inpatient hospice facility, residential  
8           treatment center, diagnostic, laboratory, or imaging center, or rehabilitation or other  
9           therapeutic health setting.

10          (8) "Healthcare services" means services, items, supplies, or drugs for the  
11          diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury,  
12          or disease.

13          (9) "Intervenor" means a person who goes to the aid of another and is killed  
14          or injured in the good faith effort to prevent a crime covered by this Chapter, to  
15          apprehend a person reasonably suspected of having engaged in such a crime, or to  
16          aid a peace officer. "Peace officer" shall include commissioned police officers,  
17          sheriffs, deputy sheriffs, marshals, deputy marshals, correctional officers, constables,  
18          wildlife enforcement agents, and probation and parole officers.

19          ~~(8)~~(10) "Pecuniary loss" means the amount of expense reasonably and  
20          necessarily incurred by reason of personal injury, as a consequence of death, or a  
21          catastrophic property loss, and includes:

22                 (a) For personal injury:

23                         (i) Medical, hospital, nursing, or psychiatric care or counseling, and physical  
24                         therapy.

25                         (ii) Actual loss of past earnings and anticipated loss of future earnings  
26                         because of a disability resulting from the personal injury or the receipt of medically  
27                         indicated services by a ~~child~~ victim related to the personal injury.

28                         (iii) Care of a child or dependent.

1 (iv) Counseling or therapy for the parents or siblings of a child who is the  
2 victim of a sexual crime.

3 (v) Loss of support for a child victim of a sexual crime not otherwise  
4 compensated for as a pecuniary loss for personal injury.

5 (b) As a consequence of death:

6 (i) Funeral, burial, or cremation expenses.

7 (ii) Loss of support to one or more dependents not otherwise compensated  
8 for as a pecuniary loss for personal injury.

9 (iii) Care of a child or children enabling the surviving spouse of a victim or  
10 the legal custodian or caretaker of the deceased victim's child or children to engage  
11 in lawful employment, where that expense is not otherwise compensated for as a  
12 pecuniary loss for personal injury.

13 (iv) Counseling or therapy for any surviving family member of the victim  
14 or any person in close relationship to such victim.

15 (v) Crime scene cleanup.

16 (c) As to catastrophic property loss, the loss must be so great as to cause  
17 overwhelming financial effect on the victim or other claimant and shall be restricted  
18 to loss of abode.

19 (d) Any other expense associated with the collection and securing of crime  
20 scene evidence.

21 ~~(8.1)~~(10.1) "Pecuniary loss" does not include loss attributable to pain and  
22 suffering.

23 ~~(9)~~(11) "Reparations" means payment of compensation in accordance with  
24 the provisions of this Chapter for pecuniary loss resulting from physical injury,  
25 death, or catastrophic property loss by reason of a crime enumerated in this Chapter.

26 (12) Sexually-oriented criminal offense includes any offense listed as a  
27 sexual offense in R.S. 15:541(24).

1                   ~~(10)~~(13) "Victim" means:

2                   (a) Any person who suffers personal injury, death, or catastrophic property  
3 loss as a result of a crime committed in this state and covered by this Chapter. This  
4 includes any person who is a victim of human trafficking as defined by R.S. 14:46.2,  
5 a victim of trafficking of children for sexual purposes as defined by R.S. 14:46.3, or  
6 a victim of any offense involving commercial sexual exploitation including but not  
7 limited to R.S. 14:81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86,  
8 89.2, 104, 105, and 282.

9                   (b) A Louisiana resident who is a victim of an act of terrorism, as defined in  
10 18 U.S.C. 2331, occurring outside the United States.

11                   (c) A Louisiana resident who suffers personal injury or death as a result of  
12 a crime described in R.S. 46:1805, except that the criminal act occurred outside of  
13 this state. The resident shall have the same rights under this Chapter as if the act had  
14 occurred in this state upon a showing that the state in which the act occurred does not  
15 have an eligible crime victims reparations program and the crime would have been  
16 compensable had it occurred in Louisiana. In this Subparagraph, "Louisiana  
17 resident" means a person who maintained a place of permanent abode in this state  
18 at the time the crime was committed for which reparations are sought.

19   \*      \*      \*

20                   §1806. Application; requirements; confidentiality

21   \*      \*      \*

22                   B.(1) An application for reparations related to a sexually-oriented criminal  
23 offense shall be filed in writing with the board within one year after the date on  
24 which the personal injury, death, or catastrophic property loss occurred or within  
25 such longer period as the board determines is justified by the circumstances.

26                   (2) A victim of a sexually-oriented criminal offense shall not be required to  
27 report a sexually-oriented criminal offense to any law enforcement officer for  
28 purposes of a claimant filing a valid application for reparations pursuant to this  
29 Subsection.

1           (3) A claimant that files an application for reparations for personal injury or  
2           death resulting from a sexually-oriented criminal offense shall submit certification  
3           from a healthcare provider that a forensic medical examination of the victim was  
4           conducted.

5           (4) The healthcare provider shall submit certification to the board that a  
6           forensic medical examination was conducted when requested by a claimant.

7           C. Application shall be made on a form prescribed and provided by the  
8 board, which shall contain at least the following:

9           (1) A description of the date, nature, and circumstances of the act or acts  
10          resulting in the physical injury, death, or catastrophic property loss, and of the crime,  
11          if known.

12          (2) A complete financial statement, including the cost of medical care or  
13          funeral, burial, or cremation expenses, the loss of wages or support, and the extent  
14          of the property loss, if any, which the claimant has incurred or will incur and the  
15          extent to which the claimant has been indemnified for these expenses from any  
16          collateral source.

17          (3) Where appropriate, a statement indicating the extent of any disability  
18          resulting from the injury incurred.

19          (4) An authorization permitting the board or its representatives to verify the  
20          contents of the application.

21          (5) Such other information as the board may require.

22          ~~E.~~ D. The following information, when submitted to the board as part of an  
23          application, shall be confidential:

24          (1) Documents submitted by a claimant which relate to medical treatment.

25          (2) Law enforcement investigative reports.

26          (3) Forensic medical examination.

27          ~~E.~~ D. Records, documents, and information in the possession of the board  
28          received pursuant to a law enforcement investigation or a verification of application  
29          by a law enforcement agency shall be considered investigative records of a law

1 enforcement agency as described in R.S. 44:3 and shall not be disseminated under  
2 any condition without the permission of the agency providing the record or  
3 information to the board.

4 §1807. Powers and duties of board; staff

5 \* \* \*

6 B. In the performance of its powers and duties the board shall:

7 \* \* \*

8 (7) The board shall develop, adopt, and promulgate rules in the manner  
9 provided in the Administrative Procedure Act and in accordance with the provisions  
10 of R.S. 46:1806(B). Such rules shall contain specific guidelines which shall  
11 establish the reasonable costs to be charged for all healthcare services or expenses  
12 associated with a forensic medical examination and shall not exceed one thousand  
13 dollars for each examination.

14 \* \* \*

15 §1809. Criteria for making awards; prohibitions; authority to deny or reduce awards

16 \* \* \*

17 B. In making its determination, the following provisions shall apply:

18 \* \* \*

19 (3)(a) No award of reparations shall be made if the board finds that:

20 ~~(a)~~(i) The crime was not reported within the time specified by R.S.  
21 46:1806(A).

22 ~~(b)~~(ii) The claimant failed or refused to cooperate substantially with the  
23 reasonable requests of appropriate law enforcement officials.

24 ~~(c)~~(iii) Reparations may substantially enrich the offender.

25 ~~(d)~~(iv) The claimant was the offender or an accessory, or that an award to the  
26 claimant would unjustly benefit any of them. However, such ineligibility shall not  
27 apply if the claimant is a victim of human trafficking or trafficking of children for  
28 sexual purposes.

1            ~~(e)~~(v) The claim was not filed timely, as provided by R.S. 46:1806(A) and  
2            (B).

3            ~~(f)~~ ~~Repealed by Acts 1991, No. 409, §2.~~

4            ~~(g)~~(vi) The crime was committed prior to the effective date of this Chapter.

5            (b) The ineligibility provisions provided for in Items (i) and (ii) of  
6            Subparagraph (a) of this Paragraph shall not apply if the claim for reparations results  
7            from a sexually-oriented criminal offense.

8            (4) The board may deny or reduce an award:

9            (a) If it finds that the behavior of the victim at the time of the crime giving  
10            rise to the claim was such that the victim bears some measure of responsibility for  
11            the crime that caused the physical injury, death, or catastrophic property loss or for  
12            the physical injury, death, or catastrophic property loss. However, such ineligibility  
13            shall not apply if the claimant is a victim of a human trafficking-related offense as  
14            defined by R.S. 46:1805 or a sexually-oriented criminal offense.

15     \*       \*       \*

16            §1817. Notification to potential applicants

17            A.(1) Every hospital licensed under the laws of this state shall display  
18            prominently in its emergency room posters giving notification of the existence of the  
19            crime victims reparations program. The board shall set standards for the location of  
20            the display and shall provide posters and general information regarding this Chapter  
21            to each hospital.

22            (2) Every hospital and healthcare provider licensed under the laws of this  
23            state shall make available to hospitals and healthcare providers a pamphlet  
24            containing an explanation of the billing process for services rendered in conducting  
25            a forensic medical examination and for healthcare services rendered to a victim of  
26            a sexually-oriented criminal offense pursuant to the provisions of R.S. 46:1806.

27     \*       \*       \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.



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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 311 Original

2015 Regular Session

Moreno

**Abstract:** Provides relative to the Crime Victims Reparations Board's application procedures and requirements for victims of a sexually-oriented criminal offense.

Present law defines "forensic medical examination" to mean an exam provided to a victim of a sexually-oriented criminal offense by a health care provider to gather and preserve evidence.

Proposed law retains present law and adds a requirement that the examination include: examination of a physical trauma; a determination of penetration or force; a patient interview; and collection and evaluation of evidence, which includes photographic documentation, chain of custody, medical specimen collection, and toxicology screening when necessary. Proposed law requires the results of the examination to remain confidential when submitted to the Crime Victims Reparations Board (board).

Present law defines "claimant" to mean a victim or dependent of a deceased victim, legal representative of either, an intervenor, or in the event of death, the person who legally or voluntarily assumes the deceased's medical and funeral obligations related to the crime.

Proposed law retains present law and adds to the definition of "claimant" a healthcare provider who provides a health care services associate with a forensic medical examination.

Proposed law provides for the definitions of "sexually-oriented criminal offense", "healthcare provider" and "healthcare services".

Proposed law requires that an application for reparations for a victim of a sexually-oriented criminal offense shall be filed in writing with the board within one year after the date of injury, death, or property loss or for a longer period as determined by the board.

Present law prohibits an award of reparations if the board finds that the crime was not timely reported in accordance with present law or that the claimant failed to cooperate with requests from law enforcement officials.

Proposed law excludes victims of a sexual offense from reporting such crimes to law enforcement for purposes of filing a valid application for reparations.

Proposed law requires a claimant to submit certification from a healthcare provider that a forensic medical examination was conducted on the victim and requires the healthcare provider to submit such certification when requested by a claimant.

Proposed law requires the board to promulgate rules and regulations relative to guidelines for the costs and expenses associated with forensic medical examinations and to provide a cap of \$1,000 for each examination.

Present law authorizes the reduction or denial of an award if it is determined by the board that the behavior of the victim at the time of the crime bears some responsibility to the injury, death, or property loss except for victims of human trafficking-related offenses.

Proposed law retains present law, and adds the exclusion for victims of a sexually-oriented criminal offense.

Proposed law requires hospitals and healthcare providers to provide victims of sexually-oriented offenses a pamphlet giving notification of the billing process and procedures available through the board.

(Amends R.S. 15:622(A)(2) and (4) and R.S. 46:1802(4), (7)-(10), 1806(B), (C), and (D), 1809(B)(3) and (4)(a), and 1817(A); Adds R.S. 46:1802(10.1), (11), (12), and (13), 1806(E), and 1807(B)(7))