

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 835

2015 Regular Session

Moreno

HEALTH/MEDICAL TREATMENT: Provides relative to the examination, treatment, and billing of victims of sexually-oriented criminal offenses

Synopsis of Senate Amendments

1. Removes the determination of penetration or force from inclusion in the definition of "forensic medical examination".
2. Adds a requirement for criminal justice agencies to submit a sexual assault kit for a reported case from an unknown suspect for testing within 30 days of receipt.
3. Adds a requirement for criminal justice agencies to submit a sexual assault kit for testing within 30 days of receiving an official request from a prosecuting agency.
4. Changes proposed law from mandating the denial, suspension or revocation of a healthcare provider's license for failure to comply with proposed law procedures to permitting the denial, suspension or revocation of the license.
5. Adds children advocacy centers to the group of stakeholders that DHH will solicit information from when developing the annual response plan listed in proposed law.
6. Requires the annual response plan to be approved by the stakeholders.

Digest of Bill as Finally Passed by Senate

Present law requires the coroner or his designee to examine all alleged victims of rape, carnal knowledge, sexual battery, and crime against nature when such cases are under police investigation.

Proposed law expands present law to victims of any sexually-oriented criminal offense and removes the requirement that the case be under police investigation.

Present law provides for the definition of a "forensic medical examination" to mean an examination of a victim of a sexually-oriented criminal offense by a healthcare provider for the purpose of gathering and preserving evidence of a sexual assault for use in court.

Proposed law retains present law and expands the definition to include the following:

- (1) Examination of physical trauma.
- (2) Patient interview, including medical history, triage, and consultation.
- (3) Collection and evaluation of evidence, including but not limited to photographic documentation, preservation and maintenance of chain of custody, medical specimen collection, when determined necessary by the healthcare provider, an alcohol and drug facilitated sexual assault assessment and toxicology screening.

Proposed law requires criminal justice agencies to submit a sexual assault kit from an unknown suspect in reported cases for testing within 30 days of receipt.

Proposed law requires criminal justice agencies to submit a sexual assault kit for testing within 30 days of receiving an official request from a prosecuting agency.

Proposed law requires all licensed hospitals and healthcare providers to adhere to the procedures set forth in proposed law in the event that a person presents or is presented for treatment as a victim of a sexually-oriented criminal offense.

Proposed law prohibits a hospital or healthcare provider from directly billing a victim for services rendered in conducting a forensic medical examination or for any healthcare services rendered to a victim as a result of the sexually-oriented criminal offense, which shall include the following:

- (1) Forensic examiner and hospital or healthcare facility services directly related to the exam, including integral forensic supplies.
- (2) Scope procedures directly related to the forensic exam including but not limited to anoscopy and colposcopy.
- (3) Laboratory testing directly related to the forensic examination, including drug screening, urinalysis, pregnancy screening, syphilis screening, chlamydia culture, gonorrhea coverage culture, blood test for HIV screening, hepatitis B and C, herpes culture, and any other sexually transmitted disease testing directly related to the forensic examination.
- (4) Any medication provided during the forensic medical examination.

Proposed law authorizes a healthcare provider to submit a claim for healthcare services rendered in conducting a forensic medical exam for a victim of a sexually-oriented offense to any of the following:

- (1) A victim's health insurance issuer, requiring the insurer to waive any applicable deductible, co-pay, and co-insurance with the remaining noncovered expenses submitted to the Crime Victims Reparations (CVR) Board for reimbursement not to exceed \$1,000.
- (2) The Louisiana Medicaid, Medicare, or Tricare programs for an enrolled victim.
- (3) The CVR Board at the rate as promulgated by the board for healthcare services rendered not to exceed \$1,000.

Proposed law requires the Dept. of Health and Hospitals (DHH) to make available to hospitals and healthcare providers a pamphlet containing an explanation of the billing process for services rendered in conducting a forensic medical examination and for healthcare services rendered to a victim of a sexually-oriented criminal offense. Proposed law further requires hospitals and healthcare providers to provide a copy of the pamphlet to any person presented for treatment as a victim of a sexually-oriented crime.

Proposed law authorizes the hospital or healthcare provider to continue ordinary billing procedures of the hospital or healthcare provider for services not specifically provided for in proposed law, but authorizes the victim to seek reimbursement for those services through the CVR Board.

Proposed law provides that the failure to comply with the standards of proposed law may constitute grounds for denial, suspension, or revocation of license by the appropriate licensing board or commission.

Present law requires any examination and treatment to include the preservation, in strict confidentiality, for a period of 30 days from the time the victim is presented for treatment, of tests or procedures, or both, and samples that may serve as potential evidence.

Proposed law expands the minimum period of preservation to a period of at least one year.

Present law requires that any evidence collected be assigned a code number and code records be maintained for a period of 30 days from the date the victim is presented for treatment.

Proposed law expands the minimum retention period to a period of at least one year and further requires the hospital or healthcare provider to assign the code number by affixing to the evidence container a code to be used in lieu of the victim's identifying information to maintain confidentiality.

Proposed law requires DHH, through the medical directors of each of its nine regional health service districts, to coordinate an annual sexual assault response plan for each district. Further requires each district to submit a proposed plan for review by the secretary of DHH no later than Nov. 1st of each year. An approved plan shall become effective Feb. 1st of the following year.

Proposed law requires each district, when developing the annual response plan, to incorporate a Sexual Assault Response Team protocol to the extent possible. At a minimum, proposed law requires each district to develop the annual plan to do all of the following:

- (1) Provide an inventory of all available resources and existing infrastructure in the region and clearly outline how the resources and infrastructure will be incorporated in the most effective manner.
- (2) Clearly outline the entity responsible for the purchase of sexual assault collection kits and the standards and procedures for the storage of the kits prior to use in a forensic medical examination.
- (3) Clearly outline the standards and procedures for a victim to receive a forensic medical examination to ensure access to such an examination in every parish, including the designation of a hospital or healthcare provider to be the lead entity for sexual assault examinations for adult victims and a hospital or healthcare provider to be the lead entity for sexual assault examinations for pediatric victims.
- (4) Clearly outline the standards and procedures for the handling and payment of medical bills related to the forensic medical examination.
- (5) Clearly outline the standards and procedures for the transfer of sexual assault collection kits for both reported and unreported crimes to the appropriate criminal justice agency or the local law enforcement agency having jurisdiction in the parish in which the hospital or healthcare provider is located, including the maximum time period for the transfer to occur not to exceed seven days after the criminal justice agency or local law enforcement agency receives a request for the transfer from the hospital or healthcare provider.

Proposed law requires DHH, when developing the annual response plan, to solicit input of interested stakeholders in the region including but not limited to all of the following:

- (1) The sheriff for each parish within the region.
- (2) The police chief for any political subdivision located within the region.
- (3) All hospitals located within the region.
- (4) The coroner for each parish within the region.
- (5) First responder organizations located within the region.
- (6) Higher education institutions located within the region.

- (7) The school board for each parish located within the region.
- (8) Sexual assault advocacy organizations and children's advocacy centers providing services within the region.
- (9) The district attorney for each parish or his designee.
- (10) Each crime lab located within the region.

Proposed law requires the annual response plan to be approved by the stakeholders.

Proposed law requires all sexual assault collection kits used in a forensic medical examination to meet the standards developed by DHH and the Dept. of Public Safety and Corrections.

Present law provides relative to the CVR Board's application procedures and requirements for victims of a sexually-oriented criminal offense.

Present law provides for definitions relative to the CVR 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 expands the definition of "claimant" to include a healthcare provider who provides services associated 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 criminal offenses a pamphlet giving notification of the billing process and procedures available through the board.

Provides for the provisions of proposed law to apply to any victim of a sexually-oriented criminal offense that occurred on or after January 13, 2015.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 13:5713(F), 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. 15:623, R.S. 40:1300.41 and R.S. 46:1802(10.1), (11), (12), and (13), 1806(E), and 1807(B)(7); Repeals R.S. 40:2109.1)