

2015 Regular Session

HOUSE BILL NO. 194

BY REPRESENTATIVE MORENO

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

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

1 AN ACT

2 To amend and reenact R.S. 13:5713(F) and R.S. 40:2109.1, relative to the treatment of
3 victims of a sexually-oriented crime; to require the coroner to examine victims; to
4 require the use of a barcode to maintain confidentiality; to provide for the transfer
5 of evidence; to provide for the forensic medical examination; to provide for ancillary
6 healthcare services; to require a regional sexual assault response plan; to provide for
7 input by stakeholders; to provide procedures for the billing of services provided to
8 a victim; to authorize certain licensure disciplinary actions for violations; to provide
9 for a costs schedule; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 13:5713(F) is hereby amended and reenacted to read as follows:

12 §5713. Duty to hold autopsies, investigations, etc.

13 * * *

14 F. The coroner or his designee shall examine all alleged victims of ~~rape;~~
15 ~~caral knowledge, sexual battery, and crime against nature when such cases are~~
16 ~~under police investigation~~ a sexually-oriented criminal offense. The coroner may
17 select the hospital or healthcare provider named as the lead entity for sexual assault
18 examinations in the regional plan required by R.S. 40:2109.1 as his designee to
19 perform the forensic medical examination.

20 * * *

1 Section 2. R.S. 40:2109.1 is hereby amended and reenacted to read as follows:

2 §2109.1. Procedures for ~~rape~~ victims of a sexually-oriented criminal offense;
3 ~~emergency rooms of licensed hospitals; immunity; regional plans; maximum~~
4 ~~allowable costs; definitions~~

5 A. All licensed hospitals and healthcare providers in Louisiana shall adhere
6 to the following procedures in the event that a person, male or female, presents
7 himself or herself or is presented ~~at the hospital~~ for treatment as a victim of ~~rape;~~
8 ~~attempted rape, carnal knowledge, or crime against nature~~ a sexually-oriented
9 criminal offense:

10 (1)(a) The victim shall make the decision of whether or not the incident will
11 be reported to law enforcement officials. No hospital ~~may~~ or healthcare provider
12 shall require the person to report the incident in order to receive medical attention.

13 (b) No hospital or healthcare provider shall directly bill a victim for services
14 rendered in conducting a forensic medical examination or for any healthcare services
15 rendered to a victim as a result of the sexually-oriented criminal offense.

16 (c) The department shall make available to hospitals and healthcare
17 providers a pamphlet containing an explanation of the billing process for services
18 rendered in conducting a forensic medical examination and for healthcare services
19 rendered to a victim of a sexually-oriented criminal offense pursuant to the Crime
20 Victims Reparations Act, R.S. 46:1801 et seq. Hospitals and healthcare providers
21 shall provide a copy of the pamphlet to any person presented for treatment as a
22 victim of a sexually-oriented crime.

23 (2)(a) If the victim does not wish to report the incident to law enforcement
24 officials, the victim shall be examined and treated as a regular ~~emergency room~~
25 patient. Any injuries requiring medical attention shall be treated in the standard
26 manner. Tests and treatments exclusive to a ~~rape~~ victim of a sexually-oriented
27 criminal offense shall be explained to the patient, ~~along with the costs for such tests.~~
28 The patient shall decide whether or not such tests shall be conducted.

1 (b) Any examination and treatment shall include the preservation, in strict
2 confidentiality, for a period of ~~thirty days~~ at least one year from the time the victim
3 is presented for treatment, of tests or procedures, or both, and samples that may serve
4 as potential evidence. The patient shall be informed of the length of time for which
5 the specimens will be preserved. If the victim does not wish to report the incident
6 to law enforcement authorities, the hospital's or healthcare provider's responsibilities,
7 beyond medical treatment, shall be limited to the collection of tests, procedures, or
8 samples that may serve as potential evidence.

9 (c) Any evidence ~~so~~ collected shall ~~then~~ be assigned a code number and the
10 hospital or healthcare provider shall maintain code records for a period of ~~thirty days~~
11 at least one year from the date the victim is presented for treatment, ~~said code~~
12 ~~records to.~~ The hospital or healthcare provider shall assign the code number by
13 affixing to the evidence container a barcode to be used in lieu of the victim's
14 identifying information to maintain confidentiality. The code number is to be used
15 for identification should the victim later choose to report the incident.

16 (d) Once a code number has been assigned, custody of ~~such~~ the evidence
17 shall be transferred to an appropriate criminal justice agency or the local law
18 enforcement agency having jurisdiction in the parish in which the hospital or
19 healthcare provider is located, and responsibility for the custody of ~~such~~ the evidence
20 shall belong to that criminal justice agency or local law enforcement agency. The
21 hospital or healthcare provider shall coordinate the transfer of ~~such~~ the evidence with
22 the criminal justice agency or local law enforcement agency in a manner designed
23 to protect its evidentiary integrity. Evidence which is transferred to the custody of
24 the appropriate criminal justice agency or local law enforcement agency shall bear
25 only the code number assigned by the hospital or healthcare provider.

26 (3) If the victim wishes to report the incident to law enforcement officials,
27 the hospital staff or healthcare provider shall contact the appropriate law
28 enforcement agency. After the incident has been reported, the victim shall be
29 examined and treated as a regular ~~emergency room~~ patient, any injuries requiring

1 medical attention will be treated in the standard manner, and specimens shall be kept
2 for evidence. ~~Such~~ The evidence shall be turned over to the law enforcement
3 officers when they arrive to assume responsibility for investigation of the incident.

4 (4)(a) Notwithstanding any other provisions of this Section, if any person
5 sixteen years old or younger presents himself or is presented ~~at a licensed hospital~~
6 for treatment as a victim of ~~any of the alleged crimes listed in this Section~~ a sexually-
7 oriented criminal offense, the hospital staff or healthcare provider shall immediately
8 notify the appropriate law enforcement official.

9 (b) The coroner of the parish, the district attorney, appropriate law
10 enforcement officials, ~~and hospital personnel,~~ and healthcare providers may develop
11 procedures pursuant to R.S. 15:440.1 through 440.6 to make a videotape of the
12 person provided for in Subparagraph (a) of this Paragraph when a person fourteen
13 years old or under has been the victim of physical or sexual abuse. The costs of such
14 videotaping may be allocated among the agencies and facilities involved.

15 (5) Notwithstanding any other provisions of this Section if the victim is
16 physically or mentally incapable of making an ~~intelligent~~ informed decision, the
17 hospital staff or healthcare provider shall immediately notify the appropriate law
18 enforcement officials.

19 B.(1) These procedures shall constitute minimum standards for the operation
20 and maintenance of hospitals under the provisions of this Part and failure to comply
21 with ~~such~~ the standards shall constitute grounds for denial, suspension, or revocation
22 of license under provisions of this Part.

23 (2) These procedures shall constitute minimum standards of care for
24 healthcare providers and failure to comply with the standards shall constitute
25 grounds for denial, suspension, or revocation of license by the appropriate licensing
26 board or commission.

27 C. When a licensed hospital or healthcare provider fails to examine and treat
28 a person, male or female, who has presented himself or herself or who has been
29 presented as a victim of ~~rape, attempted rape, carnal knowledge, or crime against~~

1 ~~nature~~ a sexually-oriented criminal offense, the coroner of the parish or his designee
2 shall examine the alleged victim and, if necessary, make arrangements for the
3 treatment of the victim, ~~notwithstanding the provisions of R.S. 33:1625(C). The~~
4 coroner may select the hospital or healthcare provider named as the lead entity for
5 sexual assault examinations in the regional plan required by this Section as his
6 designee to perform the forensic medical examination. No coroner shall refuse to
7 examine and assist an alleged victim on the grounds the alleged offense occurred
8 outside of or the victim is not a resident of the jurisdiction, ~~provided the crime is~~
9 ~~reported or assistance is sought as soon as practicable.~~ Nothing in this Subsection
10 shall relieve a licensed hospital or healthcare provider of its obligations under
11 Subsections A and B ~~hereof~~ of this Section.

12 D. Any member of the hospital staff or a healthcare provider who in good
13 faith notifies the appropriate law enforcement official pursuant to Paragraphs (4) and
14 (5) of Subsection (A) of this Section shall have immunity from any civil liability that
15 otherwise might be incurred or imposed because of ~~such~~ the notification. ~~Such~~ The
16 immunity shall extend to participation in any judicial proceeding resulting from ~~such~~
17 the report.

18 E.(1) The department, through the medical directors of each of its nine
19 regional health service districts, shall coordinate an annual sexual assault response
20 plan for each district. Each district shall submit a proposed plan for review by the
21 secretary no later than October 1 of each year. An approved plan shall become
22 effective January 1 of the following year.

23 (2) When developing the annual response plan, each district shall incorporate
24 a Sexual Assault Response Team protocol to the extent possible; however, at a
25 minimum, each district shall develop the annual plan to do all of the following:

26 (a) Provide an inventory of all available resources and existing infrastructure
27 in the region and clearly outline how the resources and infrastructure will be
28 incorporated in the most effective manner.

1 **(b) Clearly outline the entity responsible for the purchase of sexual assault**
2 **collection kits and the standards and procedures for the storage of the kits prior to**
3 **use in a forensic medical examination.**

4 **(c) Clearly outline the standards and procedures for a victim to receive a**
5 **forensic medical examination, as defined in R.S. 15:622, to ensure access to such an**
6 **examination in every parish. The plan shall designate a hospital or healthcare**
7 **provider to be the lead entity for sexual assault examinations for adult victims and**
8 **a hospital or healthcare provider to be the lead entity for sexual assault examinations**
9 **for pediatric victims. The plan shall also include specific details directing first**
10 **responders in the transport of victims of a sexually-oriented crime, the appropriate**
11 **party to perform the forensic medical examination, and the required training for any**
12 **person performing a forensic medical examination.**

13 **(d) Clearly outline the standards and procedures for the handling and**
14 **payment of medical bills related to the forensic medical examination to clarify and**
15 **ensure that those standards and procedures are in compliance with this Section and**
16 **any other applicable section of law.**

17 **(e) Clearly outline the standards and procedures for the transfer of sexual**
18 **assault collection kits for both reported and unreported crimes to an appropriate**
19 **criminal justice agency or the local law enforcement agency having jurisdiction in**
20 **the parish in which the hospital or healthcare provider is located. The plan shall**
21 **include a maximum time period for the transfer to occur not to exceed seven days**
22 **after the criminal justice agency or local law enforcement agency receives a request**
23 **for the transfer from the hospital or healthcare provider.**

24 **(3) When developing the annual response plan, the department shall solicit**
25 **the input of interested stakeholders in the region including but not limited to all of**
26 **the following:**

27 **(a) The sheriff for each parish within the region.**

28 **(b) The police chief for any political subdivision located within the region.**

29 **(c) All hospitals located within the region.**

1 (d) The coroner for each parish within the region.

2 (e) First responder organizations located within the region.

3 (f) Higher education institutions located within the region.

4 (g) The school board for each parish located within the region.

5 (h) Sexual assault advocacy organizations providing services within the
6 region.

7 F.(1) To assist in the coordination of services and the standardization of
8 procedures for treating victims of a sexually-oriented criminal offense, all hospitals
9 and healthcare providers shall use for billing purposes the definition of a forensic
10 medical examination as provided in R.S. 15:622.

11 (2) All hospitals and healthcare providers shall adhere to the following
12 maximum allowable costs schedule:

13 (a) Costs for a forensic medical examination shall not exceed the maximum
14 allowable cost promulgated by the department.

15 (b) Costs for healthcare services provided to a victim as a result of a
16 sexually-oriented criminal offense shall not exceed the maximum allowable costs
17 promulgated by the Crime Victims Reparations Board.

18 (3) All sexual assault collection kits used in a forensic medical examination
19 shall meet the standards developed by the department and the Department of Public
20 Safety.

21 G. For purposes of this Section the following definitions apply:

22 (1) "Forensic medical examination" has the same meaning as defined in R.S.
23 15:622.

24 (2) "Healthcare provider" means either of the following:

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

28 (b) A facility or institution providing healthcare services, including but not
29 limited to a hospital or other licensed inpatient center, ambulatory surgical or

1 treatment center, skilled nursing facility, inpatient hospice facility, residential
2 treatment center, diagnostic, laboratory, or imaging center, or rehabilitation or other
3 therapeutic health setting.

4 (3) "Healthcare services" means services, items, supplies, or drugs for the
5 diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury,
6 or disease.

7 (4) "Sexually-oriented criminal offense" has the same meaning as defined
8 in R.S. 15:622.

9 Section 3. This Act shall become effective upon signature by the governor or, if not
10 signed by the governor, upon expiration of the time for bills to become law without signature
11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
12 vetoed by the governor and subsequently approved by the legislature, this Act shall become
13 effective on the day following such approval.

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)]

HB 194 Original

2015 Regular Session

Moreno

Abstract: Creates standards and procedures for the examination and treatment of victims of a sexually-oriented criminal offense and the subsequent billing for the services rendered as a result of the offense.

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 requires all licensed hospitals to adhere to the procedures set forth in present law in the event that a person presents himself or is presented for treatment as a victim of rape, attempted rape, carnal knowledge, or crime against nature.

Proposed law expands present law to apply to healthcare providers and provides that the procedures constitute minimum standards of care for healthcare providers and failure to comply with the standards shall constitute grounds for denial, suspension, or revocation of license by the appropriate licensing board or commission.

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.

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 pursuant to the Crime Victims Reparations Act (R.S. 46:1801 et seq.). 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.

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 barcode 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 Oct. 1 of each year. An approved plan shall become effective Jan. 1 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 the 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 providing services within the region.

To assist in the coordination of services and the standardization of procedures for treating victims of a sexually-oriented criminal offense, proposed law requires all hospitals and healthcare providers to use for billing purposes the definition of a forensic medical examination as provided in present law (R.S. 15:622).

Proposed law requires all hospitals and healthcare providers to adhere to the following maximum allowable costs schedule:

- (1) Costs for a forensic medical examination shall not exceed the maximum allowable cost promulgated by DHH.
- (2) Costs for healthcare services provided to a victim as a result of a sexually-oriented criminal offense shall not exceed the maximum allowable costs promulgated by the Crime Victims Reparations Board.

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

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

(Amends R.S. 13:5713(F) and R.S. 40:2109.1)