

MAINE STATE LEGISLATURE

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R.O.S.

L.D. 1873

DATE: 3/17/06

(Filing No. H-844A)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1313, L.D. 1873, Bill, "An Act Regarding Sexual Assault Forensic Examinations"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 24 MRSA §2986, sub-§3, as enacted by PL 1999, c. 719, §2 and affected by §11, is amended to read:

3. Completed kit. If the alleged victim has not reported the alleged offense to a law enforcement agency when the examination is complete, the hospital or health care practitioner shall then notify the nearest law enforcement agency, which shall transport and store the completed forensic examination kit for at least 90 days. The completed kit may be identified only by the tracking number. If during that 90-day period an alleged victim decides to report the alleged offense to a law enforcement agency, the alleged victim may contact the hospital or health care practitioner to determine the tracking number. The hospital or health care practitioner shall provide the alleged victim with the tracking number on the forensic examination kit and shall inform the alleged victim which law enforcement agency is storing the kit.

If the alleged victim reports the alleged offense to a law enforcement agency by the time the examination is complete, the investigating law enforcement agency shall transport the forensic examination kit directly to the Maine State Police Crime Laboratory.

COMMITTEE AMENDMENT

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2 If an examination is performed under subsection 5 and the alleged
4 victim does not, within 60 days, regain a state of consciousness
6 adequate to decide whether or not to report the alleged offense,
8 the State may file a motion in the District Court relating to
10 storing or processing the forensic examination kit. Upon finding
12 good cause and after considering factors, including, but not
14 limited to, the possible benefits to public safety in processing
16 the kit and the likelihood of the alleged victim's regaining a
18 state of consciousness adequate to decide whether or not to
report the alleged offense in a reasonable time, the District
Court may order either that the kit be stored for additional time
or that the kit be transported to the Maine State Police Crime
Laboratory for processing, or such other disposition that the
court determines just. In the interests of justice or upon
motion by the State, the District Court may conduct hearings
required under this paragraph confidentially and in camera and
may impound pleadings and other records related to them.

20 **Sec. 2. 24 MRSA §2986, sub-§§5 and 6** are enacted to read:

22 **5. Implied consent.** If an alleged victim of gross sexual
24 assault is unconscious and a reasonable person would conclude
26 that exigent circumstances justify conducting a forensic
examination, a licensed hospital or licensed health care
practitioner may perform an examination in accordance with the
provisions of this section.

28 A forensic examination kit completed in accordance with this
30 subsection must be treated in accordance with Title 25, section
32 3821 and must preserve the alleged victim's anonymity. In
34 addition, the law enforcement agency shall immediately report to
36 the district attorney for the district in which the hospital or
health care practitioner is located that such a forensic
examination has been performed and a forensic examination kit has
been completed under this subsection.

38 **6. Liability.** A licensed hospital or licensed health care
40 practitioner in the exercise of due care is not liable for an act
done or omitted in performing a sexual assault forensic
examination under this section.

42 **Sec. 3. 25 MRSA §3821**, as enacted by PL 1999, c. 719, §4 and
44 affected by §11, is amended by adding at the end a new paragraph
46 to read:

48 In the case of a forensic examination performed under Title
50 24, section 2986, subsection 5, the law enforcement agency must
immediately notify the district attorney for the district in
which the hospital or health care practitioner is located that
such a forensic examination has been performed and a forensic

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examination kit has been completed under Title 24, section 2986, subsection 5.'

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SUMMARY

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This amendment replaces the bill.

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This amendment authorizes a forensic examination on an unconscious alleged gross sexual assault victim if a reasonable person would conclude that exigent circumstances justify the exam. The forensic examination kit must be identified without specifying the alleged victim's name and stored as required under current law. The law enforcement agency involved must notify the appropriate district attorney that the examination has been conducted and a kit has been completed.

If the alleged victim does not regain consciousness within 60 days and therefore cannot decide whether to report the alleged offense, the State may file a motion in District Court relating to storing or processing the examination kit. The District Court may order continued storage of the kit or may order it to be sent to the Maine State Police Crime Laboratory for processing or may order such other disposition that the court determines is just. The court may conduct hearings confidentially and in camera and impound pleadings and other records related to them.

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FISCAL NOTE REQUIRED
(See attached)

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Approved: 02/15/06 *MAC*

122nd MAINE LEGISLATURE

LD 1873

LR 2940(02)

An Act Regarding Sexual Assault Forensic Examinations

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system.

The collection of additional filing fees may increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of the Attorney General resulting from this legislation will be absorbed utilizing existing budgeted resources.