

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

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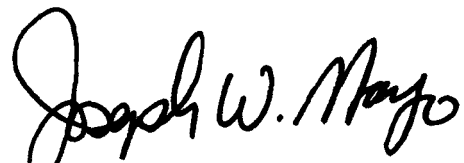
H.P. 1927

House of Representatives, April 3, 2000

**An Act to Implement the Recommendations of the Commission to
Propose an Alternative Process for Forensic Examinations for Sexual
Assault Victims.**

(EMERGENCY)

Reported by Representative POVICH for the Joint Standing Committee on Criminal
Justice pursuant to Resolve 1999, chapter 84, section 8.


JOSEPH W. MAYO, Clerk

2 alleged victims of gross sexual assault shall submit a bill to
3 the Victims' Compensation Board directly for payment of the
4 forensic examinations. The hospital or health care practitioner
5 that performs a forensic examination shall take steps necessary
6 to ensure the confidentiality of the alleged victim's identity.
7 The bill submitted by the hospital or health care practitioner
8 may not identify the alleged victim by name but must be assigned
9 a tracking number that corresponds to the forensic examination
10 kit. The tracking number may not be the alleged victim's social
11 security number. The hospital or health care practitioner that
12 performs the examination may not bill the alleged victim or the
13 alleged victim's insurer, nonprofit hospital or medical service
14 organization or health maintenance organization for payment of
15 the examination. The alleged victim is not required to report the
16 alleged offense to a law enforcement agency.

17 4. Other reimbursement. The fact that forensic
18 examinations are paid for separately through the Victims'
19 Compensation Fund does not preclude alleged victims of gross
20 sexual assault from seeking reimbursement for expenses other than
21 those for the forensic examination. A victim seeking
22 reimbursement from the Victims' Compensation Fund for expenses
23 other than the forensic examination is subject to all other
24 provisions of this chapter.

25 5. Rules. Rules adopted pursuant to this section are
26 routine technical rules as defined in Title 5, chapter 375,
27 subchapter II-A.

28 **Sec. 2. 24 MRSA §2986 is enacted to read:**

29 **§2986. Performing forensic examinations for alleged victims of**
30 **gross sexual assault**

31 1. Standard forensic examination kit. All licensed
32 hospitals and licensed health care practitioners shall use a
33 standard forensic examination kit developed and furnished by the
34 Department of Public Safety pursuant to Title 25, section 2915 to
35 perform forensic examinations for alleged victims of gross sexual
36 assault.

37 2. Victims' Compensation Board billing. All licensed
38 hospitals and licensed health care practitioners that perform
39 forensic examinations for alleged victims of gross sexual assault
40 shall submit a bill to the Victims' Compensation Board directly
41 for payment of the forensic examinations. The Victims'
42 Compensation Board shall determine what a forensic examination
43 includes pursuant to Title 5, section 3360-M. The hospital or
44 health care practitioner that performs a forensic examination
45 shall take steps necessary to ensure the confidentiality of the
46 examination.

2 alleged victim's identity. The bill submitted by the hospital or
3 health care practitioner may not identify the alleged victim by
4 name but must be assigned a tracking number that corresponds to
5 the forensic examination kit. The tracking number may not be the
6 alleged victim's social security number. The Victims'
7 Compensation Board shall pay the actual cost of the forensic
8 examination up to a maximum of \$500. Licensed hospitals and
9 licensed health care practitioners that perform forensic
10 examinations for alleged victims of gross sexual assault may not
11 bill the alleged victim or the alleged victim's insurer,
12 nonprofit hospital or medical service organization or health
13 maintenance organization for payment for the examination.

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

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

31 4. Other payment. A licensed hospital or licensed health
32 care practitioner is not precluded from seeking other payment for
33 treatment or services provided to an alleged victim that are
34 outside the scope of the forensic examination.

35 **Sec. 3. 25 MRSA §2915 is enacted to read:**

36 **§2915. Uniform forensic examination kit for evidence collection**
37 **in alleged cases of gross sexual assault**

38 1. Development of uniform forensic examination kit. The
39 Department of Public Safety shall determine by rule what
40 constitutes a uniform standardized forensic examination kit for
41 evidence collection in alleged cases of gross sexual assault.
42 The rules must define the contents of the kit, instructions for
43 administering the kit and a checklist that examiners must follow
44 and enclose in the completed kit.

2 2. Use of uniform forensic examination kit. A licensed
3 hospital or licensed health care practitioner that conducts
4 physical examinations of alleged victims of gross sexual assault
5 shall use the uniform standardized forensic examination kit
6 developed by the Department of Public Safety pursuant to
7 subsection 1. A health care practitioner who conducts physical
8 examinations of alleged victims of gross sexual assault must be
9 trained in the proper evidence collection procedures for
10 conducting a forensic examination.

11 Evidence collection results may not be excluded as evidence in
12 any proceeding before any court of this State as a result of the
13 examiner's failure to use the standardized evidence collection
14 kit or as a result of the examiner's failure to be trained in the
15 proper procedures for the collection of evidence required by this
16 subsection.

17 3. Furnishing of uniform forensic examination kit. The
18 Department of Public Safety shall furnish the uniform forensic
19 examination kits to licensed hospitals and licensed health care
20 practitioners that perform forensic examinations of alleged
21 victims of gross sexual assault.

22 4. Rules. Rules adopted pursuant to this section are
23 routine technical rules as defined in Title 5, chapter 375,
24 subchapter II-A.

25 **Sec. 4. 25 MRSA c. 407** is enacted to read:

26 **CHAPTER 407**

27 **TRANSPORTATION AND STORAGE OF**
28 **FORENSIC EXAMINATION KITS FOR ALLEGED**
29 **VICTIMS OF GROSS SEXUAL ASSAULT**

30 **§3821. Transportation and storage of forensic examination kits**

31 If an alleged victim of gross sexual assault has a forensic
32 examination and has not reported the alleged offense to a law
33 enforcement agency when the examination is complete, the licensed
34 hospital or licensed health care practitioner that completed the
35 forensic examination shall notify the nearest law enforcement
36 agency. That law enforcement agency shall transport the
37 completed kit, identified only by a tracking number assigned by
38 the hospital or health care practitioner, to its evidence storage
39 facility. The law enforcement agency shall store the kit for at
40 least 90 days from the time of receipt. If during that 90-day
41 period the alleged victim reports the offense to a law
42 enforcement agency, the agency storing the kit shall transport
43 the kit to the Maine State Police Crime Laboratory.

2 **Sec. 5. 30-A MRSA §287, sub-§1**, as repealed and replaced by PL
1991, c. 101, is amended to read:

4
6 **1. Payment of expenses by district attorney.** Except as
provided in subsection 2, in all cases reported to a law
enforcement officer of sexual abuse-~~of~~ crimes against minors, or
8 assault when serious bodily injury has been inflicted ~~and-gross~~
~~sexual-assault~~, the office of the district attorney of the county
10 in which the alleged crime occurred shall pay the expenses of a
physical examination of the victim conducted for the purpose of
12 obtaining evidence for the prosecution. Pursuant to Title 5,
section 3360-M, the Victims' Compensation Board shall pay the
14 expenses of forensic examinations for alleged victims of gross
sexual assault.

16 **Sec. 6. 30-A MRSA §287, sub-§2-A** is enacted to read:

18 **2-A. Drug and alcohol testing.** Notwithstanding subsections
20 1 and 2 and Title 5, section 3360-M, the district attorney shall
22 pay the expense of any analysis of a drug or alcohol test
24 performed as part of a forensic examination of an alleged victim
of gross sexual assault when the purpose of the analysis is to
obtain evidence for the prosecution.

26 **Sec. 7. 30-A MRSA §287, sub-§3**, as amended by PL 1989, c. 104,
Pt. C, §§8 and 10, is further amended to read:

28 **3. Medical personnel not liable for furnishing reports,**
30 **records or testimony.** ~~No~~ A physician, nurse, hospital, clinic or
any other person, firm or corporation attending a victim under
32 subsection 1 ~~may-be~~ is not liable in damages or otherwise for
providing reports or records, copies of reports or records or for
34 their testimony relating to any examination performed under this
section when those reports, records or testimony are provided to
36 a district attorney, a law enforcement officer or a court for the
purpose of prosecuting the alleged crime, whether or not the
38 reports, records or testimony are provided with the written
authorization of the victim examined under this section.

40 **Sec. 8. 30-A MRSA §287, sub-§4**, as amended by PL 1997, c. 333,
42 §1, is repealed.

44 **Sec. 9. Rulemaking.** Notwithstanding the effective date
section of this Act, the Victims' Compensation Board shall begin
46 its rule-making process pursuant to the Maine Revised Statutes,
Title 5, section 3360-M, subsections 2 and 5 when this Act is
48 approved. Notwithstanding the effective date section of this
Act, the Department of Public Safety shall begin its rule-making

2 process pursuant to Title 25, section 2915, subsections 1 and 4
when this Act is approved.

4 **Sec. 10. Appropriation.** The following funds are appropriated
from the General Fund to carry out the purposes of this Act.

6 **2000-01**

8 **PUBLIC SAFETY, DEPARTMENT OF**

10 **Bureau of State Police**

12
14 All Other \$2,400

16 Appropriates funds to cover the General Fund
18 share of the cost of providing forensic
examination kits to all licensed hospitals
20 and to all licensed health care
practitioners.

22 **Sec. 11. Allocation.** The following funds are allocated from
the Highway Fund to carry out the purposes of this Act.

24 **2000-01**

26 **PUBLIC SAFETY, DEPARTMENT OF**

28 **Bureau of State Police**

30
32 All Other \$3,600

34 Allocates funds to cover the Highway Fund
36 share of the costs of providing forensic
examination kits to all licensed hospitals
38 and to all licensed health care
practitioners.

40 **Sec. 12. Allocation.** The following funds are allocated from
Other Special Revenue funds to carry out the purposes of this Act.

42 **2000-01**

44 **ATTORNEY GENERAL, DEPARTMENT OF THE**

46 **Victims' Compensation Board**

All Other \$100,000

Provides funds to support the cost of reimbursing health care practitioners for forensic examinations of alleged victims of gross sexual assault.

Sec. 13. Effective date. Those sections of this Act that enact the Maine Revised Statutes, Title 5, section 3360-M, Title 24, section 2986, Title 25, section 2915 and chapter 407 and Title 30-A, section 287, subsection 2-A; that amend Title 30-A, section 287, subsection 1 and subsection 3; and that repeal Title 30-A, section 287, subsection 4 take effect November 1, 2000.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

FISCAL NOTE

2000-01

APPROPRIATIONS/ALLOCATIONS

General Fund	\$2,400
Highway Fund	3,600
Other Funds	100,000

This bill includes a General Fund appropriation of \$2,400 in fiscal year 2000-01 for the Bureau of State Police within the Department of Public Safety to cover the General Fund share of the costs of providing forensic examination kits to all licensed hospitals and all licensed health care practitioners. The estimated annual future costs are \$2,400 beginning in fiscal year 2001-02. This bill also includes a Highway Fund allocation of \$3,600 in fiscal year 2000-01 for the Bureau of State Police to cover the Highway Fund share of the costs of providing forensic examination kits. The estimated annual future costs are \$3,600 beginning in fiscal year 2001-02. The Bureau of State Police will also incur some minor additional costs to adopt rules pertaining to forensic examination kits. These costs can be absorbed within the bureau's existing budgeted resources.

This bill also includes an Other Special Revenue funds allocation of \$100,000 from the Victims' Compensation Fund within the Department of the Attorney General to support the cost of reimbursing health care practitioners who perform forensic examinations on alleged victims of gross sexual assault. The annual cost is estimated to be \$150,000. Since revenue accruing to the Victims' Compensation Fund has historically exceeded

2 expenditures from the fund by over \$200,000 annually, sufficient
3 revenue exists to support this additional cost.

4 6 SUMMARY

8 Pursuant to Resolve 1999, chapter 84, this bill is being
9 submitted by the Joint Standing Committee on Criminal Justice to
10 implement the recommendations of the Commission to Propose an
11 Alternative Process for Forensic Examinations for Sexual Assault
12 Victims. The bill outlines the responsibilities of the Victims'
13 Compensation Board, hospitals and health care practitioners and
14 law enforcement agencies in regards to forensic examinations of
alleged victims of sexual assault.

16 The bill directs the Victims' Compensation Board to pay for
17 all forensic examinations conducted on or after November 1, 2000
18 from the Victims' Compensation Fund and to track expenditures for
19 forensic examinations separately. The board shall determine by
20 rule what a forensic examination may include for purposes of
21 payment. An examination must include at least all services
22 directly related to the gathering of forensic evidence and
23 related testing and treatment for pregnancy and sexually
24 transmitted diseases. Forensic examination payments are not
25 subject to any other provision of the victims' compensation
26 program and are not considered payments to victims for purposes
27 of the cap.

28 The bill directs the Department of Public Safety to
29 determine by rule what a standardized forensic examination kit
30 includes and to furnish the kits to hospitals and health care
31 practitioners who perform forensic examinations of sexual assault
32 victims.

34 A hospital or health care practitioner that completes a
35 forensic examination shall bill the Victims' Compensation Board
36 directly for payment. The board shall pay the hospital or health
37 care practitioner the actual costs of the examination up to a
38 maximum of \$500. Hospitals and health care practitioners
39 performing forensic examinations shall use uniform kits developed
40 and furnished by the Department of Public Safety. A victim is
41 not required to report the alleged offense to law enforcement in
42 order for the board to pay for the examination. If an alleged
43 victim of gross sexual assault has a forensic examination but has
44 not reported the alleged offense to a law enforcement agency when
45 the examination is complete, the hospital or health care
46 practitioner that completed the forensic examination shall notify
47 the nearest law enforcement agency. That law enforcement agency
48 shall transport the completed kit, identified only by a tracking
49 number assigned by the hospital or health care practitioner, to
50

2 its evidence storage facility and shall store the kit for at
least 90 days from the time of receipt. If the victim reports
4 the offense during the 90 days, the victim may contact the
hospital or health care practitioner to determine the tracking
6 number and which law enforcement agency is storing the kit. The
law enforcement agency then shall transport the kit to the Maine
8 State Police Crime Laboratory. If the victim reports the alleged
offense to a law enforcement agency by the time the examination
10 is complete, the investigating law enforcement agency shall
transport the kit directly to the Maine State Police Crime
Laboratory.

12

The bill also requires district attorneys to pay the expense
14 of the analysis of a drug or alcohol test performed as part of
the examination to obtain evidence for the prosecution.

16

The bill is an emergency in order to give the Victims'
18 Compensation Board and the Department of Public Safety time to
adopt the rules required under this Act and so that payment for
20 all forensic examinations conducted on or after November 1, 2000
will be made by the Victims' Compensation Board.

22