

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND NINETEENTH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 5, 2000 to May 12, 2000**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 11, 2000**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**2000**

## CHAPTER 719

H.P. 1927 - L.D. 2673

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

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this Act implements the recommendations of the Commission to Propose an Alternative Process for Forensic Examinations for Sexual Assault Victims; and

**Whereas,** the Legislature needs to provide swift relief so that victims of sexual assault will no longer have to pay the costs of forensic examinations; and

**Whereas,** this Act allows the Victims' Compensation Board and the Department of Public Safety to immediately begin their rulemaking in order to implement the Victims' Compensation Fund payment plan for forensic examinations and to develop a standardized forensic examination kit, respectively, by November 2000; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA §3360-M** is enacted to read:

**§3360-M. Payment for forensic examinations for alleged victims of gross sexual assault**

**1. Payment.** The board shall pay the costs of forensic examinations for alleged victims of gross sexual assault from the Victims' Compensation Fund. The board shall track expenditures for forensic examinations separately from all other expenditures. Forensic examination payments are not subject to any other provision of this chapter.

**2. Forensic examination.** The board shall determine by rule what a forensic examination may include for purposes of payment. An examination must include at least all services directly related to the gathering of forensic evidence and related testing and treatment for pregnancy and sexually transmitted diseases. The board shall pay a licensed hospital or

licensed health care practitioner the actual cost of the forensic examination up to a maximum of \$500.

**3. Process for payment.** A licensed hospital or licensed health care practitioner that performs forensic examinations for alleged victims of gross sexual assault shall submit a bill to the Victims' Compensation Board directly for payment of the forensic examinations. The hospital or health care practitioner that performs a forensic examination shall take steps necessary to ensure the confidentiality of the alleged victim's identity. The bill submitted by the hospital or health care practitioner may not identify the alleged victim by name but must be assigned a tracking number that corresponds to the forensic examination kit. The tracking number may not be the alleged victim's social security number. The hospital or health care practitioner that performs the examination may not bill the alleged victim or the alleged victim's insurer, nonprofit hospital or medical service organization or health maintenance organization for payment of the examination. The alleged victim is not required to report the alleged offense to a law enforcement agency.

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

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

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

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

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

**2. Victims' Compensation Board billing.** All licensed hospitals and licensed health care practitioners that perform forensic examinations for alleged victims of gross sexual assault shall submit a bill to the Victims' Compensation Board directly for payment of the forensic examinations. The Victims' Compensation Board shall determine what a forensic examination includes pursuant to Title 5, section 3360-M. The hospital or health care practitioner that performs a

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

**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 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 kit directly to the Maine State Police Crime Laboratory.

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

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

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

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

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

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

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

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

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

**CHAPTER 407**

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

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

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

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

**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 assault when serious bodily injury has been inflicted ~~and gross sexual assault~~, the office of the district attorney of the county in which the alleged crime occurred shall pay the expenses of a physical examination of the victim conducted for the purpose of obtaining evidence for the prosecution. Pursuant to Title 5, section 3360-M, the Victims' Compensation Board shall pay the expenses of forensic examinations for alleged victims of gross sexual assault.

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

**2-A. Drug and alcohol testing.** Notwithstanding subsections 1 and 2 and Title 5, section 3360-M, the district attorney shall pay the expense of any analysis of a drug or alcohol test 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.

**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:

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

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

**Sec. 9. Rulemaking.** Notwithstanding the effective date section of this Act, the Victims' Compensation Board shall begin its rule-making process pursuant to the Maine Revised Statutes, Title 5, section 3360-M, subsections 2 and 5 when this Act is approved. Notwithstanding the effective date section of this Act, the Department of Public Safety shall begin its rule-making process pursuant to Title 25, section 2915, subsections 1 and 4 when this Act is approved.

**Sec. 10. Allocation.** The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

2000-01

**ATTORNEY GENERAL,  
DEPARTMENT OF THE**

**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. 11. 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.

Effective April 14, 2000, unless otherwise indicated.

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**CHAPTER 720**

**H.P. 1789 - L.D. 2509**

**An Act Regarding Discharges from  
Small Fish Hatcheries That Operated  
Prior to 1986**

**Be it enacted by the People of the State of  
Maine as follows:**

**Sec. 1. 38 MRSA §464, sub-§12** is enacted to read:

**12. Discharges from certain fish hatcheries.** An unlicensed discharge from a fish hatchery is considered, and continues to be considered after it is licensed pursuant to section 413, the same as a discharge licensed prior to January 1, 1986 for the purposes of subsection 4, paragraph A, subparagraph (1); section 465, subsection 2, paragraph C; and section 465-A, subsection 1, paragraph C if the following conditions are met: