

2020 Regular Session

HOUSE BILL NO. 415

BY REPRESENTATIVE DUPLESSIS

EVIDENCE: Provides relative to medical consent for forensic medical examinations

1 AN ACT

2 To amend and reenact R.S. 40:1159.4(A)(introductory paragraph), (C), (G), and (H) and to
3 enact R.S. 40:1159.4(I) and (J), relative to medical consent for forensic medical
4 examinations; to provide definitions; to provide for when a forensic medical
5 examination shall be performed on a victim of a sexually oriented criminal offense;
6 to provide for objections for patients receiving a forensic medical examination; and
7 to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:1159.4(A)(introductory paragraph), (C), (G), and (H) are hereby
10 amended and reenacted and R.S. 40:1159.4(I) and (J) are hereby enacted to read as follows:

11 §1159.4. Persons who may consent to surgical or medical treatment

12 A. In addition to such other persons as may be authorized and empowered,
13 any one of the following persons in the following order of priority, if there is no
14 person in a prior class who is reasonably available, willing, and competent to act, is
15 authorized and empowered to consent, either orally or otherwise, to any surgical or
16 medical treatment or procedures, including but not limited to an autopsy or forensic
17 medical examination, not prohibited by law which may be suggested, recommended,
18 prescribed, or directed by a duly licensed physician:

19 * * *

1 medical examination, not with regard to the question of consent under R.S.
2 40:1237.1 et seq., or R.S. 40:1231.1 et seq. Each hospital or other health care
3 facility, physician, health care provider, or other person or entity, who acts in good-
4 faith reliance on any such direction or decision shall be protected and released to the
5 same extent as though such person had interacted directly with the patient as a fully
6 competent person.

7 H. Any physician attending or confirming, who, in accordance with
8 Subsection C of this Section, provides or performs any surgical or medical treatment
9 or procedure, including but not limited to an autopsy or forensic medical
10 examination, or who makes decisions regarding continued services, including but not
11 limited to approving the transfer or placement of the patient, without the consent of
12 the patient or other person authorized to consent for the patient, shall not be subject
13 to criminal prosecution or civil liability or be deemed to have engaged in
14 unprofessional conduct as a result of the decision to perform, or the actual
15 performance of, such treatment or procedure, or with regard to any decisions
16 pertaining to continued services, including but not limited to decisions regarding the
17 transfer or placement of the patient as to the issue of consent only, even if death or
18 injury to the patient ensues, except for liability for medical malpractice as to the
19 provision or performance of the surgical or medical treatment, not with regard to the
20 question of consent under R.S. 40:1237.1 et seq., or R.S. 40:1231.1 et seq.
21 Furthermore, no hospital or other health care facility, health care provider or other
22 person or entity acting under the direction of a physician shall be subject to criminal
23 prosecution or civil liability, or be deemed to have engaged in unprofessional
24 conduct as a result of any treatment, procedures, continued services, transfer, or
25 placements that were performed in accordance with Subsection C of this Section, as
26 to the issue of consent only, even if death or injury to the patient ensues, except for
27 liability for medical malpractice as to the provision or performance of the surgical
28 or medical treatment, not with regard to the question of consent under R.S. 40:1237.1
29 et seq., or R.S. 40:1231.1 et seq.

1 I. A forensic medical examination may be performed if the medical examiner
2 reasonably believes that a patient has been the victim of a sexually-oriented criminal
3 offense. If, at any point in time, the patient objects to the performance of the forensic
4 medical examination, the examination shall immediately cease.

5 J. For the purposes of this Section, "forensic medical examination" shall be
6 defined to include but is not limited to a noninvasive treatment for any injuries
7 requiring medical attention, medical tests and treatments exclusive to a victim of a
8 sexually oriented criminal offense, collection and storage of samples that may serve
9 as evidence, including photographs, referrals for a follow-up, and prescribing of
10 necessary medications.

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 415 Original	2020 Regular Session	Duplessis
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Abstract: Provides relative to forensic medical examinations and the medical consent needed to perform an examination.

Present law provides that persons identified by present law may consent to any surgical or medical treatment, including an autopsy to be performed on a patient who is unable to consent to such treatment themselves.

Proposed law retains present law but adds that persons identified by present law who may consent to a patient receiving surgical or medical treatment shall be able to consent to the performance of a forensic medical examination.

Present law provides those persons designated by present law are unable to consent to a patient's surgical or medical treatment or procedure, to include an autopsy, then a physician shall have such discretion to perform the treatment or procedure according to present law.

Proposed law retains present law and adds that the physician has the discretion to perform a forensic medical examination according to present law.

Present law provides that no healthcare facility, physician, or other provider shall be subjected to criminal prosecution or civil liability for the performance of a surgical or medical treatment which includes the performance of an autopsy.

Proposed law retains present law and adds forensic medical examinations as a procedure that is not subjected to present law.

Proposed law defines "forensic medical examination".

Proposed law provides that a medical examiner may perform a forensic medical examination upon having a reasonable belief the individual has been the victim of a sexually-oriented

criminal offense. Proposed law further provides that a forensic medical examination shall cease upon the victim objecting to the examination.

(Amends R.S. 40:1159.4(A)(intro. para.), (C), (G), and (H); Adds R.S. 40:1159.4(I) and (J))