

2015 Regular Session

HOUSE BILL NO. 835 (Substitute for House Bill No. 194 by Representative Moreno)

BY REPRESENTATIVES MORENO, ADAMS, ARNOLD, BADON, BARROW, BILLIOT, BOUIE, BROWN, BURRELL, CONNICK, EDWARDS, GAINES, GAROFALO, GISCLAIR, HARRISON, HAZEL, JACKSON, JAMES, JEFFERSON, MIKE JOHNSON, ROBERT JOHNSON, NANCY LANDRY, LEGER, LEOPOLD, MACK, MILLER, JAY MORRIS, NORTON, ORTEGO, PYLANT, RITCHIE, SEABAUGH, SMITH, TALBOT, THIERRY, WILLMOTT, AND WOODRUFF

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 sexually-oriented criminal offenses

1 AN ACT

2 To amend and reenact R.S. 13:5713(F) and R.S. 15:622(A)(2) and (4) and R.S. 46:1802(4),

3 (7) through (10), 1806(B), (C), and (D), 1809(B)(3) and (4)(a), and 1817(A) and to

4 enact Part XLIV of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950,

5 to be comprised of R.S. 40:1300.41, and R.S. 46:1802(10.1), (11), (12), and (13),

6 1806(E), and 1807(B)(7) and to repeal R.S. 40:2109.1, relative to the treatment and

7 billing of victims of a sexually-oriented criminal offense; to require the coroner to

8 examine victims; to require the use of a barcode to maintain confidentiality; to

9 provide for the transfer of evidence; to provide for the forensic medical examination;

10 to provide for ancillary healthcare services; to require a regional sexual assault

11 response plan; to provide for input by stakeholders; to provide procedures for the

12 billing of services provided to a victim; to authorize certain licensure disciplinary

13 actions for violations; to provide relative to forensic medical examinations; to

14 provide for certain application requirements for reparations relative to victims of

15 sexually-oriented criminal offenses; to require the Crime Victims Reparations Board

16 to promulgate rules and regulations; to provide for certain eligibility provisions; to

1 provide for notification requirements; to provide for definitions; and to provide for
2 related matters.

3 Be it enacted by the Legislature of Louisiana:

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

5 §5713. Duty to hold autopsies, investigations, etc.

6 * * *

7 F. The coroner or his designee shall examine all alleged victims of ~~rape,~~
8 ~~carnal knowledge, sexual battery, and crime against nature when such cases are~~
9 ~~under police investigation~~ a sexually-oriented criminal offense. The coroner may
10 select the hospital or healthcare provider named as the lead entity for sexual assault
11 examinations in the regional plan required by R.S. 40:1300.41 as his designee to
12 perform the forensic medical examination.

13 * * *

14 Section 2. R.S. 15:622(A)(2) and (4) are hereby amended and reenacted to read as
15 follows:

16 §622. Sexual assault collection kits

17 A. As used in this Section:

18 * * *

19 (2) "Forensic medical examination" means an examination provided to the
20 victim of a sexually-oriented criminal offense by a health care provider for the
21 purpose of gathering and preserving evidence of a sexual assault for use in a court
22 of law. A forensic medical examination shall only include the following:

23 (a) Examination of physical trauma.

24 (b) Determination of penetration or force.

25 (c) Patient interview, including medical history, triage, and consultation.

26 (d) Collection and evaluation of evidence, including but not limited to the
27 following:

28 (i) Photographic documentation.

29 (ii) Preservation and maintenance of chain of custody.

1 (iii) Medical specimen collection.

2 (iv) When determined necessary by the healthcare provider, an alcohol- and
3 drug-facilitated sexual assault assessment and toxicology screening.

4 * * *

5 (4) "Sexually-oriented criminal offense" ~~includes any sexual assault~~ shall
6 have the same meaning as sex offense as defined in R.S. 44:51 and any sexual abuse
7 offense as defined in R.S. 14:403 R.S. 15:541(24).

8 * * *

9 Section 3. Part XLIV of Chapter 5 of Title 40 of the Louisiana Revised Statutes of
10 1950, to be comprised of R.S. 40:1300.41, is hereby enacted to read as follows:

11 PART XLIV. HEALTHCARE SERVICES FOR VICTIMS OF

12 SEXUALLY-ORIENTED CRIMINAL OFFENSES

13 §1300.41. Procedures for victims of a sexually-oriented criminal offense; immunity;
14 regional plans; maximum allowable costs; definitions

15 A. All licensed hospitals and healthcare providers in Louisiana shall adhere
16 to the following procedures in the event that a person, male or female, presents
17 himself or herself or is presented for treatment as a victim of a sexually-oriented
18 criminal offense:

19 (1) The victim shall make the decision of whether or not the incident will be
20 reported to law enforcement officials. No hospital or healthcare provider shall
21 require the person to report the incident in order to receive medical attention.

22 (2)(a) If the victim does not wish to report the incident to law enforcement
23 officials, the victim shall be examined and treated as any other patient. Any injuries
24 requiring medical attention shall be treated in the standard manner. Tests and
25 treatments exclusive to a victim of a sexually-oriented criminal offense shall be
26 explained and offered to the patient. The patient shall decide whether or not such
27 tests shall be conducted.

28 (b) Any examination and treatment shall include the preservation, in strict
29 confidentiality, for a period of at least one year from the time the victim is presented

1 for treatment, of tests or procedures, or both, and samples that may serve as potential
2 evidence. The patient shall be informed of the length of time for which the
3 specimens will be preserved. If the victim does not wish to report the incident to law
4 enforcement authorities, the responsibilities of the hospital or healthcare provider,
5 beyond medical treatment, shall be limited to the collection of tests, procedures, or
6 samples that may serve as potential evidence.

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

14 (d) For unreported cases, once a code number has been assigned, custody of
15 the evidence shall be transferred to an appropriate criminal justice agency or the
16 local law enforcement agency having jurisdiction in the parish in which the crime
17 occurred or to the appropriate criminal justice agency or local law enforcement
18 agency having jurisdiction in the parish in which the hospital or healthcare provider
19 is located, if the jurisdiction of the crime is unknown, and responsibility for the
20 custody of the evidence shall belong to that criminal justice agency or local law
21 enforcement agency. The law enforcement agency shall retrieve from the hospital
22 or healthcare provider the evidence no later than seven days after receiving
23 notification that a code number has been assigned to the evidence. The hospital or
24 healthcare provider shall coordinate the transfer of the evidence with the criminal
25 justice agency or law enforcement agency in a manner designed to protect its
26 evidentiary integrity. Evidence which is transferred to the custody of the appropriate
27 criminal justice agency or local law enforcement agency shall bear only the code
28 number assigned by the hospital or healthcare provider.

1 (3) If the victim wishes to report the incident to law enforcement officials,
2 the hospital staff or healthcare provider shall contact the appropriate law
3 enforcement agency. After the incident has been reported, the victim shall be
4 examined and treated as any other patient, any injuries requiring medical attention
5 shall be treated in the standard manner, and specimens shall be kept for evidence.
6 The evidence shall be turned over to the law enforcement officers when they arrive
7 to assume responsibility for investigation of the incident and in no event shall the
8 evidence remain at the hospital more than seven days after the law enforcement
9 agency receives the notification from the hospital.

10 (4)(a) Notwithstanding any other provisions of this Section, if any person
11 sixteen years old or younger presents himself or herself or is presented for treatment
12 as a victim of a sexually-oriented criminal offense, the hospital or healthcare
13 provider shall immediately notify the appropriate law enforcement official. The
14 appropriate law enforcement official shall have seven days from the receipt of the
15 notification to retrieve any evidence collected by the hospital pursuant to this
16 Subparagraph.

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

23 (5) Notwithstanding any other provisions of this Section, if the victim is
24 physically or mentally incapable of making the decision to report, the hospital or
25 healthcare provider shall immediately notify the appropriate law enforcement
26 officials.

27 (6) No hospital or healthcare provider shall directly bill a victim of a
28 sexually-oriented criminal offense for any healthcare services rendered in conducting

1 a forensic medical examination as provided for in R.S. 15:622. The expenses shall
2 include the following:

3 (a) Forensic examiner and hospital or healthcare facility services directly
4 related to the exam, including integral forensic supplies.

5 (b) Scope procedures directly related to the forensic exam including but not
6 limited to anoscopy and colposcopy.

7 (c) Laboratory testing directly related to the forensic examination, including
8 drug screening, urinalysis, pregnancy screening, syphilis screening, chlamydia
9 culture, gonorrhea coverage culture, blood test for HIV screening, hepatitis B and C,
10 herpes culture, and any other sexually transmitted disease testing directly related to
11 the forensic examination.

12 (d) Any medication provided during the forensic medical examination.

13 (7) A healthcare provider may submit a claim for payment of healthcare
14 services rendered in conducting a forensic medical exam for a victim of a sexually-
15 oriented offense to any of the following:

16 (a) With the consent of the victim, to the victim's health insurance issuer.
17 Notwithstanding any provision to the contrary, a health insurance issuer receiving
18 a claim for covered healthcare services rendered in conducting a forensic medical
19 exam shall waive any applicable deductible, co-insurance, and co-pay and the
20 healthcare provider shall submit a claim to the Crime Victims Reparations Fund for
21 satisfaction of any non-covered services, not to exceed one thousand dollars. In
22 addition, the health insurance issuer shall allow the victim to designate any address
23 to be used for purposes of transmitting an explanation of benefits or allow the victim
24 to designate that no explanation of benefits be generated or transmitted.

25 (b) The Louisiana Medicaid, Medicare, or Tricare programs, if the victim is
26 enrolled as beneficiary of any of these programs.

27 (c) If the victim does not consent to the healthcare provider submitting a
28 claim to his or her health insurance issuer or the victim is not otherwise insured, the
29 Crime Victims Reparations Board. The Crime Victims Reparations Board shall

1 reimburse at the rate as promulgated by the board for healthcare services rendered
2 but in no case shall reimburse in any amount greater than one thousand dollars.

3 (8) Except for those services specifically set forth in the provision of this
4 Section, no other services shall be subject to the reimbursement or billing provisions
5 of this Section and shall continue to be reimbursable under the ordinary billing
6 procedures of the hospital or healthcare provider. In addition, a victim of a sexually-
7 oriented offense may seek reimbursement for these services through the Crime
8 Victims Reparations Board.

9 (9) The department shall make available to every hospital and healthcare
10 provider licensed under the laws of this state a pamphlet containing an explanation
11 of the billing process for services rendered pursuant to this Section. Every hospital
12 and healthcare provider shall provide a copy of the pamphlet to any person presented
13 for treatment as a victim of a sexually-oriented criminal offense.

14 B.(1) These procedures shall constitute minimum standards for the operation
15 and maintenance of hospitals under the provisions of this Part and failure to comply
16 with the standards shall constitute grounds for denial, suspension, or revocation of
17 license under provisions of this Part.

18 (2) Failure to comply with the provisions of this Section shall constitute
19 grounds for denial, suspension, or revocation of the healthcare provider's license by
20 the appropriate licensing board or commission.

21 C. When a licensed hospital or healthcare provider fails to examine and treat
22 a person, male or female, who has presented himself or herself or who has been
23 presented as a victim of a sexually-oriented criminal offense, the coroner of the
24 parish or his designee shall examine the alleged victim and, if necessary, make
25 arrangements for the treatment of the victim. The coroner may select the hospital or
26 healthcare provider named as the lead entity for sexual assault examinations in the
27 regional plan required by this Section as his designee to perform the forensic medical
28 examination. No coroner shall refuse to examine and assist an alleged victim on the
29 grounds the alleged offense occurred outside of or the victim is not a resident of the

1 jurisdiction. Nothing in this Subsection shall relieve a licensed hospital or healthcare
2 provider of its obligations under Subsections A and B of this Section.

3 D.(1) Any member of the hospital staff or a healthcare provider who in good
4 faith notifies the appropriate law enforcement official pursuant to Paragraphs (A)(4)
5 and (A)(5) of this Section shall have immunity from any civil liability that otherwise
6 might be incurred or imposed because of the notification. The immunity shall extend
7 to participation in any judicial proceeding resulting from the report.

8 (2) The hospital or healthcare provider staff member who notifies the
9 appropriate law enforcement official shall document the date, time, and method of
10 notification and the name of the official who received the notification.

11 (3) On or before January first of each year, each law enforcement agency
12 shall provide each hospital located in its respective jurisdiction with the name of the
13 responsible contact person along with the responsible person's contact information
14 in order to comply with the provisions of this Section.

15 E.(1) The Department of Health and Hospitals, through the medical directors
16 of each of its nine regional health service districts, shall coordinate an annual sexual
17 assault response plan for each district. Each district shall submit a proposed plan for
18 review by the secretary no later than November first of each year. An approved plan
19 shall become effective February first of the following year.

20 (2) When developing the annual response plan, each district shall incorporate
21 a sexual assault response team protocol to the extent possible; however, at a
22 minimum, each district shall develop the annual plan to do all of the following:

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

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

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

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

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

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

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

27 (b) The chief of police for any political subdivision located within the region.

28 (c) All hospitals located within the region.

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

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

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

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

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

6 (i) The district attorney for each parish within the region or his designee.

7 (j) Each crime lab located within the region.

8 F. All sexual assault collection kits used in a forensic medical examination
9 shall meet the standards developed by the Department of Health and Hospitals and
10 the Department of Public Safety and Corrections.

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

12 (1) "Forensic medical examination" has the same meaning as defined in R.S.
13 15:622.

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

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

18 (b) A facility or institution providing healthcare services, including but not
19 limited to a hospital or other licensed inpatient center, ambulatory surgical or
20 treatment center, skilled nursing facility, inpatient hospice facility, residential
21 treatment center, diagnostic, laboratory, or imaging center, or rehabilitation or other
22 therapeutic health setting.

23 (3) "Healthcare services" means services, items, supplies, or drugs for the
24 diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury,
25 or disease ancillary to a sexually-oriented criminal offense.

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

Section 4. R.S. 46:1802(4), (7) through (10), 1806(B), (C), and (D), 1809(B)(3) and (4)(a), and 1817(A) are hereby amended and reenacted and R.S. 46:1802(10.1), (11), (12), and (13), 1806(E), and 1807(B)(7) are enacted to read as follows:

§1802. Definitions

As used in this Chapter:

* * *

(4) "Claimant" means a victim or a dependent of a deceased victim, or the legal representative of either, an intervenor, the healthcare provider who provides healthcare services associated with a forensic medical examination as defined in R.S. 15:622, or in the event of a death, a person who legally assumes the obligation or who voluntarily pays the medical or the funeral or burial expenses incurred as a direct result of the crime.

* * *

(7) "Healthcare provider" means either of the following:

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

(b) A facility or institution providing healthcare services, including but not limited to a hospital or other licensed inpatient center, ambulatory surgical or treatment center, skilled nursing facility, inpatient hospice facility, residential treatment center, diagnostic, laboratory, or imaging center, or rehabilitation or other therapeutic health setting.

(8) "Healthcare services" means services, items, supplies, or drugs for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease ancillary to a sexually-oriented offense.

(9) "Intervenor" means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent a crime covered by this Chapter, to apprehend a person reasonably suspected of having engaged in such a crime, or to aid a peace officer. "Peace officer" shall include commissioned police officers,

1 sheriffs, deputy sheriffs, marshals, deputy marshals, correctional officers, constables,
2 wildlife enforcement agents, and probation and parole officers.

3 ~~(8)~~(10) "Pecuniary loss" means the amount of expense reasonably and
4 necessarily incurred by reason of personal injury, as a consequence of death, or a
5 catastrophic property loss, and includes:

6 (a) For personal injury:

7 (i) Medical, hospital, nursing, or psychiatric care or counseling, and physical
8 therapy.

9 (ii) Actual loss of past earnings and anticipated loss of future earnings
10 because of a disability resulting from the personal injury or the receipt of medically
11 indicated services by a ~~child~~ victim related to the personal injury.

12 (iii) Care of a child or dependent.

13 (iv) Counseling or therapy for the parents or siblings of a child who is the
14 victim of a sexual crime.

15 (v) Loss of support for a child victim of a sexual crime not otherwise
16 compensated for as a pecuniary loss for personal injury.

17 (b) As a consequence of death:

18 (i) Funeral, burial, or cremation expenses.

19 (ii) Loss of support to one or more dependents not otherwise compensated
20 for as a pecuniary loss for personal injury.

21 (iii) Care of a child or children enabling the surviving spouse of a victim or
22 the legal custodian or caretaker of the deceased victim's child or children to engage
23 in lawful employment, where that expense is not otherwise compensated for as a
24 pecuniary loss for personal injury.

25 (iv) Counseling or therapy for any surviving family member of the victim
26 or any person in close relationship to such victim.

27 (v) Crime scene cleanup.

1 (c) As to catastrophic property loss, the loss must be so great as to cause
2 overwhelming financial effect on the victim or other claimant and shall be restricted
3 to loss of abode.

4 (d) Any other expense associated with the collection and securing of crime
5 scene evidence.

6 ~~(8.1)~~(10.1) "Pecuniary loss" does not include loss attributable to pain and
7 suffering.

8 ~~(9)~~(11) "Reparations" means payment of compensation in accordance with
9 the provisions of this Chapter for pecuniary loss resulting from physical injury,
10 death, or catastrophic property loss by reason of a crime enumerated in this Chapter.

11 (12) "Sexually-oriented criminal offense" shall have the same meaning as
12 sex offense as defined in R.S. 15:541(24).

13 ~~(10)~~(13) "Victim" means:

14 (a) Any person who suffers personal injury, death, or catastrophic property
15 loss as a result of a crime committed in this state and covered by this Chapter. This
16 includes any person who is a victim of human trafficking as defined by R.S. 14:46.2,
17 a victim of trafficking of children for sexual purposes as defined by R.S. 14:46.3, or
18 a victim of any offense involving commercial sexual exploitation including but not
19 limited to R.S. 14:81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86,
20 89.2, 104, 105, and 282.

21 (b) A Louisiana resident who is a victim of an act of terrorism, as defined in
22 18 U.S.C. 2331, occurring outside the United States.

23 (c) A Louisiana resident who suffers personal injury or death as a result of
24 a crime described in R.S. 46:1805, except that the criminal act occurred outside of
25 this state. The resident shall have the same rights under this Chapter as if the act had
26 occurred in this state upon a showing that the state in which the act occurred does not
27 have an eligible crime victims reparations program and the crime would have been
28 compensable had it occurred in Louisiana. In this Subparagraph, "Louisiana

1 resident" means a person who maintained a place of permanent abode in this state
2 at the time the crime was committed for which reparations are sought.

3 * * *

4 §1806. Application; requirements; confidentiality

5 * * *

6 B.(1) An application for reparations related to a sexually-oriented criminal
7 offense shall be filed in writing with the board within one year after the date on
8 which the personal injury, death, or catastrophic property loss occurred or within
9 such longer period as the board determines is justified by the circumstances.

10 (2) A victim of a sexually-oriented criminal offense shall not be required to
11 report a sexually-oriented criminal offense to any law enforcement officer for
12 purposes of a claimant filing a valid application for reparations pursuant to this
13 Subsection.

14 (3) A claimant that files an application for reparations for personal injury or
15 death resulting from a sexually-oriented criminal offense shall submit certification
16 from a healthcare provider or coroner that a forensic medical examination of the
17 victim was conducted and an itemized billing statement for all related services
18 provided by the healthcare provider or coroner.

19 (4) The coroner shall provide certification to the healthcare provider that a
20 forensic medical examination was conducted.

21 (5) The healthcare provider shall submit certification to the board that a
22 forensic medical examination was conducted when requested by a claimant.

23 C. Application shall be made on a form prescribed and provided by the
24 board, which shall contain at least the following:

25 (1) A description of the date, nature, and circumstances of the act or acts
26 resulting in the physical injury, death, or catastrophic property loss, and of the crime,
27 if known.

28 (2) A complete financial statement, including the cost of medical care or
29 funeral, burial, or cremation expenses, the loss of wages or support, and the extent

1 of the property loss, if any, which the claimant has incurred or will incur and the
2 extent to which the claimant has been indemnified for these expenses from any
3 collateral source.

4 (3) Where appropriate, a statement indicating the extent of any disability
5 resulting from the injury incurred.

6 (4) An authorization permitting the board or its representatives to verify the
7 contents of the application.

8 (5) Such other information as the board may require.

9 ~~C.D.~~ The following information, when submitted to the board as part of an
10 application, shall be confidential:

11 (1) Documents submitted by a claimant which relate to medical treatment
12 including any itemized billing statements.

13 (2) Law enforcement investigative reports.

14 (3) Forensic medical examination.

15 ~~D.E.~~ Records, documents, and information in the possession of the board
16 received pursuant to a law enforcement investigation or a verification of application
17 by a law enforcement agency shall be considered investigative records of a law
18 enforcement agency as described in R.S. 44:3 and shall not be disseminated under
19 any condition without the permission of the agency providing the record or
20 information to the board.

21 §1807. Powers and duties of board; staff

22 * * *

23 B. In the performance of its powers and duties the board shall:

24 * * *

25 (7) Develop, adopt, and promulgate rules in the manner provided in the
26 Administrative Procedure Act and in accordance with the provisions of R.S.
27 46:1806(B). The rules shall contain specific guidelines which shall establish the
28 reasonable costs to be charged for all healthcare services or expenses ancillary to a

1 forensic medical examination which shall not exceed one thousand dollars for each
2 case.

3 * * *

4 §1809. Criteria for making awards; prohibitions; authority to deny or reduce awards

5 * * *

6 B. In making its determination, the following provisions shall apply:

7 * * *

8 (3)(a) No award of reparations shall be made if the board finds that:

9 ~~(a)~~(i) The crime was not reported within the time specified by R.S.
10 46:1806(A).

11 ~~(b)~~(ii) The claimant failed or refused to cooperate substantially with the
12 reasonable requests of appropriate law enforcement officials.

13 ~~(c)~~(iii) Reparations may substantially enrich the offender.

14 ~~(d)~~(iv) The claimant was the offender or an accessory, or that an award to the
15 claimant would unjustly benefit any of them. However, such ineligibility shall not
16 apply if the claimant is a victim of human trafficking or trafficking of children for
17 sexual purposes.

18 ~~(e)~~(v) The claim was not filed timely, as provided by R.S. 46:1806(A) and
19 (B).

20 ~~(f) Repealed by Acts 1991, No. 409, §2.~~

21 ~~(g)~~(vi) The crime was committed prior to the effective date of this Chapter.

22 (b) The ineligibility provisions provided for in Items (a)(i) and (ii) of this
23 Paragraph shall not apply if the claim for reparations results from a sexually-oriented
24 criminal offense.

25 (4) The board may deny or reduce an award:

26 (a) If it finds that the behavior of the victim at the time of the crime giving
27 rise to the claim was such that the victim bears some measure of responsibility for
28 the crime that caused the physical injury, death, or catastrophic property loss or for
29 the physical injury, death, or catastrophic property loss. However, such ineligibility

1 shall not apply if the claimant is a victim of a human trafficking-related offense as
2 defined by R.S. 46:1805 or a sexually-oriented criminal offense as defined by R.S.
3 15:622.

4 * * *

5 §1817. Notification to potential applicants

6 A.(1) Every hospital licensed under the laws of this state shall display
7 prominently in its emergency room posters giving notification of the existence of the
8 crime victims reparations program. The board shall set standards for the location of
9 the display and shall provide posters and general information regarding this Chapter
10 to each hospital.

11 (2) Every hospital and healthcare provider licensed under the laws of this
12 state shall make available to hospitals and healthcare providers a pamphlet
13 containing an explanation of the billing process for services rendered pursuant to the
14 provisions of R.S. 40:1300.41.

15 * * *

16 Section 5. R.S. 40:2109.1 is hereby repealed in its entirety.

17 Section 6. This Act shall become effective upon signature by the governor or, if not
18 signed by the governor, upon expiration of the time for bills to become law without signature
19 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
20 vetoed by the governor and subsequently approved by the legislature, this Act shall become
21 effective on the day following such approval.

22 Section 7. The provisions of this Act shall apply to any victim of a sexually-oriented
23 criminal offense that occurred on or after January 13, 2015, in accordance with emergency
24 rules promulgated by the Crime Victims Reparations Board and pursuant to Executive Order
25 BJ 14-17, which provides relative to the administrative rules, policies, and practices for
26 medical expenses and examinations related to victims of a sexually-oriented criminal
27 offense.

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 835 Reengrossed

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 provides for the definition of a "forensic medical examination" to mean an examination of a victim of a sexually-oriented criminal offense by a health care provider for the purpose of gathering and preserving evidence of a sexual assault for use in court.

Proposed law retains present law and expands the definition to include the following:

- (1) Examination of physical trauma.
- (2) Determination of penetration or force.
- (3) Patient interview, including medical history, triage, and consultation.
- (4) Collection and evaluation of evidence, including but not limited to photographic documentation, preservation and maintenance of chain of custody, medical specimen collection, when determined necessary by the healthcare provider, an alcohol and drug facilitated sexual assault assessment and toxicology screening.

Proposed law requires all licensed hospitals and healthcare providers to adhere to the procedures set forth in proposed law in the event that a person presents or is presented for treatment as a victim of a sexually-oriented criminal offense.

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, which shall include the following:

- (1) Forensic examiner and hospital or healthcare facility services directly related to the exam, including integral forensic supplies.
- (2) Scope procedures directly related to the forensic exam including but not limited to anoscopy and colposcopy.
- (3) Laboratory testing directly related to the forensic examination, including drug screening, urinalysis, pregnancy screening, syphilis screening, chlamydia culture, gonorrhea coverage culture, blood test for HIV screening, hepatitis B and C, herpes culture, and any other sexually transmitted disease testing directly related to the forensic examination.

- (4) Any medication provided during the forensic medical examination.

Proposed law authorizes a healthcare provider to submit a claim for healthcare services rendered in conducting a forensic medical exam for a victim of a sexually-oriented offense to any of the following:

- (1) A victim's health insurance issuer, requiring the insurer to waive any applicable deductible, co-pay, and co-insurance with the remaining non-covered expenses submitted to the Crime Victims Reparations (CVR) Board for reimbursement not to exceed \$1,000.
- (2) The Louisiana Medicaid, Medicare, or Tricare programs for an enrolled victim.
- (3) The CVR Board at the rate as promulgated by the board for healthcare services rendered not to exceed \$1,000.

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. Proposed law 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.

Proposed law authorizes the hospital or healthcare provider to continue ordinary billing procedures of the hospital or healthcare provider for services not specifically provided for in proposed law, but authorizes the victim to seek reimbursement for those services through the CVR Board.

Provides that the failure to comply with the standards of proposed law shall constitute grounds for denial, suspension, or revocation of license by the appropriate licensing board or commission.

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 Nov. 1st of each year. An approved plan shall become effective Feb. 1st 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 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.
- (9) The district attorney for each parish or his designee.
- (10) Each crime lab located within the region.

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

Present law provides relative to the CVR Board's application procedures and requirements for victims of a sexually-oriented criminal offense.

Present law provides for definitions relative to the CVR Board.

Present law defines "claimant" to mean a victim or dependent of a deceased victim, legal representative of either, an intervenor, or in the event of death, the person who legally or voluntarily assumes the deceased's medical and funeral obligations related to the crime.

Proposed law retains present law and expands the definition of "claimant" to include a healthcare provider who provides services associated with a forensic medical examination.

Proposed law provides for the definitions of "sexually-oriented criminal offense", "healthcare provider", and "healthcare services".

Proposed law requires that an application for reparations for a victim of a sexually-oriented criminal offense shall be filed in writing with the board within one year after the date of injury, death, or property loss or for a longer period as determined by the board.

Present law prohibits an award of reparations if the board finds that the crime was not timely reported in accordance with present law or that the claimant failed to cooperate with requests from law enforcement officials.

Proposed law excludes victims of a sexual offense from reporting such crimes to law enforcement for purposes of filing a valid application for reparations.

Proposed law requires a claimant to submit certification from a healthcare provider that a forensic medical examination was conducted on the victim and requires the healthcare provider to submit such certification when requested by a claimant.

Proposed law requires the board to promulgate rules and regulations relative to guidelines for the costs and expenses associated with forensic medical examinations and to provide a cap of \$1,000 for each examination.

Present law authorizes the reduction or denial of an award if it is determined by the board that the behavior of the victim at the time of the crime bears some responsibility to the injury, death, or property loss except for victims of human trafficking-related offenses.

Proposed law retains present law, and adds the exclusion for victims of a sexually-oriented criminal offense.

Proposed law requires hospitals and healthcare providers to provide victims of sexually-oriented criminal offenses a pamphlet giving notification of the billing process and procedures available through the board.

Provides for the provisions of proposed law to apply to any victim of a sexually-oriented criminal offense that occurred on or after January 13, 2015.

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

(Amends R.S. 13:5713(F), R.S. 15:622(A)(2) and (4), and R.S. 46:1802(4), (7)-(10), 1806(B), (C), and (D), 1809(B)(3) and (4)(a), and 1817(A); Adds R.S. 40:1300.41 and R.S. 46:1802(10.1), (11), (12), and (13), 1806(E), and 1807(B)(7); Repeals R.S. 40:2109.1)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Make technical amendments.
2. Authorize the provisions of proposed law to apply to a victim of a sexually-oriented offense that occurred on or after January 13, 2015.