

STATE OF MAINE

—

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

—

S.P. 410 - L.D. 1219

An Act To Amend the Laws Governing Forensic Examination Kits

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

Sec. 1. 5 MRSA §3360-M, as amended by PL 2009, c. 79, §4, is further amended to read:

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

1. Payment. The board shall pay the costs of forensic examiner training as well as 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. For the purposes of this section, "sexual assault" means any crime enumerated in Title 17-A, chapter 11.

2. Forensic examination; forensic examiner training and education. 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 \$750.

The cost of sexual assault forensic examiner training and education provided by the sexual assault forensic examiner program must be paid from the Victims' Compensation Fund in an amount that may not exceed \$50,000 per year.

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 assigned by the manufacturer of~~ 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 ~~H-A~~ 2-A.

Sec. 2. 24 MRSA §2986, as amended by PL 2011, c. 59, §1 and c. 420, Pt. A, §21, is further amended to read:

§2986. Performing forensic examinations for alleged victims of 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. For the purposes of this section, "sexual assault" means any crime enumerated in Title 17-A, chapter 11.

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~~ assigned by the manufacturer of 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 \$750. 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 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 agency shall retain custody of the forensic examination kit.

If an examination is performed under subsection 5 and the alleged victim does not, within 60 days, regain a state of consciousness adequate to decide whether or not to report the alleged offense, the State may file a motion in the District Court relating to storing or processing the forensic examination kit. Upon finding good cause and after considering factors, including, but not limited to, the possible benefits to public safety in processing the kit and the likelihood of the alleged victim's regaining a 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.

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.

5. Implied consent. If an alleged victim of ~~gross~~ sexual assault is unconscious and a reasonable person would conclude 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.

A forensic examination kit completed in accordance with this subsection must be treated in accordance with Title 25, section 3821 and must preserve the alleged victim's anonymity. In addition, the law enforcement agency shall immediately report to 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.

6. Liability. A licensed hospital or licensed health care 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.

Sec. 3. 25 MRSA §2915, as enacted by PL 1999, c. 719, §3 and affected by §11, is amended to read:

§2915. Uniform forensic examination kit for evidence collection in alleged cases of 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.

3-A. "Sexual assault" defined. For the purposes of this section, "sexual assault" means any crime enumerated in Title 17-A, chapter 11.

4. Rules. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

Sec. 4. 25 MRSA §3821, as amended by PL 2007, c. 209, §7, is further amended to read:

§3821. Transportation and storage of forensic examination kits

For the purposes of this section, "sexual assault" means any crime enumerated in Title 17-A, chapter 11.

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~~ the kit manufacturer, 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 investigating agency shall take possession of the kit.

In the case of a forensic examination performed under Title 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 examination kit has been completed under Title 24, section 2986, subsection 5.

Sec. 5. Rulemaking; exemption from Maine Administrative Procedure Act. The Department of Public Safety shall amend its rules implementing the Maine Revised Statutes, Title 25, sections 2915 and 3821 to reflect the changes set forth in this Act; and, notwithstanding Title 5, Part 18, or any other provision of law to the contrary, rule amendments adopted in accordance with this section are not subject to the requirements of the Maine Administrative Procedure Act.

Sec. 6. Rulemaking. The Victims' Compensation Board shall amend the rules on reimbursement by the Victims' Compensation Fund for use of forensic examination test kits in certain instances of sexual assault as provided in this Act by January 1, 2018. Rules adopted pursuant to this section are routine technical rules as defined by the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Sec. 7. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 25, chapter 407, in the chapter headnote, the words "transportation and storage of forensic examination kits for alleged victims of gross sexual assault" are amended to read "transportation and storage of forensic examination kits for alleged victims of sexual assault" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.