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Date: (Filing No. S-)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
SENATE
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 410, L.D. 1219, Bill, “An Act To Amend the Laws Governing Forensic Examination Kits”

Amend the bill by inserting after the enacting clause and before section 1 the following:

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

COMMITTEE AMENDMENT

1 the alleged victim by name but must be assigned a tracking number ~~that corresponds to~~
2 assigned by the manufacturer of the forensic examination kit. ~~The tracking number may~~
3 ~~not be the alleged victim's social security number.~~ The hospital or health care practitioner
4 that performs the examination may not bill the alleged victim or the alleged victim's
5 insurer, nonprofit hospital or medical service organization or health maintenance
6 organization for payment of the examination. The alleged victim is not required to report
7 the alleged offense to a law enforcement agency.

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

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

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

18 **§2986. Performing forensic examinations for alleged victims of sexual assault**

19 **1. Standard forensic examination kit.** All licensed hospitals and licensed health
20 care practitioners shall use a standard forensic examination kit developed and furnished
21 by the Department of Public Safety pursuant to Title 25, section 2915 to perform forensic
22 examinations for alleged victims of ~~gross~~ sexual assault. For the purposes of this section,
23 "sexual assault" means any crime enumerated in Title 17-A, chapter 11.

24 **2. Victims' Compensation Board billing.** All licensed hospitals and licensed health
25 care practitioners that perform forensic examinations for alleged victims of ~~gross~~ sexual
26 assault shall submit a bill to the Victims' Compensation Board directly for payment of the
27 forensic examinations. The Victims' Compensation Board shall determine what a
28 forensic examination includes pursuant to Title 5, section 3360-M. The hospital or health
29 care practitioner that performs a forensic examination shall take steps necessary to ensure
30 the confidentiality of the alleged victim's identity. The bill submitted by the hospital or
31 health care practitioner may not identify the alleged victim by name but must be assigned
32 a tracking number ~~that corresponds to~~ assigned by the manufacturer of the forensic
33 examination kit. ~~The tracking number may not be the alleged victim's social security~~
34 ~~number.~~ The Victims' Compensation Board shall pay the actual cost of the forensic
35 examination up to a maximum of \$750. Licensed hospitals and licensed health care
36 practitioners that perform forensic examinations for alleged victims of ~~gross~~ sexual
37 assault may not bill the alleged victim or the alleged victim's insurer, nonprofit hospital or
38 medical service organization or health maintenance organization for payment for the
39 examination.

40 **3. Completed kit.** If the alleged victim has not reported the alleged offense to a law
41 enforcement agency when the examination is complete, the hospital or health care
42 practitioner shall then notify the nearest law enforcement agency, which shall transport
43 and store the completed forensic examination kit for at least 90 days. The completed kit
44 may be identified only by the tracking number. If during that 90-day period an alleged

1 victim decides to report the alleged offense to a law enforcement agency, the alleged
2 victim may contact the hospital or health care practitioner to determine the tracking
3 number. The hospital or health care practitioner shall provide the alleged victim with the
4 tracking number on the forensic examination kit and shall inform the alleged victim
5 which law enforcement agency is storing the kit.

6 If the alleged victim reports the alleged offense to a law enforcement agency by the time
7 the examination is complete, the investigating agency shall retain custody of the forensic
8 examination kit.

9 If an examination is performed under subsection 5 and the alleged victim does not, within
10 60 days, regain a state of consciousness adequate to decide whether or not to report the
11 alleged offense, the State may file a motion in the District Court relating to storing or
12 processing the forensic examination kit. Upon finding good cause and after considering
13 factors, including, but not limited to, the possible benefits to public safety in processing
14 the kit and the likelihood of the alleged victim's regaining a state of consciousness
15 adequate to decide whether or not to report the alleged offense in a reasonable time, the
16 District Court may order either that the kit be stored for additional time or that the kit be
17 transported to the Maine State Police Crime Laboratory for processing, or such other
18 disposition that the court determines just. In the interests of justice or upon motion by the
19 State, the District Court may conduct hearings required under this paragraph
20 confidentially and in camera and may impound pleadings and other records related to
21 them.

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

25 **5. Implied consent.** If an alleged victim of ~~gross~~ sexual assault is unconscious and a
26 reasonable person would conclude that exigent circumstances justify conducting a
27 forensic examination, a licensed hospital or licensed health care practitioner may perform
28 an examination in accordance with the provisions of this section.

29 A forensic examination kit completed in accordance with this subsection must be treated
30 in accordance with Title 25, section 3821 and must preserve the alleged victim's
31 anonymity. In addition, the law enforcement agency shall immediately report to the
32 district attorney for the district in which the hospital or health care practitioner is located
33 that such a forensic examination has been performed and a forensic examination kit has
34 been completed under this subsection.

35 **6. Liability.** A licensed hospital or licensed health care practitioner in the exercise of
36 due care is not liable for an act done or omitted in performing a sexual assault forensic
37 examination under this section.'

38 Amend the bill in section 3 in the 4th line (page 2, line 14 in L.D.) by striking out the
39 following: "part 18" and inserting the following: 'Part 18'

40 Amend the bill by inserting after section 3 the following:

41 **'Sec. 4. Rulemaking.** The Victims' Compensation Board shall amend the rules on
42 reimbursement by the Victims' Compensation Fund for use of forensic examination test
43 kits in certain instances of sexual assault as provided in this Act by January 1, 2018.

1 Rules adopted pursuant to this section are routine technical rules as defined by the Maine
2 Revised Statutes, Title 5, chapter 375, subchapter 2-A.'

3 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
4 section number to read consecutively.

5 **SUMMARY**

6 This amendment amends the laws governing forensic examination kits to provide for
7 the kits to be used for testing in relation to alleged sexual assault crimes other than gross
8 sexual assault, making that change in the Maine Revised Statutes, Title 5, section 3360-M
9 and Title 24, section 2986. The amendment changes the tracking number used on the
10 completed kit from a number assigned by the hospital or health care practitioner to the
11 number assigned by the kit manufacturer. The amendment requires the Victims'
12 Compensation Board to amend its rules regarding forensic examination test kits.