

AMENDED IN SENATE APRIL 13, 2009

AMENDED IN SENATE MARCH 16, 2009

SENATE BILL

No. 50

Introduced by Senator Corbett

January 13, 2009

An act to *add Section 13957.3 to the Government Code, and to amend Sections 13823.95 and 13823.11 of the Penal Code, relating to victims of sexual assault.*

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as amended, Corbett. Victims of sexual assault.

Existing law authorizes state compensation for victims of crime, as specified.

This bill would additionally authorize state payment of claims by medical providers for the costs of medical examinations and treatment for victims of sexual assaults, as specified.

Existing law provides that no costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the forensic examination of the victim of a sexual assault for the purposes of gathering evidence for possible prosecution shall be charged directly or indirectly to the victim of the assault.

This bill would provide that collection and retention of evidence gathered during the examination of a victim of sexual assault shall be the responsibility of the law enforcement agency requesting the examination, and would prohibit charging the victim of a sexual assault for the costs of medical treatment, as specified.

By imposing evidence retention duties on local law enforcement agencies, this bill would impose a state-mandated local program.

Existing law provides that the law enforcement agency in the jurisdiction in which the alleged sexual assault was committed which requests the examination has the option of determining whether or not the examination will be performed in the office of a physician and surgeon.

The bill would delete the provisions giving that law enforcement agency the option of determining whether or not the examination will be performed in the office of a physician and surgeon.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 13957.3 is added to the Government Code,*
 2 *to read:*

3 13957.3. *Notwithstanding any other provision of this article,*
 4 *the board shall pay claims submitted by medical providers for the*
 5 *costs of medical examinations and treatment for victims of sexual*
 6 *assault, unless an alternative source of payment is available.*

7 ~~**SECTION 1.**~~

8 **SEC. 2.** *Section 13823.95 of the Penal Code is amended to*
 9 *read:*

10 13823.95. *No costs incurred by a qualified health care*
 11 *professional, hospital, or other emergency medical facility for the*
 12 *forensic examination of the victim of a sexual assault, as described*
 13 *in the protocol developed pursuant to Section 13823.5, when the*
 14 *examination is performed, pursuant to Sections 13823.5 and*
 15 *13823.7, for the purposes of gathering evidence for possible*
 16 *prosecution, or for medical treatment, shall be charged directly or*
 17 *indirectly to the victim of the assault. Those costs shall be treated*
 18 *as local costs and charged to the local governmental agency in*
 19 *whose jurisdiction the alleged offense was committed.*

1 Bills for ~~these costs~~ *the costs of medical examination and*
2 *treatment, whether performed as part of a forensic examination*
3 *or separately*, shall be submitted to the ~~law enforcement agency~~
4 ~~in the jurisdiction in which the alleged offense was committed~~
5 ~~which requests the examination~~ *California Victim Compensation*
6 *and Government Claims Board*. Collection and retention of any
7 evidence gathered during the examination of a victim of a sexual
8 assault shall be the responsibility of the law enforcement agency
9 in the jurisdiction in which the alleged offense was committed
10 ~~which requests the examination~~.

11 ~~SEC. 2.~~

12 *SEC. 3.* Section 13823.11 of the Penal Code is amended to
13 read:

14 13823.11. *The health care provider shall follow minimum*
15 *standards for the medical examination and treatment of victims*
16 *of sexual assault or attempted sexual assault, including child*
17 *molestation*. The minimum standards for the *forensic* examination
18 ~~and treatment~~ of victims of sexual assault or attempted sexual
19 assault, including child molestation and the collection and
20 preservation of evidence therefrom include all of the following:

- 21 (a) Law enforcement authorities shall be notified.
- 22 (b) In conducting the physical examination, the outline indicated
23 in the form adopted pursuant to subdivision (c) of Section 13823.5
24 shall be followed.
- 25 (c) Consent for a physical examination, treatment, and collection
26 of evidence shall be obtained.
 - 27 (1) Consent to an examination for evidence of sexual assault
28 shall be obtained prior to the examination of a victim of sexual
29 assault and shall include separate written documentation of consent
30 to each of the following:
 - 31 (A) Examination for the presence of injuries sustained as a result
32 of the assault.
 - 33 (B) Examination for evidence of sexual assault and collection
34 of physical evidence.
 - 35 (C) Photographs of injuries.
 - 36 (2) Consent to treatment shall be obtained in accordance with
37 usual hospital policy.
 - 38 (3) A victim of sexual assault shall be informed that he or she
39 may refuse to consent to an examination for evidence of sexual
40 assault, including the collection of physical evidence, but that a

1 refusal is not a ground for denial of treatment of injuries and for
2 possible pregnancy and sexually transmitted diseases, if the person
3 wishes to obtain treatment and consents thereto. No costs incurred
4 by a qualified health care professional, hospital, or other emergency
5 medical facility for the treatment of a victim of a sexual assault
6 shall be charged directly or indirectly to the victim of a sexual
7 assault.

8 (4) Pursuant to Chapter 3 (commencing with Section 6920) of
9 Part 4 of Division 11 of the Family Code, a minor may consent to
10 hospital, medical, and surgical care related to a sexual assault
11 without the consent of a parent or guardian.

12 (5) In cases of known or suspected child abuse, the consent of
13 the parents or legal guardian is not required. In the case of
14 suspected child abuse and nonconsenting parents, the consent of
15 the local agency providing child protective services or the local
16 law enforcement agency shall be obtained. Local procedures
17 regarding obtaining consent for the examination and treatment of,
18 and the collection of evidence from, children from child protective
19 authorities shall be followed.

20 (d) A history of sexual assault shall be taken.

21 The history obtained in conjunction with the examination for
22 evidence of sexual assault shall follow the outline of the form
23 established pursuant to subdivision (c) of Section 13823.5 and
24 shall include all of the following:

25 (1) A history of the circumstances of the assault.

26 (2) For a child, any previous history of child sexual abuse and
27 an explanation of injuries, if different from that given by a parent
28 or person accompanying the child.

29 (3) Physical injuries reported.

30 (4) Sexual acts reported, whether or not ejaculation is suspected,
31 and whether or not a condom or lubricant was used.

32 (5) Record of relevant medical history.

33 (e) (1) If indicated by the history of contact, a female victim
34 of sexual assault shall be provided with the option of ~~postcoital~~
35 *emergency* contraception by a physician or other health care
36 provider.

37 (2) ~~Postcoital~~ *Emergency* contraception shall be dispensed by
38 a physician or other health care provider upon the request of the
39 victim.

1 (f) Each adult and minor victim of sexual assault who consents
2 to a medical examination *as part of the forensic examination* for
3 collection of evidentiary material shall have a *medical* physical
4 examination which includes, but is not limited to, all of the
5 following:

6 (1) Inspection of the clothing, body, and external genitalia for
7 injuries and foreign materials.

8 (2) Examination of the mouth, vagina, cervix, penis, anus, and
9 rectum, as indicated.

10 (3) Documentation of injuries and evidence collected.

11 Prepubertal children shall not have internal vaginal or anal
12 examinations unless absolutely necessary. This does not preclude
13 careful collection of evidence using a swab.

14 (g) The collection of physical evidence shall conform to the
15 following procedures:

16 (1) Each victim of sexual assault who consents to an examination
17 for collection of evidence shall have the following items of
18 evidence collected, except where he or she specifically objects:

19 (A) Clothing worn during the assault.

20 (B) Foreign materials revealed by an examination of the
21 clothing, body, external genitalia, and pubic hair combings.

22 (C) Swabs and slides from the mouth, vagina, rectum, and penis,
23 as indicated, to determine the presence or absence of sperm and
24 sperm motility, and for genetic marker typing.

25 (D) If indicated by the history of contact, the victim's urine and
26 blood sample, for toxicology purposes, to determine if drugs or
27 alcohol were used in connection with the assault. Toxicology
28 results obtained pursuant to this paragraph shall not be admissible
29 in any criminal or civil action or proceeding against any victim
30 who consents to the collection of physical evidence pursuant to
31 this paragraph. Except for purposes of prosecuting or defending
32 the crime or crimes necessitating the examination specified by this
33 section, any toxicology results obtained pursuant to this paragraph
34 shall be kept confidential, may not be further disclosed, and shall
35 not be required to be disclosed by the victim for any purpose not
36 specified in this paragraph. The victim shall specifically be
37 informed of the immunity and confidentiality safeguards provided
38 herein.

39 (2) Each victim of sexual assault who consents to ~~an examination~~
40 *a medical examination, whether or not in connection with a*

1 *forensic examination*, for the collection of evidence shall have
2 reference specimens taken, except when he or she specifically
3 objects thereto. A reference specimen is a standard from which to
4 obtain baseline information (for example: pubic and head hair,
5 blood, and saliva for genetic marker typing). These specimens
6 shall be taken in accordance with the standards of the local
7 criminalistics laboratory.

8 (3) A baseline gonorrhea culture, and syphilis serology, shall
9 be taken, if indicated by the history of contact. Specimens for a
10 pregnancy test shall be taken, if indicated by the history of contact.

11 (4) (A) If indicated by the history of contact, a female victim
12 of sexual assault shall be provided with the option of ~~postcoital~~
13 *emergency* contraception by a physician or other health care
14 provider.

15 (B) ~~Postcoital~~ *Emergency* contraception shall be dispensed by
16 a physician or other health care provider upon the request of the
17 victim.

18 (h) Preservation and disposition of physical evidence shall
19 conform to the following procedures:

20 (1) All swabs and slides shall be air-dried prior to packaging.

21 (2) All items of evidence including laboratory specimens shall
22 be clearly labeled as to the identity of the source and the identity
23 of the person collecting them.

24 (3) The evidence shall have a form attached which documents
25 its chain of custody and shall be properly sealed.

26 (4) The evidence shall be turned over to the proper law
27 enforcement agency.

28 ~~SEC. 3.~~

29 *SEC. 4.* If the Commission on State Mandates determines that
30 this act contains costs mandated by the state, reimbursement to
31 local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.