

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 a forensic exam for a victim of a sexual assault, 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. ~~Existing law requires those costs be treated as local costs and charged to the local governmental agency in whose jurisdiction the alleged offense was committed.~~

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. The bill would require that bills for the costs of those forensic examinations and that medical

~~treatment be submitted to the California Victim Compensation and Government Claims Board.~~

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: ~~no~~-yes.

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

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

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

7 ~~SEC. 2.~~

8 ~~SECTION 1.~~ Section 13823.95 of the Penal Code is amended
9 to read:

10 13823.95. No costs incurred by a qualified health care
11 professional, hospital, or other emergency medical facility for the
12 examination of the victim of a sexual assault, as described in the
13 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

prosecution, or for medical treatment, shall be charged directly or indirectly to the victim of the assault. *Those costs shall be treated as local costs and charged to the local governmental agency in whose jurisdiction the alleged offense was committed.*

Bills for these costs shall be submitted to the ~~California Victim Compensation and Government Claims Board~~ law enforcement agency in the jurisdiction in which the alleged offense was committed which requests the examination. Collection and retention of any evidence gathered during the examination of a victim of a sexual assault shall be the responsibility of the law enforcement agency in the jurisdiction in which the alleged offense was committed which requests the examination.

~~The law enforcement agency in the jurisdiction in which the alleged offense 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.~~

~~SEC. 3.~~

SEC. 2. Section 13823.11 of the Penal Code is amended to read:

13823.11. The minimum standards for the examination and treatment of victims of sexual assault or attempted sexual assault, including child molestation and the collection and preservation of evidence therefrom include all of the following:

(a) Law enforcement authorities shall be notified.

(b) In conducting the physical examination, the outline indicated in the form adopted pursuant to subdivision (c) of Section 13823.5 shall be followed.

(c) Consent for a physical examination, treatment, and collection of evidence shall be obtained.

(1) Consent to an examination for evidence of sexual assault shall be obtained prior to the examination of a victim of sexual assault and shall include separate written documentation of consent to each of the following:

(A) Examination for the presence of injuries sustained as a result of the assault.

(B) Examination for evidence of sexual assault and collection of physical evidence.

(C) Photographs of injuries.

(2) Consent to treatment shall be obtained in accordance with usual hospital policy.

(3) A victim of sexual assault shall be informed that he or she may refuse to consent to an examination for evidence of sexual assault, including the collection of physical evidence, but that a refusal is not a ground for denial of treatment of injuries and for possible pregnancy and sexually transmitted diseases, if the person wishes to obtain treatment and consents thereto. No costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the treatment of a victim of a sexual assault shall be charged directly or indirectly to the victim of a sexual assault.

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

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

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

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

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

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

(3) Physical injuries reported.

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

(5) Record of relevant medical history.

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

(2) Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim.

(f) Each adult and minor victim of sexual assault who consents to a medical examination for collection of evidentiary material shall have a physical examination which includes, but is not limited to, all of the following:

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

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

(3) Documentation of injuries and evidence collected.

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

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

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

(A) Clothing worn during the assault.

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

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

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

(2) Each victim of sexual assault who consents to an examination for the collection of evidence shall have reference specimens taken, except when he or she specifically objects thereto. A reference

1 specimen is a standard from which to obtain baseline information
2 (for example: pubic and head hair, blood, and saliva for genetic
3 marker typing). These specimens shall be taken in accordance with
4 the standards of the local criminalistics laboratory.

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

8 (4) (A) If indicated by the history of contact, a female victim
9 of sexual assault shall be provided with the option of postcoital
10 contraception by a physician or other health care provider.

11 (B) Postcoital contraception shall be dispensed by a physician
12 or other health care provider upon the request of the victim.

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

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

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

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

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

23 *SEC. 3. If the Commission on State Mandates determines that*
24 *this act contains costs mandated by the state, reimbursement to*
25 *local agencies and school districts for those costs shall be made*
26 *pursuant to Part 7 (commencing with Section 17500) of Division*
27 *4 of Title 2 of the Government Code.*