

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1342
PROPOSED SENATE COMMITTEE SUBSTITUTE H1342-PCS50724-RD-62

Short Title: Free Med. Exam-Victims of Rape/Sex Offenses.

(Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FREE FORENSIC MEDICAL EXAMINATIONS FOR VICTIMS OF RAPE AND SEX OFFENSES; TO INCREASE THE AUTHORITY OF THE DIRECTOR OF THE CRIME VICTIMS COMPENSATION COMMISSION AND THE COMMISSION ITSELF TO CONSIDER PROXIMATE CAUSE WHEN DETERMINING WHETHER TO MAKE AN AWARD; AND TO MAKE VARIOUS OTHER CHANGES TO THE RAPE VICTIMS ASSISTANCE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143B-480.2 is repealed.

SECTION 1.(b) G.S. 143B-480.1 reads as rewritten:

"§ 143B-480.1. Assistance Program for Victims of Rape and Sex Offenses.

(a) Establishment of Program. – There is established an Assistance Program for Victims of Rape and Sex Offenses, hereinafter referred to as the "Program." The Secretary shall administer and implement the Program and shall have authority over all assistance awarded through the Program. The Secretary shall promulgate rules and guidelines for the Program.

(b) Victims to Be Provided Free Forensic Medical Examinations. – It is the policy of this State to arrange for victims to obtain forensic medical examinations free of charge. Whenever a forensic medical examination is conducted as a result of a sexual assault or an attempted sexual assault that occurred in this State, the Program shall pay for the cost of the examination. A medical facility or medical professional that performs a forensic medical examination on the victim of a sexual assault or attempted sexual assault shall not seek payment for the examination except from the Program.

(c) No Billing of Victim. – A medical facility or medical professional that performs a forensic medical examination shall accept payment made under this section as payment in full of the amount owed for the cost of the examination and other eligible expenses and shall not bill victims, their personal insurance, Medicaid, Medicare, or any other collateral source for the examination. Furthermore, a medical facility or medical professional shall not seek reimbursement from the Program after one year from the date of the examination.

(d) Eligible Expenses. – Medical facilities and medical professionals who perform forensic medical examinations shall do so using a Sexual Assault Evidence Collection Kit. Payments by the Program for the forensic medical examination shall be limited to the following:

<u>Service</u>	<u>Maximum Amount Paid by Program</u>
Physician or SANE Nurse	\$350.00



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1	<u>Hospital/Facility Fee</u>	<u>\$250.00</u>
2	<u>Other Expenses Deemed Eligible</u>	
3	<u>by the Program</u>	<u>\$200.00</u>
4	<u>Total:</u>	<u>\$800.00</u>

5 (e) Payment Directly to Provider. – The Program shall make payment directly to the
6 medical facility or medical professional. Bills submitted to the Program for payment shall
7 specify under which categories of expense set forth in subsection (d) of this section the billed
8 services fall.

9 (f) Additional Victim Notification Requirements. – A medical facility or medical
10 professional who performs a forensic medical examination shall encourage victims to submit an
11 application for reimbursement of medical expenses beyond the forensic examination to the
12 Crime Victims Compensation Commission for consideration of those expenses. The victim
13 must meet the eligibility requirements of the Crime Victims Compensation Commission to be
14 reimbursed for those additional expenses. A medical facility or medical professional who
15 performs a forensic medical examination shall also inform victims before providing any
16 services that are not covered by the Program. Medical facilities and medical professionals shall
17 not seek reimbursement from the Program after one year from the date of the exam.

18 (g) Judicial Review. – Upon an adverse determination by the Secretary on a claim for
19 assistance under this Part, a victim is entitled to judicial review of that decision. The person
20 seeking review shall file a petition in the Superior Court of Wake County.

21 (h) The Secretary shall adopt rules to encourage, whenever practical, the use of licensed
22 registered nurses trained under G.S. 90-171.38(b) to conduct medical examinations and
23 procedures.

24 (i) Definitions. – The following definitions apply in this section:

25 (1) Forensic medical examination. – An examination provided to a sexual
26 assault victim by medical personnel trained to gather evidence of a sexual
27 assault in a manner suitable for use in a court of law. The examination
28 should include at a minimum an examination of physical trauma, a patient
29 interview, a determination of penetration or force, and a collection and
30 evaluation of evidence. This definition shall be interpreted consistently with
31 28 C.F.R. § 90.2(b) and other relevant federal law.

32 (2) SANE nurse. – A Sexual Assault Nurse Examiner that is a licensed
33 registered nurse trained pursuant to G.S. 90-171.38(b) who obtains
34 preliminary histories, conducts in-depth interviews, and conducts medical
35 examinations of rape victims or victims of related sexual offenses.

36 (3) Sexual assault. – Any of the following crimes:

37 a. First-degree rape as defined in G.S. 14-27.2.

38 b. Second degree rape as defined in G.S. 14-27.3.

39 c. First-degree sexual offense as defined in G.S. 14-27.4.

40 d. Second degree sexual offense as defined in G.S. 14-27.5.

41 e. Statutory rape as defined in G.S. 14-27.7A.

42 (4) Sexual Assault Evidence Collection Kit. – The kit assembled and paid for by
43 the Program and used to conduct forensic medical examinations in this
44 State."

45 **SECTION 2.** G.S. 143B-480.3 reads as rewritten:

46 "**§ 143B-480.3. Reduction of benefits; restitution; Restitution; actions.**

47 (a) ~~Assistance shall be reduced or denied to the extent the medical expenses are~~
48 ~~recouped through a public or private insurance plan or other victim benefit source, except that~~
49 ~~the Program shall pay any co-payment that the victim is required to pay in connection with the~~
50 ~~forensic medical examination up to the maximum amount that the Program will pay for a~~
51 ~~forensic medical exam under G.S. 143B-480.2(c).~~

1 (b) The Program shall be an eligible recipient for restitution or reparation under
2 G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

3 (c) When any victim who:

4 (1) Has received assistance under this Part;

5 (2) Brings an action for damages arising out of the rape, attempted rape, sexual
6 offense, or attempted sexual offense for which she received that assistance;
7 and

8 (3) Recovers damages including the expenses for which she was awarded
9 assistance,

10 the court shall make as part of its judgment an order for reimbursement to the Program of the
11 amount of any assistance awarded less reasonable expenses allocated by the court to that
12 recovery.

13 (d) Funds appropriated to the Department of Crime Control and Public Safety for this
14 program may be used to purchase and distribute rape evidence collection kits approved by the
15 State Bureau of Investigation."

16 **SECTION 3.** G.S. 15B-10 reads as rewritten:

17 **"§ 15B-10. Awarding claims.**

18 (a) The Director shall decide the award of compensation for an initial claim or
19 follow-up claim when the claim does not exceed ~~seven thousand five hundred dollars~~
20 ~~(\$7,500)~~ twelve thousand five hundred dollars (\$12,500) and does not include future economic
21 loss. The Director shall report all awards under this subsection to the Commission.

22 (b) The Director shall recommend the award of compensation for an initial claim or
23 follow-up claim when the claim exceeds ~~seven thousand five hundred dollars (\$7,500)~~ twelve
24 thousand five hundred dollars (\$12,500) or involves future economic loss. The Commission
25 shall decide the award of compensation for a claim based on a review of written evidence
26 submitted to the Commission by the Director.

27 (c) In reporting a decision under subsection (a) or recommending a decision under
28 subsection (b), the Director shall submit to the Commission documentation to establish the
29 economic loss of the claimant by substantial evidence.

30 (d) The Director shall send each claimant a written statement of a decision made under
31 subsection (a) or (b) that gives the reasons for the decision. A claimant who is dissatisfied with
32 a decision may commence a contested case under Article 3 of Chapter 150B of the General
33 Statutes."

34 **SECTION 4.** G.S. 15B-11 reads as rewritten:

35 **"§ 15B-11. Grounds for denial of claim or reduction of award.**

36 (a) An award of compensation shall be denied if:

37 (1) The claimant fails to file an application for an award within two years after
38 the date of the criminally injurious conduct that caused the injury or death
39 for which the claimant seeks the award;

40 (2) The economic loss is incurred after one year from the date of the criminally
41 injurious conduct that caused the injury or death for which the victim seeks
42 the award, except in the case where the victim for whom compensation is
43 sought was 10 years old or younger at the time the injury occurred. In that
44 case an award of compensation will be denied if the economic loss is
45 incurred after two years from the date of the criminally injurious conduct
46 that caused the injury or death for which the victim seeks the award;

47 (3) The criminally injurious conduct was not reported to a law enforcement
48 officer or agency within 72 hours of its occurrence, and there was no good
49 cause for the delay;

- 1 (4) The award would benefit the offender or the offender's accomplice, unless a
2 determination is made that the interests of justice require that an award be
3 approved in a particular case;
- 4 (5) The criminally injurious conduct occurred while the victim was confined in
5 any State, county, or city prison, correctional, youth services, or juvenile
6 facility, or local confinement facility, or half-way house, group home, or
7 similar facility; or
- 8 (6) The victim was participating in a felony at or about the time that the victim's
9 injury occurred.
- 10 (b) A claim may be denied or an award of compensation may be reduced if:
- 11 (1) The victim was participating in a nontraffic misdemeanor at or about the
12 time that the victim's injury occurred; or
- 13 (2) The claimant or a victim through whom the claimant claims engaged in
14 contributory misconduct.
- 15 (b1) The Commission or Director, whichever has the authority to decide a claim under
16 G.S. 15B-10, shall use its—the Commission's/Director's discretion in determining whether to
17 deny a claim under this subsection-subsection (b) of this section. In exercising its discretion, the
18 Commission may or Director shall consider whether any proximate cause exists between the
19 injury and the misdemeanor or contributory misconduct, when applicable. The
20 Director or Commission shall deny claims when it finds that there was contributory misconduct
21 that is a proximate cause of becoming a victim. However, contributory misconduct that is not a
22 proximate cause of becoming a victim shall not lead to an automatic denial of a claim."

23 **SECTION 5.** This act becomes effective July 1, 2009.