

HOUSE BILL NO. 2097

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare, and Institutions

on _____)

(Patron Prior to Substitute--Delegate Hudson)

A BILL to amend and reenact §§ 19.2-368.2, 19.2-368.3, 19.2-368.11:1, 32.1-162.15:2, as it shall become effective, and 32.1-162.15:4, as it shall become effective, of the Code of Virginia, relating to treatment services for sexual assault survivors; emergency contraception; provision by health care providers, payment from fund.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-368.2, 19.2-368.3, 19.2-368.11:1, 32.1-162.15:2, as it shall become effective, and 32.1-162.15:4, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 19.2-368.2. Definitions.

For the purpose of this chapter:

"Claimant" means the person filing a claim pursuant to this chapter.

"Commission" means the Virginia Workers' Compensation Commission.

"Crime" means an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-51.4 or 18.2-266 or from a felony violation of § 46.2-894.

"Emergency contraception" means medication approved by the U.S. Food and Drug Administration that can significantly reduce the risk of pregnancy if taken or administered after sexual intercourse. "Emergency contraception" includes emergency contraceptive pills and intrauterine devices.

25 "Family," when used with reference to a person, means (i) any person related to such person within
26 the third degree of consanguinity or affinity, (ii) any person residing in the same household with such
27 person, or (iii) a spouse.

28 "Sexual abuse" means sexual abuse as defined in subdivision 6 of § 18.2-67.10 and acts
29 constituting rape, sodomy, object sexual penetration or sexual battery as defined in Article 7 (§ 18.2-61 et
30 seq.) of Chapter 4 of Title 18.2.

31 "Victim" means a person who suffers personal physical injury or death as a direct result of a crime
32 including a person who is injured or killed as a result of foreign terrorism or who suffers personal
33 emotional injury as a direct result of being the subject of a violent felony offense as defined in subsection
34 C of § 17.1-805, or stalking as described in § 18.2-60.3, or attempted robbery or abduction.

35 **§ 19.2-368.3. Powers and duties of Commission.**

36 The Commission shall have the following powers and duties in the administration of the provisions
37 of this chapter:

38 1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the
39 provisions and purposes of this chapter, to include a distinct policy (i) for the payment of physical evidence
40 recovery kit examinations or emergency contraception and (ii) to require each health care provider as
41 defined in § 8.01-581.1 that provides services under this chapter to negotiate with the Commission or its
42 designee to establish prospective agreements relating to rates for payment of claims for such services
43 allowed under § 19.2-368.11:1, such rates to discharge the obligation to the provider in full except where
44 the provider is an agency of the Commonwealth and the claimant receives a third party recovery in
45 addition to the payment from the Fund.

46 2. Notwithstanding the provisions of §§ 2.2-3706 and 2.2-3706.1, to acquire from the attorneys for
47 the Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical
48 Examiner such investigative results, information and data as will enable the Commission to determine if,
49 in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was
50 responsible for his own injury. These data shall include prior adult arrest records and juvenile court
51 disposition records of the offender. For such purposes and in accordance with § 16.1-305, the Commission

52 may also acquire from the juvenile and domestic relations district courts a copy of the order of disposition
53 relating to the crime. The use of any information received by the Commission pursuant to this subdivision
54 shall be limited to carrying out the purposes set forth in this section, and this information shall be
55 confidential and shall not be disseminated further. The agency from which the information is requested
56 may submit original reports, portions thereof, summaries, or such other configurations of information as
57 will comply with the requirements of this section.

58 3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter,
59 and to reinvestigate or reopen cases as the Commission deems necessary.

60 4. To require and direct medical examination of victims.

61 5. To hold hearings, administer oaths or affirmations, examine any person under oath or
62 affirmation and to issue summonses requiring the attendance and giving of testimony of witnesses and
63 require the production of any books, papers, documentary or other evidence. The powers provided in this
64 subsection may be delegated by the Commission to any member or employee thereof.

65 6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

66 7. To render each year to the Governor and to the General Assembly a written report of its
67 activities. This report shall include a detailed section on all unclaimed restitution collected and disbursed
68 to the victim from the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1.

69 8. To accept from the government of the United States grants of federal moneys for disbursement
70 under the provisions of this chapter.

71 9. To collect and disburse unclaimed restitution pursuant to subsection I of § 19.2-305.1 and
72 develop, in consultation with circuit court clerks and the Office of the Executive Secretary of the Supreme
73 Court of Virginia, policies and procedures for the receipt, collection, and disbursement of unclaimed
74 restitution to victims of crime.

75 10. To identify and locate victims of crime for whom restitution owed to such victims has been
76 deposited into the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1.
77 Notwithstanding the provisions of §§ 2.2-3706 and 2.2-3706.1, the Commission may acquire from the
78 attorneys for the Commonwealth, State Police, local police departments, and sheriffs' departments such

79 information as will enable the Commission to identify and locate such victims. The use of any information
80 received by the Commission pursuant to this subdivision shall be limited to carrying out the purposes set
81 forth in this section, and this information shall be confidential and shall not be disseminated further.

82 **§ 19.2-368.11:1. Amount of award.**

83 A. Compensation for Total Loss of Earnings: An award made pursuant to this chapter for total loss
84 of earnings that results directly from incapacity incurred by a crime victim shall be payable during total
85 incapacity to the victim or to such other eligible person, at a weekly compensation rate equal to 66-2/3
86 percent of the victim's average weekly wages. The victim's average weekly wages shall be determined as
87 provided in § 65.2-101.

88 B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial
89 loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during
90 incapacity at a weekly rate equal to 66-2/3 percent of the difference between the victim's average weekly
91 wages before the injury and the weekly wages which the victim is able to earn thereafter. The combined
92 total of actual weekly earnings and compensation for partial loss of earnings shall not exceed \$600 per
93 week.

94 C. Compensation for Loss of Earnings of Parent of Minor Victim: The parent or guardian of a
95 minor crime victim may receive compensation for loss of earnings, calculated as specified in subsections
96 A and B, for time spent obtaining medical treatment for the child and for accompanying the child to,
97 attending or participating in investigative, prosecutorial, judicial, adjudicatory and post-conviction
98 proceedings.

99 D. Compensation for Dependents of a Victim Who Is Killed: If death results to a victim of crime
100 entitled to benefits, dependents of the victim shall be entitled to compensation in accordance with the
101 provisions of §§ 65.2-512 and 65.2-515 in an amount not to exceed the maximum aggregate payment or
102 the maximum weekly compensation which would have been payable to the deceased victim under this
103 section.

104 E. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.: Awards may
105 also be made on claims or portions of claims based upon the claimant's actual expenses incurred as are

106 determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness
107 reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and
108 necessary services in lieu of those the victim would have performed, for the benefit of himself and his
109 family, if he had not been a victim of crime; (iii) expenses directly related to funeral or burial, not to
110 exceed \$10,000; (iv) expenses attributable to pregnancy resulting from forcible rape; (v) mental health
111 counseling for survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4, not to exceed \$3,500
112 per claim; (vi) reasonable and necessary moving expenses, not to exceed \$2,000, incurred by a victim or
113 survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4; and (vii) any other reasonable and
114 necessary expenses and indebtedness incurred as a direct result of the injury or death upon which such
115 claim is based, not otherwise specifically provided for. Notwithstanding any other provision of law, a
116 person who is not eligible for an award under subsection A of § 19.2-368.4 who pays expenses directly
117 related to funeral or burial is eligible for reimbursement subject to the limitations of this section.

118 F. Notwithstanding the provisions of subdivision 3 of § 19.2-368.10, §§ 19.2-368.5, 19.2-368.5:1,
119 19.2-368.6, 19.2-368.7, and 19.2-368.8, subsection G of this section, and § 19.2-368.16, the Criminal
120 Injuries Compensation Fund shall pay for physical evidence recovery kit examinations conducted on and
121 all forms of emergency contraception provided to victims of sexual assault. If multiple forms of emergency
122 contraception are provided to a victim of sexual assault, the Criminal Injuries Compensation Fund shall
123 pay for all forms of emergency contraception provided. Any individual ~~that~~ who submits to and completes
124 a physical evidence recovery kit examination or receives emergency contraception from a health care
125 provider shall be considered to have met the reporting and cooperation requirements of this chapter. Funds
126 paid for physical evidence recovery kit collection and emergency contraception shall not be offset against
127 the Fund's maximum allowable award as provided in subsection H. Payments may be subject to negotiated
128 agreements with the provider. Health care providers that complete physical evidence recovery kit
129 examinations or provide emergency contraception may bill the Fund directly subject to the provisions of
130 § 19.2-368.5:2. The Commission shall develop policies for a distinct payment process for physical
131 evidence recovery kit examination expenses and emergency contraception expenses as required under
132 subdivision 1 of § 19.2-368.3.

133 In order for the Fund to consider additional crime-related expenses, victims shall file with the Fund
134 following the provisions of this chapter and Criminal Injuries Compensation Fund policy.

135 G. Any claim made pursuant to this chapter shall be reduced by the amount of any payments
136 received or to be received as a result of the injury from or on behalf of the person who committed the
137 crime or from any other public or private source, including an emergency award by the Commission
138 pursuant to § 19.2-368.9.

139 H. To qualify for an award under this chapter, a claim must have a minimum value of \$100, and
140 payments for injury or death to a victim of crime, to the victim's dependents or to others entitled to payment
141 for covered expenses, after being reduced as provided in subsection G, shall not exceed \$35,000 in the
142 aggregate.

143 **§ 32.1-162.15:2. (Effective July 1, 2023) Definitions.**

144 "Anonymous physical evidence recovery kit" has the same meaning as in § 19.2-11.5.

145 "Approved pediatric health care facility" means a pediatric health care facility for which a plan for
146 the delivery of services to pediatric survivors of sexual assault has been approved pursuant to § 32.1-
147 162.15:6.

148 "Board" means the Board of Health.

149 "Department" means the Department of Health.

150 "Emergency contraception" means medication approved by the U.S. Food and Drug
151 Administration that can significantly reduce the risk of pregnancy if taken ~~within 72 hours~~ or administered
152 after sexual-assault intercourse. "Emergency contraception" includes emergency contraceptive pills and
153 intrauterine devices.

154 "Follow-up health care" means any physical examination, laboratory tests to determine the
155 presence of sexually transmitted infection, or appropriate medications, including HIV-prophylaxis,
156 provided to a survivor of sexual assault by a health care provider within 90 days after the date on which
157 treatment or transfer services pursuant to this article are first provided.

158 "Forensic medical examination" means health care services provided to a survivor of sexual assault
159 that include medical history, physical examination, laboratory testing, assessment for drug-facilitated or

160 alcohol-facilitated sexual assault, collection of evidence in accordance with the requirements of Chapter
161 1.2 (§ 19.2-11.5 et seq.) of Title 19.2, and discharge and follow-up health care planning necessary to
162 ensure the health, safety, and welfare of the survivor of sexual assault and the collection and preservation
163 of evidence that may be used in a criminal proceeding.

164 "Hospital" means any hospital licensed by the Department pursuant to this chapter.

165 "Pediatric health care facility" means a hospital, clinic, or physician's office that provides health
166 care services to pediatric patients.

167 "Pediatric survivor of sexual assault" means a survivor of sexual assault who is under 18 years of
168 age.

169 "Physical evidence recovery kit" has the same meaning as in § 19.2-11.5.

170 "Sexual assault forensic examiner" means a sexual assault nurse examiner, physician, physician
171 assistant, nurse practitioner, or registered nurse who has completed training that meets or is substantially
172 similar to the Sexual Assault Nurse Examiner Education Guidelines established by the International
173 Association of Forensic Nurses.

174 "Sexual assault survivor transfer services" means an appropriate medical examination and such
175 stabilizing treatment as may be necessary prior to the transfer of a sexual assault survivor from a transfer
176 hospital to a treatment hospital in accordance with the provisions of a transfer plan approved by the
177 Department.

178 "Sexual assault survivor treatment services" means a forensic medical examination and other
179 health care services provided to a sexual assault survivor by a hospital in accordance with § 32.1-162.15:4
180 or pediatric health care facility in accordance with § 32.1-162.15:6.

181 "Transfer hospital" means a hospital with a sexual assault survivor transfer plan approved by the
182 Department.

183 "Transportation service" means transportation provided to a survivor of sexual assault who is
184 transferred from a transfer hospital, treatment hospital, or approved pediatric health care facility to a
185 treatment hospital or approved pediatric care facility pursuant to a transfer plan approved in accordance
186 with this article.

187 "Treatment hospital" means a hospital with a sexual assault survivor treatment plan approved by
188 the Department to provide sexual assault survivor treatment services to all survivors of sexual assault who
189 present with a complaint of sexual assault within the previous seven days or who have disclosed past
190 sexual assault by a specific individual and were in the care of that individual within the previous seven
191 days.

192 **§ 32.1-162.15:4. (For effective date, see Acts 2020, c 725) Treatment services.**

193 A. The Board shall adopt regulations to establish standards for review and approval of sexual
194 assault survivor treatment plans, which shall include provisions for the following services, when ordered
195 by a health care provider and with the consent of the survivor of sexual assault:

- 196 1. Appropriate forensic medical examination;
- 197 2. Appropriate oral and written information concerning the possibility of infection or sexually
198 transmitted disease, including human immunodeficiency virus (HIV) resulting from the sexual assault,
199 accepted medical procedures and medications for the prevention or treatment of such infection or sexually
200 transmitted disease, and the indications, contraindications, and potential risks of such medical procedures
201 or medications;
- 202 3. Appropriate evaluations to determine the survivor of sexual assault's risk of infection or sexually
203 transmitted disease, including HIV, resulting from the sexual assault;
- 204 4. Appropriate oral and written information regarding the possibility of pregnancy resulting from
205 the sexual assault and medically and factually accurate oral and written information about emergency
206 contraception, the indications and contraindications and potential risks associated with the use of
207 emergency contraception, and the availability of emergency contraception for survivors of sexual assault;
- 208 5. Dispensing or administering a complete course of emergency contraception in the form or forms
209 requested by the survivor of sexual assault after the survivor is provided with information pursuant to
210 subdivision 4 and in accordance with the currently accepted professional standards of care, including in
211 instances of moral and religious objections by individual health care providers;
- 212 6. Prescriptions of such medications as may be appropriate for treatment of the survivor of sexual
213 assault both during treatment at the hospital and upon discharge, including, in cases in which prophylactic

214 treatment for infection with HIV is deemed appropriate, an initial dose or all required doses of HIV
215 prophylaxis;

216 ~~6-7.~~ Oral and written information regarding the need for follow-up care, including examinations
217 and laboratory tests to determine the presence or absence of sexually transmitted infection or disease and
218 follow-up care related to HIV prophylaxis;

219 ~~7-8.~~ Information about medical advocacy services provided by a rape crisis center with which the
220 hospital has entered into a memorandum of understanding pursuant to subsection D; and

221 ~~8-9.~~ Referral for appropriate counseling and other support services.

222 B. All appropriate sexual assault survivor treatment services shall be provided without delay in a
223 private location and in an age-appropriate or developmentally appropriate manner.

224 C. Forensic medical examinations provided pursuant to a sexual assault survivor treatment plan
225 approved by the Board shall include an offer to complete a physical evidence recovery kit. Every treatment
226 hospital for which a sexual assault survivor treatment plan has been approved by the Department shall
227 report to the Department by December 1 of each year:

228 1. The total number of patients to whom a forensic medical examination was provided; and

229 2. The total number of physical evidence recovery kits offered and completed.

230 D. Every treatment hospital shall (i) enter into a memorandum of understanding with at least one
231 rape crisis center for medical advocacy services for survivors of sexual assault and (ii) adopt procedures
232 to ensure compliance with mandatory reporting requirements pursuant to §§ 63.2-1509 and 63.2-1606.

233 E. Records of services provided to survivors of sexual assault, including the results of any
234 examination or laboratory test conducted pursuant to subsection A, shall be maintained by the treatment
235 hospital and made available to law enforcement upon request of the survivor of sexual assault. Records of
236 services provided to survivors of sexual assault 18 years of age and older shall be maintained by the
237 hospital for a period of 20 years from the date the record was created. Records of services provided to
238 survivors of sexual assault under 18 years of age shall be maintained for a period of 20 years after the date
239 on which the survivor of sexual assault reaches 18 years of age.

240 F. Every treatment hospital, including every treatment hospital with an approved pediatric sexual
241 assault survivor plan, shall include in its sexual assault survivor treatment plan provisions requiring
242 appropriate health care providers who provide services in the hospital's emergency department to annually
243 complete training developed and made available by the Department on the topic of sexual assault,
244 detection of sexual assault, provision of services for survivors of sexual assault, and collection of evidence
245 in cases involving alleged sexual assault. Such training shall be consistent with best practices outlined by
246 the International Association of Forensic Nurses.

247 G. Every treatment hospital shall develop policies and procedures to ensure compliance with this
248 section.

249 #