

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-354
HOUSE BILL 1342**

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SECTION 1.(a) G.S. 143B-480.2 is repealed.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>
<u>Physician or SANE Nurse</u>	\$350.00
<u>Hospital/Facility Fee</u>	\$250.00
<u>Other Expenses Deemed Eligible by the Program</u>	\$200.00
<u>Total:</u>	<u>\$800.00</u>

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

(f) Additional Victim Notification Requirements. – A medical facility or medical professional who performs a forensic medical examination shall encourage victims to submit an application for reimbursement of medical expenses beyond the forensic examination to the Crime Victims Compensation Commission for consideration of those expenses. Medical facilities and medical professionals shall not seek reimbursement from the Program after one year from the date of the exam.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) When any victim who:

(1) Has received assistance under this Part;

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

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

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

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

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

"§ 15B-10. Awarding claims.

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

(b) The Director shall recommend the award of compensation for an initial claim or follow-up claim when the claim exceeds ~~seven thousand five hundred dollars (\$7,500)~~ twelve thousand five hundred dollars (\$12,500) or involves future economic loss. The Commission

shall decide the award of compensation for a claim based on a review of written evidence submitted to the Commission by the Director.

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

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

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

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

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

- (1) The claimant fails to file an application for an award within two years after the date of the criminally injurious conduct that caused the injury or death for which the claimant seeks the award;
- (2) The economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award, except in the case where the victim for whom compensation is sought was 10 years old or younger at the time the injury occurred. In that case an award of compensation will be denied if the economic loss is incurred after two years from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award;
- (3) The criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay;
- (4) The award would benefit the offender or the offender's accomplice, unless a determination is made that the interests of justice require that an award be approved in a particular case;
- (5) The criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar facility; or
- (6) The victim was participating in a felony at or about the time that the victim's injury occurred.

(b) A claim may be denied or an award of compensation may be reduced if:

- (1) The victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred; or
- (2) The claimant or a victim through whom the claimant claims engaged in contributory misconduct.

(b1) The Commission or Director, whichever has the authority to decide a claim under G.S. 15B-10, shall use its—the Commission's/Director's discretion in determining whether to deny a claim under this subsection-subsection (b) of this section. In exercising its discretion, the Commission may or Director shall consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct, when applicable. The Director or Commission shall deny claims when it finds that there was contributory misconduct that is a proximate cause of becoming a victim. However, contributory misconduct that is not a proximate cause of becoming a victim shall not lead to an automatic denial of a claim."

SECTION 5. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 16th day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 9:26 a.m. this 27th day of July, 2009