

H. B. 3253

(By Delegates Sobonya, Poore, C. Miller,
Brown and Fleischauer)

[Introduced February 21, 2011; referred to the
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §61-8B-19, relating
to forensic-medical examination services for victims of sexual
offenses.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §61-8B-19, to read as
follows:

ARTICLE 8B. SEXUAL OFFENSES.

**§61-8B-19. Forensic-medical examination services for victims of
sexual offenses.**

(a) Where a victim of sexual assault has been determined to be
in need of emergency care by any person with admitting authority,
no such person may be denied admission by reason only of his or her
inability to pay for services to be rendered by the hospital.

(b) Every hospital of this state which offers emergency
services shall provide that a physician, a sexual assault nurse
examiner, who shall be a registered nurse licensed in this state

1 and credentialed by the West Virginia Board of Nursing, or another
2 qualified medical professional, is available on call twenty-four
3 hours each day for the examinations of persons seeking treatment as
4 victims of sexual offenses.

5 (c) An examination provided in accordance with this section of
6 a victim of a sexual offense may be performed in a sexual assault
7 examination facility. An examination under this section shall
8 apply only to an examination of a victim.

9 (d) The physician, sexual assault nurse examiner, or other
10 qualified medical professional, acting under a statewide medical
11 forensic protocol, which shall be developed by administrative rule
12 promulgated by the West Virginia Prosecuting Attorneys Institute,
13 shall, upon the request of any peace officer or prosecuting
14 attorney, and with the consent of the victim, or upon the request
15 of the victim, examine such person for the purposes of providing
16 basic medical care relating to the incident and gathering samples
17 that may be used as physical evidence. This examination shall
18 include, but not be limited to:

19 (1) Basic treatment and sample gathering services; and

20 (2) Laboratory tests, as appropriate.

21 (e) Each victim shall be informed of available services for
22 treatment of sexually transmitted infections, pregnancy, and other
23 medical and psychiatric problems. Pregnancy counseling shall not
24 include abortion counseling or referral information.

25 (f) Each victim shall be informed of available crisis
26 intervention or other mental health services provided by regional
27 rape crisis centers providing services to victims of sexual

1 assault.

2 (g) Notwithstanding any other provision of law, a minor may
3 consent to examination under this section. This consent is not
4 subject to disaffirmance because of minority, and consent of the
5 parents or guardians of the minor is not required for the
6 examination.

7 (h) The sexual assault-forensic examinations (SAFE Exams)
8 provided in accordance with this section and sexual assault
9 examination kits shall be paid for by the West Virginia Prosecuting
10 Attorneys Institute, or by funding provided by legislative rule or
11 appropriation of the legislature.

12 (i) (1) Each victim shall have the right to determine whether
13 a report or other notification shall be made to law enforcement,
14 except where reporting of abuse and neglect of a child, spouse, and
15 other vulnerable adult is required. No victim may be denied an
16 examination because the victim chooses not to file a police report,
17 cooperate with law enforcement, or otherwise participate in the
18 criminal justice system.

19 (2) (A) All samples collected during an exam where the victim
20 has chosen not to immediately report to law enforcement shall be
21 stored, released, and destroyed, if appropriate, in accordance with
22 an administrative rule promulgated by the West Virginia Prosecuting
23 Attorneys Institute.

24 (B) Facilities collecting samples pursuant to this section may
25 provide the required secure storage, sample destruction, and
26 related activities, or may enter into agreements with other
27 agencies qualified to do so, pursuant to administrative regulation.

1 (C) All samples collected pursuant to this section shall be
2 stored for at least ninety days from the date of collection in
3 accordance with the administrative regulation promulgated pursuant
4 to this subsection.

5 (D) Samples collected during exams where the victim chose not
6 to report immediately or file a report within ninety days after
7 collection may be destroyed as set forth in accordance with the
8 administrative regulation promulgated pursuant to this section. No
9 hospital, sexual assault examination facility, or designated
10 storage facility shall be liable for destruction of samples after
11 the required storage period has expired.

12 (k) The provisions of this section control and supercede any
13 provision in this article which conflicts with the provisions of
14 this section.

NOTE: The purpose of this bill is to provide forensic-medical examination services for sexual assault victims.

§61-8B-19 is new; therefore, it has been completely underscored.