

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4236**

4 (By Delegates Fleischauer, Campbell, Pino,
5 Longstreth, Ellem, L. Phillips, Hunt, Poore,
6 Sobonya, Moore and Storch)

7 (Originating in the Committee on the Judiciary)

8 [January 31, 2014]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §15-9B-1, §15-9B-2
12 and §15-9B-3, all relating to establishing a regulatory system
13 for sexual assault forensic examinations; requiring the
14 creation of the Sexual Assault Forensic Examination
15 Commission; setting forth its powers and responsibilities;
16 setting forth its membership; requiring county prosecutors to
17 convene and chair local Sexual Assault Forensic Examination
18 Boards; and authorizing rule making.

19 *Be it enacted by the Legislature of West Virginia:*

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new article, designated §15-9B-1, §15-9B-2 and
22 §15-9B-3, all to read as follows:

23 **ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.**

24 **§15-9B-1. Sexual Assault Forensic Examination Commission.**

25 (a) The Governor's Committee on Crime, Delinquency and

1 Correction shall create the Sexual Assault Forensic Examination
2 Commission to establish mandatory state-wide protocols for
3 conducting sexual assault forensic examinations, including
4 designating locations and providers to perform forensic
5 examinations, establishing minimum qualifications and procedures
6 for performing forensic examinations and establishing protocols to
7 assure the proper collection of evidence. As used in this article,
8 the word "commission" means the "Sexual Assault Forensic
9 Examination Commission." The purpose of the commission is to
10 establish, manage and monitor a state-wide system to facilitate the
11 timely and efficient collection of forensic evidence. The
12 commission shall be chaired by the director of the Division of
13 Justice and Community Service, and will consist the following:
14 Persons representing the following agencies or organizations:
15 (1) The West Virginia Prosecuting Attorney's Association;
16 (2) The West Virginia Association of Counties;
17 (3) Bureau of Public Health;
18 (4) The State Police Crime Laboratory;
19 (5) The West Virginia Child Advocacy Network;
20 (6) The West Virginia Hospital Association;
21 (7) The West Virginia Foundation for Rape and Information
22 Services;
23 (8) West Virginia University's Forensic and Investigative
24 Sciences Program; and
25 (9) Marshall University's Forensic Science Center.

1 If any of the representative organizations listed do not
2 continue to exist, the director may select a person from a similar
3 organization.

4 The director is further authorized to appoint the following
5 additional members of the commission, as follows:

6 (1) An emergency room physician;

7 (2) A victim advocate from a rape crisis center;

8 (3) A sexual assault nurse examiner;

9 (4) A law-enforcement officer with experience with sexual
10 assault investigations;

11 (5) A healthcare provider with pediatric and child abuse
12 expertise; and

13 (6) A director of a child advocacy center.

14 **§15-9B-2. Powers and duties of the commission.**

15 (a) The commission shall authorize the creation and oversee
16 local boards established pursuant to section three of this article
17 and shall approve local plans for each area of the state on a
18 county or regional basis. If the commission deems necessary, it may
19 add or remove a county or portion thereof from a region to assure
20 that all areas of the state are included in an appropriate local
21 plan. Upon the failure of any county or local region to propose a
22 plan, the commission may implement a plan for that county or
23 region.

24 (b) The commission shall authorize minimum training
25 requirements for providers conducting exams and establish a basic

1 standard of care for victims of sexual assault. The commission
2 shall facilitate the recruitment and retention of qualified health
3 care providers, that are properly qualified to conduct forensic
4 examinations. The commission shall work with county and regional
5 boards to identify areas of greatest need and develop and implement
6 recruitment and retention programs to help facilitate the effective
7 collection of evidence.

8 (c) The commission may adopt necessary and reasonable
9 requirements relating to establishment of a state-wide training and
10 forensic examination system, including, but not limited to,
11 developing a data collection system to monitor adherence to
12 established standards, assisting exam providers receive training
13 and support services; advocating the fair and reasonable
14 reimbursement to exam providers, and to facilitate transportation
15 services for victims to get to and from designated exam locations.

16 (d) Once a plan is approved by the commission, it can only be
17 amended or otherwise altered as provided by rules of the
18 commission. Designated facilities and organizations providing
19 services in the plan may not withdraw from participation without
20 commission authorization. If there is a change of circumstances,
21 that would require a change in a county or regional plan, the
22 members of the local board and the state commission shall be
23 notified. The local board shall meet as soon as possible to
24 implement an alternative plan to ensure continuity of services in
25 the county or region. The local board shall submit a revised plan

1 for approval by the commission as soon as is practicable.

2 (e) The commission may propose rules for legislative approval,
3 in accordance with article three, chapter twenty-nine-a of this
4 code, necessary to implement this article.

5 **§15-9B-3. Local Sexual Assault Forensic Examination Boards.**

6 Each county prosecutor, or his or her designee, shall convene
7 a Sexual Assault Forensic Examination Board, or may as an
8 alternative, convene and chair the sexual assault response team in
9 the county to act as the Sexual Assault Forensic Examination Board.
10 If a regional board is authorized, all county prosecutors from the
11 designated area shall be members of the board. The prosecutors
12 shall assure that each board be proportionally representative of
13 the designated region. Each board may vary in membership, but
14 should include representatives from local health care facilities,
15 local law enforcement, multidisciplinary investigative teams,
16 county and municipal governments and victims advocates. Each
17 county or regional board shall develop a local plan and protocols
18 for the area, which will address, at a minimum, the following:

19 (1) Identify facilities that are appropriate for receipt and
20 treatment of sexual assault victims;

21 (2) Assess and designate physicians or nurses, or both, in the
22 area qualified to conduct forensic examinations;

23 (3) Evaluate the needs and available resources of the area to
24 facilitate and encourage twenty-four hour, seven day a week
25 coverage;

1 (4) If availability of services are limited, or the remoteness
2 of the region causes lack of adequate examination facilities or
3 personnel, the local boards may designate local government or other
4 resources to provide appropriate transport of victims to facilities
5 where the victim can receive a timely and appropriate forensic
6 examination; and

7 (5) Develop an alternative plan in case there is a change in
8 circumstances to ensure continuity of service.