

20106731D

SENATE BILL NO. 949

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 3, 2020)

(Patron Prior to Substitute—Senator Lucas)

A BILL to amend and reenact §§ 15.2-1627.4 and 19.2-368.11:1 of the Code of Virginia, relating to Criminal Injuries Compensation Fund; unreimbursed medical costs; victims of sexual assault.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1627.4 and 19.2-368.11:1 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1627.4. Coordination of multidisciplinary response to sexual assault.

A. The attorney for the Commonwealth in each political subdivision in the Commonwealth shall coordinate the establishment of a multidisciplinary response to criminal sexual assault as set forth in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, and hold a meeting, at least annually, to: (i) discuss implementation of protocols and policies for sexual assault response teams consistent with those established by the Department of Criminal Justice Services pursuant to subdivision 37 d of § 9.1-102; and (ii) establish and review guidelines for the community's response, including the collection, preservation, and secure storage of evidence from Physical Evidence Recovery Kit examinations consistent with § 19.2-165.1.

B. The following persons or their designees shall be invited to participate in the annual meeting: the attorney for the Commonwealth; the sheriff; the director of the local sexual assault crisis center providing services in the jurisdiction, if any; the chief of each police department and the chief of each campus police department of any institution of higher education in the jurisdiction, if any; a forensic nurse examiner or other health care provider who performs Physical Evidence Recovery Kit examinations in the jurisdiction, if any; the Title IX coordinator of any institution of higher education in the jurisdiction, if any; representatives from the offices of student affairs, human resources, and counseling services of any institution of higher education in the jurisdiction, if any; a representative of campus security of any institution of higher education in the jurisdiction that has not established a campus police department, if any; and the director of the victim/witness program in the jurisdiction, if any. *In addition, the attorney for the Commonwealth shall invite other individuals, or their designees, to participate in the annual meeting, including (i) local health department district directors; (ii) the administrator of each licensed hospital within the jurisdiction; (iii) the director of each health safety net clinic within the jurisdiction, including those clinics created by 42 C.F.R. § 491.1 and the free and charitable clinics; and (iv) as determined by the attorney for the Commonwealth, any other local health care providers.*

C. *Attendance at the annual meeting shall be encouraged but is not required. Attorneys for the Commonwealth are authorized to conduct the sexual assault response team annual meetings using other methods to encourage attendance, including electronic communication means as provided in § 2.2-3708.2.*

§ 19.2-368.11:1. Amount of award.

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

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

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

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

60 section.

61 E. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.: Awards may
62 also be made on claims or portions of claims based upon the claimant's actual expenses incurred as are
63 determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness
64 reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and
65 necessary services in lieu of those the victim would have performed, for the benefit of himself and his
66 family, if he had not been a victim of crime; (iii) expenses directly related to funeral or burial, not to
67 exceed \$10,000; (iv) ~~expenses attributable to pregnancy resulting from forcible rape;~~ (v) mental health
68 counseling for survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4, not to exceed
69 \$3,500 per claim; ~~(vi)~~ (v) reasonable and necessary moving expenses, not to exceed \$2,000, incurred by
70 a victim or survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4; and ~~(vii)~~ (vi) any other
71 reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death
72 upon which such claim is based, not otherwise specifically provided for. Notwithstanding any other
73 provision of law, a person who is not eligible for an award under subsection A of § 19.2-368.4 who
74 pays expenses directly related to funeral or burial is eligible for reimbursement subject to the limitations
75 of this section.

76 F. Notwithstanding the provisions of subdivision 3 of § 19.2-368.10, §§ 19.2-368.5, 19.2-368.5:1,
77 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
78 Injuries Compensation Fund shall ~~pay for~~ *make awards on claims or portions of claims based upon the*
79 *claimant's actual expenses incurred, as are determined by the Commission to be appropriate, for*
80 *unreimbursed medical costs resulting from sexual abuse, including the cost of* (i) physical evidence
81 recovery kit examinations conducted on victims of sexual assault. ~~Any individual that submits to and~~
82 ~~completes a physical evidence recovery kit examination shall be considered to have met the reporting~~
83 ~~and cooperation requirements of this chapter,~~ (ii) *unreimbursed medical expenses or indebtedness*
84 *reasonably incurred for medical expenses,* (iii) *expenses attributable to pregnancy resulting from such*
85 *sexual abuse, and (iv) any other reasonable and necessary expenses and indebtedness associated with or*
86 *attributable to the sexual abuse upon which such claim is based not otherwise specifically provided for*
87 *in this subsection.* Funds paid for physical evidence recovery kit collection shall not be offset against the
88 Fund's maximum allowable award as provided in subsection H. ~~Payments may be subject to negotiated~~
89 ~~agreements with the provider. Health care providers that complete physical evidence recovery kit~~
90 ~~examinations may bill the Fund directly subject to the provisions of § 19.2-368.5:2.~~ The Commission
91 shall develop policies for a distinct payment process for physical evidence recovery kit examination
92 expenses as required under subdivision 1 of § 19.2-368.3.

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

95 *Payments may be subject to negotiated agreements with the provider. Health care providers that*
96 *provide services to victims of sexual abuse may bill the Fund directly subject to the provisions of*
97 *§ 19.2-368.5:2.*

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

102 H. To qualify for an award under this chapter, a claim must have a minimum value of \$100, and
103 payments for injury or death to a victim of crime, to the victim's dependents or to others entitled to
104 payment for covered expenses, after being reduced as provided in subsection G, shall not exceed
105 \$35,000 in the aggregate.

106 **2. That the Secretary of Health and Human Resources shall establish a work group composed of**
107 **the Secretary of Public Safety and Homeland Security or his designee, the Attorney General or his**
108 **designee, the Directors of the Department of Medical Assistance Services, the Department of**
109 **Criminal Justice Services, and the Department of Planning and Budget or their designees, the**
110 **Executive Secretary of the Supreme Court or his designee, the Executive Director of the Virginia**
111 **Workers' Compensation Commission, and such other stakeholders as the Secretary of Health and**
112 **Human Resources shall deem appropriate to evaluate the feasibility of transferring responsibility**
113 **for the SAFE program and all related claims for medical expenses related to sexual assault,**
114 **strangulation, domestic and intimate partner violence, human trafficking, and adult and child**
115 **abuse from the Virginia Workers' Compensation Commission to the Department of Medical**
116 **Assistance Services. If the work group finds that it is not feasible to move responsibility for the**
117 **Sexual Assault Forensic Examination program and related claims from the Virginia Workers'**
118 **Compensation Commission to the Department of Medical Assistance Services, the work group shall**
119 **develop recommendations for creation of an efficient, seamless electronic medical claim processing**
120 **system for hospitals and health care providers that coordinates payments from all available**
121 **sources, suppresses explanations of benefits, and removes the patient from the medical billing and**

122 reimbursement process. The work group shall also provide recommendations related to (i)
123 increasing the reimbursement rates for sexual assault forensic examinations to cover the actual
124 cost of such examinations and (ii) including reimbursement of costs associated with preparing for
125 and participating in a criminal trial related to the sexual assault when a sexual assault forensic
126 nurse is subpoenaed to participate in such trial as a cost that is reimbursable through the SAFE
127 program. Recommendations developed by the work group shall include recommendations for
128 specific legislative, regulatory, and budgetary changes necessary to implement the work group's
129 recommendations. The work group shall report its findings and recommendations to the Governor
130 and the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance
131 and Appropriations, and the Joint Commission on Health Care by September 1, 2020.