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HOUSE BILL NO. 2097

Offered January 11, 2023

Prefiled January 10, 2023

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.*

Patrons—Hudson, Adams, D.M., Simon and Kory

Referred to Committee on Health, Welfare and Institutions

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 an intra uterine device administered in conjunction with another form of emergency contraception.

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

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

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

§ 19.2-368.3. Powers and duties of Commission.

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

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

2. Notwithstanding the provisions of §§ 2.2-3706 and 2.2-3706.1, to acquire from the attorneys for the Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such investigative results, information and data as will enable the Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury. These data shall include prior adult arrest records and juvenile court disposition records of the offender. For such purposes and in accordance with § 16.1-305, the Commission may also acquire from the juvenile and domestic relations district courts a copy of the order of disposition relating to the crime. The use of any information received by the Commission pursuant to this subdivision shall be limited to carrying out the purposes set forth in this section, and

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59 this information shall be confidential and shall not be disseminated further. The agency from which the
60 information is requested may submit original reports, portions thereof, summaries, or such other
61 configurations of information as will comply with the requirements of this section.

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

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

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

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

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

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

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

79 10. To identify and locate victims of crime for whom restitution owed to such victims has been
80 deposited into the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1.
81 Notwithstanding the provisions of §§ 2.2-3706 and 2.2-3706.1, the Commission may acquire from the
82 attorneys for the Commonwealth, State Police, local police departments, and sheriffs' departments such
83 information as will enable the Commission to identify and locate such victims. The use of any
84 information received by the Commission pursuant to this subdivision shall be limited to carrying out the
85 purposes set forth in this section, and this information shall be confidential and shall not be
86 disseminated further.

87 **§ 19.2-368.11:1. Amount of award.**

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

93 B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial
94 loss of earnings which results directly from incapacity incurred by a crime victim shall be payable
95 during incapacity at a weekly rate equal to 66-2/3 percent of the difference between the victim's average
96 weekly wages before the injury and the weekly wages which the victim is able to earn thereafter. The
97 combined total of actual weekly earnings and compensation for partial loss of earnings shall not exceed
98 \$600 per week.

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

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

108 E. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.: Awards may
109 also be made on claims or portions of claims based upon the claimant's actual expenses incurred as are
110 determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness
111 reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and
112 necessary services in lieu of those the victim would have performed, for the benefit of himself and his
113 family, if he had not been a victim of crime; (iii) expenses directly related to funeral or burial, not to
114 exceed \$10,000; (iv) expenses attributable to pregnancy resulting from forcible rape; (v) mental health
115 counseling for survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4, not to exceed
116 \$3,500 per claim; (vi) reasonable and necessary moving expenses, not to exceed \$2,000, incurred by a
117 victim or survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4; and (vii) any other
118 reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death
119 upon which such claim is based, not otherwise specifically provided for. Notwithstanding any other
120 provision of law, a person who is not eligible for an award under subsection A of § 19.2-368.4 who

pays expenses directly related to funeral or burial is eligible for reimbursement subject to the limitations of this section.

F. Notwithstanding the provisions of subdivision 3 of § 19.2-368.10, §§ 19.2-368.5, 19.2-368.5:1, 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 Injuries Compensation Fund shall pay for physical evidence recovery kit examinations conducted on *and emergency contraception provided to* victims of sexual assault. Any individual ~~that~~ *who* submits to and completes a physical evidence recovery kit examination *or receives emergency contraception from a health care provider* shall be considered to have met the reporting and cooperation requirements of this chapter. Funds paid for physical evidence recovery kit collection *and emergency contraception* shall not be offset against the Fund's maximum allowable award as provided in subsection H. Payments may be subject to negotiated agreements with the provider. Health care providers that complete physical evidence recovery kit examinations *or provide emergency contraception* may bill the Fund directly subject to the provisions of § 19.2-368.5:2. The Commission shall develop policies for a distinct payment process for physical evidence recovery kit examination expenses *and emergency contraception expenses* as required under subdivision 1 of § 19.2-368.3.

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

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

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

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

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

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

"Board" means the Board of Health.

"Department" means the Department of Health.

"Emergency contraception" means medication approved by the U.S. Food and Drug Administration that can significantly reduce the risk of pregnancy if taken ~~within 72 hours~~ *or administered* after sexual ~~assault~~ *intercourse*. *"Emergency contraception" includes an intra uterine device administered in conjunction with another form of emergency contraception.*

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

"Forensic medical examination" means health care services provided to a survivor of sexual assault that include medical history, physical examination, laboratory testing, assessment for drug-facilitated or alcohol-facilitated sexual assault, collection of evidence in accordance with the requirements of Chapter 1.2 (§ 19.2-11.5 et seq.) of Title 19.2, and discharge and follow-up health care planning necessary to ensure the health, safety, and welfare of the survivor of sexual assault and the collection and preservation of evidence that may be used in a criminal proceeding.

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

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

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

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

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

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

"Sexual assault survivor treatment services" means a forensic medical examination and other health

182 care services provided to a sexual assault survivor by a hospital in accordance with § 32.1-162.15:4 or
183 pediatric health care facility in accordance with § 32.1-162.15:6.

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

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

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

195 **§ 32.1-162.15:4. (For effective date, see Acts 2020, c 725) Treatment services.**

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

199 1. Appropriate forensic medical examination;

200 2. Appropriate oral and written information concerning the possibility of infection or sexually
201 transmitted disease, including human immunodeficiency virus (HIV) resulting from the sexual assault,
202 accepted medical procedures and medications for the prevention or treatment of such infection or
203 sexually transmitted disease, and the indications, contraindications, and potential risks of such medical
204 procedures or medications;

205 3. Appropriate evaluations to determine the survivor of sexual assault's risk of infection or sexually
206 transmitted disease, including HIV, resulting from the sexual assault;

207 4. Appropriate oral and written information regarding the possibility of pregnancy resulting from the
208 sexual assault and medically and factually accurate oral and written information about emergency
209 contraception, the indications and contraindications and potential risks associated with the use of
210 emergency contraception, and the availability of emergency contraception for survivors of sexual assault;

211 5. *Dispensing or administering a complete course of emergency contraception, in the form requested,*
212 *by the survivor of sexual assault after the survivor is provided with information pursuant to subdivision*
213 *4 and in accordance with the currently accepted professional standards of care;*

214 6. Prescriptions of such medications as may be appropriate for treatment of the survivor of sexual
215 assault both during treatment at the hospital and upon discharge, including, in cases in which
216 prophylactic treatment for infection with HIV is deemed appropriate, an initial dose or all required doses
217 of HIV prophylaxis;

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

221 ~~7.~~ 8. Information about medical advocacy services provided by a rape crisis center with which the
222 hospital has entered into a memorandum of understanding pursuant to subsection D; and

223 ~~8.~~ 9. Referral for appropriate counseling and other support services.

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

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

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

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

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

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

242 F. Every treatment hospital, including every treatment hospital with an approved pediatric sexual
243 assault survivor plan, shall include in its sexual assault survivor treatment plan provisions requiring

244 appropriate health care providers who provide services in the hospital's emergency department to
245 annually complete training developed and made available by the Department on the topic of sexual
246 assault, detection of sexual assault, provision of services for survivors of sexual assault, and collection
247 of evidence in cases involving alleged sexual assault. Such training shall be consistent with best
248 practices outlined by the International Association of Forensic Nurses.
249 *G. Every treatment hospital shall comply with this section and shall develop policies and procedures*
250 *to ensure compliance with this section, including in instances of moral or religious objections by*
251 *individual health care providers.*