

2025 South Dakota Legislature

Senate Bill 123**AMENDMENT 123B
FOR THE INTRODUCED BILL**

1 **An Act to revise provisions related to forensic medical examinations.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 22-22-26 be AMENDED:**

4 **22-22-26.** The county where an alleged rape or sexual offense occurred ~~shall~~ must
5 pay the cost of any forensic medical examination performed by a physician, hospital, or
6 clinic on the victim of the alleged rape or sexual offense. ~~For purposes of the provisions~~
7 ~~of §§ 22-22-26 to 22-22-26.2, inclusive, the term, forensic medical examination, includes:~~

8 (1) ~~Examination of physical trauma;~~

9 (2) ~~Patient interview, including medical history, triage, and consultation; and~~

10 (3) ~~Collection and evaluation of evidence, including any photographic~~
11 ~~documentation; preservation and maintenance of the chain of custody of evidence;~~
12 ~~medical specimen collection; and any alcohol or drug facilitated sexual assault~~
13 ~~assessment and toxicology screening deemed necessary by the physician, hospital, or~~
14 ~~clinic. The cost of a forensic medical examination includes:~~

15 (1) Physician, hospital, or clinic services directly related to the forensic medical
16 examination;

17 (2) Necessary forensic supplies;

18 (3) Scope procedures directly related to the forensic medical examination, including
19 anoscopy and colposcopy;

20 (4) Laboratory testing directly related to the forensic medical examination, including
21 drug screening, urinalysis, pregnancy screening, syphilis screening, chlamydia
22 culture, gonorrhea coverage culture, HIV screening, hepatitis B and C screening,
23 herpes culture, and any other sexually transmitted disease testing directly related
24 to the examination;

25 (5) Any medication provided during the forensic medical examination; and

26 (6) Any radiology service directly related to the forensic medical examination.

1 **Section 2. That § 22-22-26.1 be AMENDED:**

2 **22-22-26.1.** A person who is convicted of a rape or sexual offense ~~shall be~~ is
3 required, as part of the sentence imposed by the court, to reimburse the county for the
4 cost of any forensic medical examination ~~performed under, pursuant to~~ § 22-22-26
5 ~~resulting from, that was conducted as a result of~~ the rape or sexual offense for which the
6 defendant is convicted. ~~The cost of a forensic medical examination to be paid by the county~~
7 ~~under § 22-22-26 and reimbursed to the county under this section shall include:~~

8 (1) ~~Physician, hospital, or clinic services and fees directly related to the forensic~~
9 ~~medical examination, including integral forensic supplies;~~

10 (2) ~~Scope procedures directly related to the forensic medical examination,~~
11 ~~including anoscopy and colposcopy;~~

12 (3) ~~Laboratory testing directly related to the forensic medical examination,~~
13 ~~including drug screening, urinalysis, pregnancy screening, syphilis screening, chlamydia~~
14 ~~culture, gonorrhea coverage culture, blood test for HIV screening, hepatitis B and C,~~
15 ~~herpes culture, and any other sexually transmitted disease testing directly related to the~~
16 ~~examination;~~

17 (4) ~~Any medication provided during the forensic medical examination; and~~

18 (5) ~~Any radiology service directly related to the forensic medical examination.~~

19 **Section 3. That § 22-22-26.3 be AMENDED:**

20 **22-22-26.3.** A minor age sixteen or older may consent to a forensic medical
21 examination, as defined under ~~§ 22-22-26~~ section 5 of this Act. The minor's consent is
22 not subject to disaffirmance because of minority, and consent of a parent or guardian is
23 not required under this section. The physician, hospital, or clinic shall take reasonable
24 steps to notify a minor's parent or guardian that an examination has taken place, unless
25 the parent or guardian is the suspected perpetrator.

26 **Section 4. That § 22-22-26.4 be AMENDED:**

27 **22-22-26.4.** A physician, hospital, or clinic may provide a forensic medical
28 examination, as defined under ~~§ 22-22-26~~ section 5 of this Act, without the consent of a
29 guardian of a protected person, as defined under § 29A-5-102, to any protected person
30 who provides informed consent. If a patient has a guardian, the physician, hospital, or
31 clinic ~~shall~~ must make a good faith effort to notify the guardian, before the forensic medical

1 examination, that the patient provided informed consent for the examination and the
2 examination will take place, unless the guardian is the suspected perpetrator.

3 ~~A physician, hospital, or clinic who in~~ If the attending physician, physician assistant,
4 nurse practitioner, or sexual assault nurse examiner makes a good faith ~~believes~~
5 determination that a patient is incapable of giving informed consent under this section,
6 neither the physician, physician assistant, nurse practitioner, or nurse examiner, nor the
7 hospital or clinic, may ~~not~~ be subject to criminal prosecution, civil liability, or professional
8 discipline for failing to follow the patient's direction or for making the determination.

9 ~~A physician, hospital, or clinic who in~~ If the attending physician, physician assistant,
10 nurse practitioner, or sexual assault nurse examiner makes a good faith ~~believes~~
11 determination that a patient is capable of giving informed consent under this section,
12 neither the physician, physician assistant, nurse practitioner, or nurse examiner, nor the
13 hospital or clinic, may ~~not~~ be subject to criminal prosecution, civil liability, or professional
14 discipline for following a patient's direction or for making the determination.

15 For purposes of this section, the term, "informed consent," means consent
16 voluntarily, knowingly, and competently given without any element of force, fraud, deceit,
17 duress, threat, or other form of coercion after conscientious explanation of all information
18 that a reasonable person would consider significant to the decision in a manner reasonably
19 comprehensible to general lay understanding.

20 **Section 5. That a NEW SECTION be added to chapter 22-22:**

21 For the purposes of §§ 22-22-26 to 22-22-26.4, inclusive, the term "forensic
22 medical examination" includes:

- 23 (1) Examination of physical trauma;
24 (2) Patient interview, determination of medical history, triage, and consultation; and
25 (3) Collection and evaluation of any evidence, including any photographic
26 documentation; preservation and maintenance of the chain of custody of evidence;
27 medical specimen collection; and any assessment of whether an alcohol-facilitated
28 sexual assault or a drug-facilitated sexual assault occurred and any toxicology
29 screening deemed necessary by the attending physician, physician assistant, nurse
30 practitioner, or sexual assault nurse examiner.