



2026 South Dakota Legislature
Senate Bill 87
ENROLLED

AN ACT

ENTITLED An Act to clarify and establish requirements related to forensic medical examinations.

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

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

22-22-26. The county where an alleged rape or sexual offense occurred shall pay the cost of any forensic medical examination performed on the victim of the alleged rape or sexual offense.

The cost of a forensic medical examination includes:

- (1) Provider, hospital, or clinic services directly related to the examination;
- (2) Necessary forensic supplies;
- (3) Scope procedures directly related to the examination, including anoscopy and colposcopy;
- (4) Laboratory testing directly related to the examination, including drug screening, urinalysis, pregnancy screening, syphilis screening, chlamydia culture, gonorrhea coverage culture, HIV screening, hepatitis B and C screening, herpes culture, and any other sexually transmitted disease testing directly related to the examination;
- (5) Any medication provided during the examination; and
- (6) Any radiology service directly related to the examination.

Section 2. That § 22-22-26.2 be AMENDED:

22-22-26.2. Each hospital and clinic that provides a forensic medical examination under § 22-22-26 shall coordinate with the county to establish a payment process by which the county shall pay for the cost of the examination, and to notify any victim of rape or sexual offense of the availability of an examination at no cost to the victim. A victim of rape or sexual offense is not required to participate in the criminal justice system or to cooperate with law enforcement to be provided with a forensic medical examination.

The amount paid to a hospital or clinic for a forensic medical examination performed under § 22-22-26 may not exceed the actual cost of the examination or an amount established by the secretary of the Department of Social Services, whichever is less. The amount established by the secretary under this section must be based on medicaid payment methodology. A hospital or clinic may not maintain a claim against a county for any amount that exceeds the usual, ordinary, and reasonable charge for a forensic medical examination, even if the amount is less than the actual cost of the examination. If the hospital or clinic provides forensic medical examinations, or any portion of an examination, to persons who are medically indigent residing in the county in which the hospital or clinic is located, at a cost less than the amount provided for in this section, the hospital or clinic must furnish the examination, or any applicable portion of the examination, at the lower cost.

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

22-22-26.3. A minor age sixteen or older may consent to a forensic medical examination. The minor's consent is not subject to disaffirmance because of minority, and consent of a parent or guardian is not required under this section. The hospital or clinic shall take reasonable steps to notify a minor's parent or guardian that an examination has taken place, unless the parent or guardian is the suspected perpetrator.

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

22-22-26.4. A hospital or clinic may provide a forensic medical examination without the consent of a guardian of a protected person, as those terms are defined under § 29A-5-102, to any protected person who provides informed consent. If a patient has a guardian, the hospital or clinic must make a good faith effort to notify the guardian, before the forensic medical examination, that the patient provided informed consent for the examination and the examination will take place, unless the guardian is the suspected perpetrator.

If the attending physician, physician assistant, nurse practitioner, or sexual assault nurse examiner makes a good faith determination that a patient is incapable of giving informed consent under this section, neither the physician, physician assistant, nurse practitioner, or nurse examiner, nor the hospital or clinic, may be subject to criminal prosecution, civil liability, or professional discipline for failing to follow the patient's direction or for making the determination.

If the attending physician, physician assistant, nurse practitioner, or sexual assault nurse examiner makes a good faith determination that a patient is capable of giving informed consent under this section, neither the physician, physician assistant, nurse practitioner, or nurse examiner, nor the hospital or clinic, may be subject to criminal prosecution, civil liability, or professional discipline for following a patient's direction or for making the determination.

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

Section 5. That § 22-22-26.5 be AMENDED:

22-22-26.5. For the purposes of §§ 22-22-26 to 22-22-26.4, inclusive, and sections 6 to 8, inclusive, of this Act, the following terms mean:

- (1) "Forensic medical examination," a medical assessment, administered in accordance with section 6 of this Act, with the following components:
 - (a) Examination of physical trauma;
 - (b) Patient interview, determination of medical history, triage, and consultation; and
 - (c) Collection and evaluation of any evidence, including any photographic documentation; preservation and maintenance of the chain of custody of evidence; medical specimen collection; and any assessment of whether an alcohol-facilitated sexual assault or a drug-facilitated sexual assault occurred and any toxicology screening deemed necessary by the attending physician, physician assistant, nurse practitioner, or sexual assault nurse examiner;
- (2) "Sexual assault nurse examiner," a registered nurse, licensed in accordance with chapter 36-9, who has completed specialized education and clinical training in the medical forensic care of patients who have experienced sexual assault; and
- (3) "Sexual assault response team," a multidisciplinary, interagency group of law enforcement officials, health care providers, victim advocates, and representatives from state's attorney offices, who collaborate to provide a coordinated response to sexual assault and to improve health and judicial outcomes for victims.

Section 6. That a NEW SECTION be added to chapter 22-22:

A forensic medical examination may be administered only by a:

- (1) Physician licensed in accordance with chapter 36-4;
- (2) Physician assistant licensed in accordance with chapter 36-4A;
- (3) Nurse practitioner licensed in accordance with chapter 36-9A; or
- (4) Sexual assault nurse examiner.

Except as otherwise provided in this section, a hospital or clinic that provides forensic medical examinations shall ensure that the physician, physician assistant, or nurse practitioner who administers the examination has completed appropriate training, as determined by the hospital or clinic, to conduct the examination.

A physician, physician assistant, or nurse practitioner may administer a forensic medical examination without completing any additional training, if a sexual assault nurse examiner, or a physician, physician assistant, or nurse practitioner, who has completed appropriate training as determined by the hospital or clinic, utilizes telehealth to observe and advise the on-site provider regarding the administration of the examination.

Section 7. That a NEW SECTION be added to chapter 22-22:

A hospital licensed in accordance with chapter 34-12, except a specialized hospital, shall establish and maintain policies and procedures regarding the administration of forensic medical examinations. The policies and procedures must:

- (1) State whether the hospital provides forensic medical examinations on-site;
- (2) If the hospital does not provide examinations on-site, or if a provider is not available, address timely transfers and referrals to another hospital or clinic that provides examinations, in order to best preserve the integrity of forensic evidence;
- (3) If the hospital provides examinations on-site, address how the hospital coordinates with law enforcement agencies for the processing, storage, and maintenance of the chain of custody of evidence;
- (4) Address how the hospital coordinates with the sexual assault response team that provides services to the county in which the hospital is located, if applicable; and
- (5) Address how the hospital provides information, to a patient requesting an examination, on the availability of and resources from victim advocates.

Section 8. That a NEW SECTION be added to chapter 22-22:

If a clinic provides forensic medical examinations, the clinic must establish and maintain policies and procedures regarding the administration of the examinations. The policies and procedures must:

- (1) Identify the types of providers who administer the examinations;
- (2) If a provider is not available, address timely transfers and referrals to another hospital or clinic that provides examinations, in order to best preserve the integrity of forensic evidence;
- (3) Address how the clinic coordinates with law enforcement agencies for the processing, storage, and maintenance of the chain of custody of evidence;
- (4) Address how the clinic coordinates with the sexual assault response team that provides services to the county in which the clinic is located, if applicable; and
- (5) Address how the clinic provides information, to a patient requesting an examination, on the availability of and resources from victim advocates.

An Act to clarify and establish requirements related to forensic medical examinations.

I certify that the attached Act originated in
the:
Senate as Bill No. 87

Received at this Executive Office
this ____ day of _____,
2026 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby
approved this _____ day of
_____, A.D., 2026

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2026
at _____ o'clock __ M.

Chief Clerk of the House

Secretary of State

Senate Bill No. 87
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State