

By: Raymond

H.B. No. 438

A BILL TO BE ENTITLED

AN ACT

relating to the victim's statement regarding the impact of an offense in certain sexual assault cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 26.13(e), Code of Criminal Procedure, is amended to read as follows:

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one has been returned. In a case involving the offense of sexual assault, regardless of whether a victim impact statement has been returned under this subsection, the victim or the victim's designee may address the court regarding the impact of the offense on the victim.

SECTION 2. Article 56.02(a), Code of Criminal Procedure, is amended to read as follows:

(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or the victim's ~~his~~ family into consideration as an

1 element in fixing the amount of bail for the accused;

2 (3) the right, if requested, to be informed:

3 (A) by the attorney representing the state of
4 relevant court proceedings, including appellate proceedings, and
5 to be informed if those proceedings have been canceled or
6 rescheduled prior to the event; and

7 (B) by an appellate court of decisions of the
8 court, after the decisions are entered but before the decisions are
9 made public;

10 (4) the right to be informed, when requested, by a
11 peace officer concerning the defendant's right to bail and the
12 procedures in criminal investigations and by the district
13 attorney's office concerning the general procedures in the criminal
14 justice system, including general procedures in guilty plea
15 negotiations and arrangements, restitution, and the appeals and
16 parole process;

17 (5) the right to provide pertinent information to a
18 probation department conducting a presentencing investigation
19 concerning the impact of the offense on the victim and the victim's
20 ~~his~~ family by testimony, written statement, or any other manner
21 prior to any sentencing of the offender;

22 (6) the right to receive information regarding
23 compensation to victims of crime as provided by Subchapter B,
24 including information related to the costs that may be compensated
25 under that subchapter and the amount of compensation, eligibility
26 for compensation, and procedures for application for compensation
27 under that subchapter, the payment for a medical examination under

1 Article 56.06 for a victim of a sexual assault, and when requested,
2 to referral to available social service agencies that may offer
3 additional assistance;

4 (7) the right to be informed, upon request, of parole
5 procedures, to participate in the parole process, to be notified,
6 if requested, of parole proceedings concerning a defendant in the
7 victim's case, to provide to the Board of Pardons and Paroles for
8 inclusion in the defendant's file information to be considered by
9 the board prior to the parole of any defendant convicted of any
10 crime subject to this subchapter, and to be notified, if requested,
11 of the defendant's release;

12 (8) the right to be provided with a waiting area,
13 separate or secure from other witnesses, including the offender and
14 relatives of the offender, before testifying in any proceeding
15 concerning the offender; if a separate waiting area is not
16 available, other safeguards should be taken to minimize the
17 victim's contact with the offender and the offender's relatives and
18 witnesses, before and during court proceedings;

19 (9) the right to prompt return of any property of the
20 victim that is held by a law enforcement agency or the attorney for
21 the state as evidence when the property is no longer required for
22 that purpose;

23 (10) the right to have the attorney for the state
24 notify the employer of the victim, if requested, of the necessity of
25 the victim's cooperation and testimony in a proceeding that may
26 necessitate the absence of the victim from work for good cause;

27 (11) the right to counseling, on request, regarding

1 acquired immune deficiency syndrome (AIDS) and human
2 immunodeficiency virus (HIV) infection and testing for acquired
3 immune deficiency syndrome (AIDS), human immunodeficiency virus
4 (HIV) infection, antibodies to HIV, or infection with any other
5 probable causative agent of AIDS, if the offense is an offense under
6 Section 21.11(a)(1), 22.011, or 22.021, Penal Code;

7 (12) the right to request victim-offender mediation
8 coordinated by the victim services division of the Texas Department
9 of Criminal Justice; ~~and~~

10 (13) the right to be informed of the uses of a victim
11 impact statement and the statement's purpose in the criminal
12 justice system, to complete the victim impact statement, and to
13 have the victim impact statement considered:

14 (A) by the attorney representing the state and
15 the judge before sentencing or before a plea bargain agreement is
16 accepted; and

17 (B) by the Board of Pardons and Paroles before an
18 inmate is released on parole; and

19 (14) if permitted by Article 26.13(e), the right to
20 address the court regarding the impact of the offense on the victim.

21 SECTION 3. (a) The change in law made by this Act applies
22 only to a proceeding under Article 26.13, Code of Criminal
23 Procedure, as amended by this Act, that occurs on or after the
24 effective date of this Act.

25 (b) A proceeding under Article 26.13, Code of Criminal
26 Procedure, occurring before the effective date of this Act is
27 covered by the law in effect when the proceeding occurred, and the

1 former law is continued in effect for that purpose.

2 SECTION 4. This Act takes effect September 1, 2003.