

By: Naishtat, McClendon

H.B. No. 544

Substitute the following for H.B. No. 544:

By: Burnam

C.S.H.B. No. 544

A BILL TO BE ENTITLED

AN ACT

relating to the right of certain sexual assault victims to a forensic medical examination.

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

SECTION 1. 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 his family into consideration as an element in fixing the amount of bail for the accused;

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

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

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

(4) the right to be informed, when requested, by a

1 peace officer concerning the defendant's right to bail and the
2 procedures in criminal investigations and by the district
3 attorney's office concerning the general procedures in the criminal
4 justice system, including general procedures in guilty plea
5 negotiations and arrangements, restitution, and the appeals and
6 parole process;

7 (5) the right to provide pertinent information to a
8 probation department conducting a presentencing investigation
9 concerning the impact of the offense on the victim and his family by
10 testimony, written statement, or any other manner prior to any
11 sentencing of the offender;

12 (6) the right to receive information regarding
13 compensation to victims of crime as provided by Subchapter B,
14 including information related to the costs that may be compensated
15 under that subchapter and the amount of compensation, eligibility
16 for compensation, and procedures for application for compensation
17 under that subchapter, the payment for a medical examination under
18 Article 56.06 for a victim of a sexual assault, and when requested,
19 to referral to available social service agencies that may offer
20 additional assistance;

21 (7) the right to be informed, upon request, of parole
22 procedures, to participate in the parole process, to be notified,
23 if requested, of parole proceedings concerning a defendant in the
24 victim's case, to provide to the Board of Pardons and Paroles for
25 inclusion in the defendant's file information to be considered by
26 the board prior to the parole of any defendant convicted of any
27 crime subject to this subchapter, and to be notified, if requested,

1 of the defendant's release;

2 (8) the right to be provided with a waiting area,
3 separate or secure from other witnesses, including the offender and
4 relatives of the offender, before testifying in any proceeding
5 concerning the offender; if a separate waiting area is not
6 available, other safeguards should be taken to minimize the
7 victim's contact with the offender and the offender's relatives and
8 witnesses, before and during court proceedings;

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

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

17 (11) the right to counseling, on request, regarding
18 acquired immune deficiency syndrome (AIDS) and human
19 immunodeficiency virus (HIV) infection and testing for acquired
20 immune deficiency syndrome (AIDS), human immunodeficiency virus
21 (HIV) infection, antibodies to HIV, or infection with any other
22 probable causative agent of AIDS, if the offense is an offense under
23 Section 21.11(a)(1), 22.011, or 22.021, Penal Code;

24 (12) the right to request victim-offender mediation
25 coordinated by the victim services division of the Texas Department
26 of Criminal Justice; ~~and~~

27 (13) the right to be informed of the uses of a victim

1 impact statement and the statement's purpose in the criminal
2 justice system, to complete the victim impact statement, and to
3 have the victim impact statement considered:

4 (A) by the attorney representing the state and
5 the judge before sentencing or before a plea bargain agreement is
6 accepted; and

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

9 (14) except as provided by Article 56.06(a), for a
10 victim of a sexual assault, the right to a forensic medical
11 examination if the sexual assault is reported to a law enforcement
12 agency within 96 hours of the assault.

13 SECTION 2. Article 56.06, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 56.06. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM;
16 COSTS [~~OF MEDICAL EXAMINATION~~]. (a) If a sexual assault is
17 reported to a law enforcement agency within 96 hours of the assault,
18 the law enforcement agency, with the consent of the victim or a
19 person authorized to act on behalf of the victim, shall request a
20 medical examination of the victim of the alleged assault for use in
21 the investigation or prosecution of the offense. A law enforcement
22 agency may decline to request a medical examination under this
23 subsection only if the person reporting the sexual assault has made
24 one or more false reports of sexual assault to any law enforcement
25 agency and if there is no other evidence to corroborate the current
26 allegations of sexual assault.

27 (b) If a sexual assault is not reported within the period

1 described by Subsection (a), on receiving the consent described by
2 that subsection the law enforcement agency may request a medical
3 examination of a victim of an alleged sexual assault as considered
4 appropriate by the agency.

5 (c) A law enforcement agency that requests a medical
6 examination of a victim of an alleged sexual assault for use in the
7 investigation or prosecution of the offense shall pay all costs of
8 the examination. On application to the attorney general, the law
9 enforcement agency is entitled to be reimbursed for the reasonable
10 costs of that examination if the examination was performed by a
11 physician or by a sexual assault examiner or sexual assault nurse
12 examiner, as defined by Section 420.003, Government Code.

13 (d) [~~(b)~~] A law enforcement agency or prosecuting
14 attorney's office may pay all costs related to the testimony of a
15 licensed health care professional in a criminal proceeding
16 regarding the results of the medical examination or manner in which
17 it was performed.

18 (e) [~~(c)~~] This article does not require a law enforcement
19 agency to pay any costs of treatment for injuries.

20 SECTION 3. The changes in law made by this Act apply only to
21 a sexual assault reported on or after the effective date of this
22 Act. A sexual assault reported before the effective date of this
23 Act is governed by the law in effect on the date the assault is
24 reported, and the current law remains in effect for that purpose.

25 SECTION 4. This Act takes effect September 1, 2005.