

1-1 By: Zaffirini S.B. No. 37
1-2 (In the Senate - Filed November 8, 2004; January 31, 2005,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 March 31, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 4, Nays 0; March 31, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 37 By: Seliger

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the right of certain sexual assault victims to a
1-11 forensic medical examination.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Article 56.02, Code of Criminal
1-14 Procedure, is amended to read as follows:

1-15 (a) A victim, guardian of a victim, or close relative of a
1-16 deceased victim is entitled to the following rights within the
1-17 criminal justice system:

1-18 (1) the right to receive from law enforcement agencies
1-19 adequate protection from harm and threats of harm arising from
1-20 cooperation with prosecution efforts;

1-21 (2) the right to have the magistrate take the safety of
1-22 the victim or his family into consideration as an element in fixing
1-23 the amount of bail for the accused;

1-24 (3) the right, if requested, to be informed:

1-25 (A) by the attorney representing the state of
1-26 relevant court proceedings, including appellate proceedings, and
1-27 to be informed if those proceedings have been canceled or
1-28 rescheduled prior to the event; and

1-29 (B) by an appellate court of decisions of the
1-30 court, after the decisions are entered but before the decisions are
1-31 made public;

1-32 (4) the right to be informed, when requested, by a
1-33 peace officer concerning the defendant's right to bail and the
1-34 procedures in criminal investigations and by the district
1-35 attorney's office concerning the general procedures in the criminal
1-36 justice system, including general procedures in guilty plea
1-37 negotiations and arrangements, restitution, and the appeals and
1-38 parole process;

1-39 (5) the right to provide pertinent information to a
1-40 probation department conducting a presentencing investigation
1-41 concerning the impact of the offense on the victim and his family by
1-42 testimony, written statement, or any other manner prior to any
1-43 sentencing of the offender;

1-44 (6) the right to receive information regarding
1-45 compensation to victims of crime as provided by Subchapter B,
1-46 including information related to the costs that may be compensated
1-47 under that subchapter and the amount of compensation, eligibility
1-48 for compensation, and procedures for application for compensation
1-49 under that subchapter, the payment for a medical examination under
1-50 Article 56.06 for a victim of a sexual assault, and when requested,
1-51 to referral to available social service agencies that may offer
1-52 additional assistance;

1-53 (7) the right to be informed, upon request, of parole
1-54 procedures, to participate in the parole process, to be notified,
1-55 if requested, of parole proceedings concerning a defendant in the
1-56 victim's case, to provide to the Board of Pardons and Paroles for
1-57 inclusion in the defendant's file information to be considered by
1-58 the board prior to the parole of any defendant convicted of any
1-59 crime subject to this subchapter, and to be notified, if requested,
1-60 of the defendant's release;

1-61 (8) the right to be provided with a waiting area,
1-62 separate or secure from other witnesses, including the offender and
1-63 relatives of the offender, before testifying in any proceeding

2-1 concerning the offender; if a separate waiting area is not
 2-2 available, other safeguards should be taken to minimize the
 2-3 victim's contact with the offender and the offender's relatives and
 2-4 witnesses, before and during court proceedings;

2-5 (9) the right to prompt return of any property of the
 2-6 victim that is held by a law enforcement agency or the attorney for
 2-7 the state as evidence when the property is no longer required for
 2-8 that purpose;

2-9 (10) the right to have the attorney for the state
 2-10 notify the employer of the victim, if requested, of the necessity of
 2-11 the victim's cooperation and testimony in a proceeding that may
 2-12 necessitate the absence of the victim from work for good cause;

2-13 (11) the right to counseling, on request, regarding
 2-14 acquired immune deficiency syndrome (AIDS) and human
 2-15 immunodeficiency virus (HIV) infection and testing for acquired
 2-16 immune deficiency syndrome (AIDS), human immunodeficiency virus
 2-17 (HIV) infection, antibodies to HIV, or infection with any other
 2-18 probable causative agent of AIDS, if the offense is an offense under
 2-19 Section 21.11(a)(1), 22.011, or 22.021, Penal Code;

2-20 (12) the right to request victim-offender mediation
 2-21 coordinated by the victim services division of the Texas Department
 2-22 of Criminal Justice; ~~and~~

2-23 (13) the right to be informed of the uses of a victim
 2-24 impact statement and the statement's purpose in the criminal
 2-25 justice system, to complete the victim impact statement, and to
 2-26 have the victim impact statement considered:

2-27 (A) by the attorney representing the state and
 2-28 the judge before sentencing or before a plea bargain agreement is
 2-29 accepted; and

2-30 (B) by the Board of Pardons and Paroles before an
 2-31 inmate is released on parole; and

2-32 (14) except as provided by Article 56.06(a), for a
 2-33 victim of a sexual assault, the right to a forensic medical
 2-34 examination if the sexual assault is reported to a law enforcement
 2-35 agency within 96 hours of the assault.

2-36 SECTION 2. Article 56.06, Code of Criminal Procedure, is
 2-37 amended to read as follows:

2-38 Art. 56.06. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM;
 2-39 COSTS [OF MEDICAL EXAMINATION]. (a) If a sexual assault is
 2-40 reported to a law enforcement agency within 96 hours of the assault,
 2-41 the law enforcement agency, with the consent of the victim, a person
 2-42 authorized to act on behalf of the victim, or an employee of the
 2-43 Department of Family and Protective Services, shall request a
 2-44 medical examination of the victim of the alleged assault for use in
 2-45 the investigation or prosecution of the offense. A law enforcement
 2-46 agency may decline to request a medical examination under this
 2-47 subsection only if the person reporting the sexual assault has made
 2-48 one or more false reports of sexual assault to any law enforcement
 2-49 agency and if there is no other evidence to corroborate the current
 2-50 allegations of sexual assault.

2-51 (b) If a sexual assault is not reported within the period
 2-52 described by Subsection (a), on receiving the consent described by
 2-53 that subsection the law enforcement agency may request a medical
 2-54 examination of a victim of an alleged sexual assault as considered
 2-55 appropriate by the agency.

2-56 (c) A law enforcement agency that requests a medical
 2-57 examination of a victim of an alleged sexual assault for use in the
 2-58 investigation or prosecution of the offense shall pay all costs of
 2-59 the examination. On application to the attorney general, the law
 2-60 enforcement agency is entitled to be reimbursed for the reasonable
 2-61 costs of that examination if the examination was performed by a
 2-62 physician or by a sexual assault examiner or sexual assault nurse
 2-63 examiner, as defined by Section 420.003, Government Code.

2-64 (d) ~~(b)~~ A law enforcement agency or prosecuting
 2-65 attorney's office may pay all costs related to the testimony of a
 2-66 licensed health care professional in a criminal proceeding
 2-67 regarding the results of the medical examination or manner in which
 2-68 it was performed.

2-69 (e) ~~(c)~~ This article does not require a law enforcement

3-1 agency to pay any costs of treatment for injuries.
3-2 SECTION 3. The changes in law made by this Act apply only to
3-3 a sexual assault reported on or after the effective date of this
3-4 Act. A sexual assault reported before the effective date of this
3-5 Act is governed by the law in effect on the date the assault is
3-6 reported, and the current law remains in effect for that purpose.
3-7 SECTION 4. This Act takes effect September 1, 2005.

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