

By: Naishtat

H.B. No. 2626

A BILL TO BE ENTITLED

AN ACT

relating to the forensic medical examination of a sexual assault victim who has not reported the assault to a law enforcement agency.

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 21.02, 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;

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) to the extent [~~except as~~] provided by Articles
10 56.06 and 56.065 [~~Article 56.06(a)~~], for a victim of a sexual
11 assault, the right to a forensic medical examination if, within 96
12 hours of the sexual assault, the [~~sexual~~] assault is reported to a
13 law enforcement agency or a forensic medical examination is
14 otherwise conducted at a health care facility [~~within 96 hours of~~
15 ~~the assault~~].

16 SECTION 2. The heading to Article 56.06, Code of Criminal
17 Procedure, is amended to read as follows:

18 Art. 56.06. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM
19 WHO HAS REPORTED ASSAULT; COSTS.

20 SECTION 3. Subchapter A, Chapter 56, Code of Criminal
21 Procedure, is amended by adding Article 56.065 to read as follows:

22 Art. 56.065. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM
23 WHO HAS NOT REPORTED ASSAULT; COSTS. (a) In this article:

24 (1) "Crime laboratory" has the meaning assigned by
25 Article 38.35.

26 (2) "Department" means the Department of Public
27 Safety.

1 (3) "Sexual assault examiner" and "sexual assault
2 nurse examiner" have the meanings assigned by Section 420.003,
3 Government Code.

4 (b) This article applies to the following health care
5 facilities that provide diagnosis or treatment services to victims
6 of sexual assault:

7 (1) a general or special hospital licensed under
8 Chapter 241, Health and Safety Code;

9 (2) a general or special hospital owned by this state;

10 (3) an outpatient clinic; and

11 (4) a private physician's office.

12 (c) Except as provided by Subsection (e), a health care
13 facility shall conduct in accordance with Subchapter B, Chapter
14 420, Government Code, a forensic medical examination of the victim
15 of an alleged sexual assault if:

16 (1) the victim arrives at the facility within 96 hours
17 after the assault occurred;

18 (2) the victim or a legal representative of the victim
19 consents to the examination;

20 (3) at the time of the examination the victim has not
21 reported the assault to a law enforcement agency; and

22 (4) a physician determines that it is not detrimental
23 to the victim's health to conduct the examination.

24 (d) The department shall pay for reasonable costs of the
25 forensic portion of the medical examination and for the evidence
26 collection kit if a physician, sexual assault examiner, or sexual
27 assault nurse examiner conducts the forensic portion of the

1 examination within 96 hours after the alleged sexual assault
2 occurred. The attorney general shall reimburse the department for
3 costs paid under this subsection.

4 (e) If a health care facility does not provide diagnosis or
5 treatment services to victims of sexual assault, the facility shall
6 refer a victim seeking a forensic medical examination under
7 Subsection (c) to a health care facility that provides services to
8 those victims.

9 (f) The department shall develop procedures for the
10 transfer of evidence collected under this article to a crime
11 laboratory designated by the department. The designated laboratory
12 shall preserve the evidence until the earlier of:

13 (1) the second anniversary of the date the laboratory
14 received the evidence; or

15 (2) the date the victim or a legal representative of
16 the victim signs a written consent to release the evidence.

17 (g) The victim may not be required to:

18 (1) participate in the investigation or prosecution of
19 an offense as a condition of receiving a forensic medical
20 examination under this article; or

21 (2) pay for the cost of the forensic portion of the
22 medical examination or for the evidence collection kit.

23 (h) The attorney general and the department each shall adopt
24 rules as necessary to implement this article.

25 SECTION 4. Section 323.004(b), Health and Safety Code, is
26 amended to read as follows:

27 (b) A health care facility providing care to a sexual

1 assault survivor shall provide the survivor with:

2 (1) a forensic medical examination in accordance with
3 Subchapter B, Chapter 420, Government Code, if the examination has
4 been requested [~~approved~~] by a law enforcement agency under Article
5 56.06, Code of Criminal Procedure, or is conducted under Article
6 56.065, Code of Criminal Procedure;

7 (2) a private area, if available, to wait or speak with
8 the appropriate medical, legal, or sexual assault crisis center
9 staff or volunteer until a physician, nurse, or physician assistant
10 is able to treat the survivor;

11 (3) access to a sexual assault program advocate, if
12 available, as provided by Article 56.045, Code of Criminal
13 Procedure;

14 (4) the information form required by Section 323.005;

15 (5) a private treatment room, if available;

16 (6) if indicated by the history of contact, access to
17 appropriate prophylaxis for exposure to sexually transmitted
18 infections; and

19 (7) the name and telephone number of the nearest
20 sexual assault crisis center.

21 SECTION 5. Section 323.005(a), Health and Safety Code, is
22 amended to read as follows:

23 (a) The department shall develop a standard information
24 form for sexual assault survivors that must include:

25 (1) a detailed explanation of the forensic medical
26 examination required to be provided by law, including a statement
27 that photographs may be taken of the genitalia;

1 (2) information regarding treatment of sexually
2 transmitted infections and pregnancy, including:

3 (A) generally accepted medical procedures;

4 (B) appropriate medications; and

5 (C) any contraindications of the medications
6 prescribed for treating sexually transmitted infections and
7 preventing pregnancy;

8 (3) information regarding drug-facilitated sexual
9 assault, including the necessity for an immediate urine test for
10 sexual assault survivors who may have been involuntarily drugged;

11 (4) information regarding crime victims compensation,
12 including:

13 (A) a statement that:

14 (i) a law enforcement agency will pay for
15 the cost of the forensic portion of an [the] examination requested
16 by the agency under Article 56.06, Code of Criminal Procedure; or

17 (ii) the Department of Public Safety will
18 pay for the reasonable costs of the forensic portion of an
19 examination conducted under Article 56.065, Code of Criminal
20 Procedure; and

21 (B) reimbursement information for the medical
22 portion of the examination;

23 (5) an explanation that consent for the forensic
24 medical examination may be withdrawn at any time during the
25 examination;

26 (6) the name and telephone number of sexual assault
27 crisis centers statewide; and

1 (7) information regarding postexposure prophylaxis
2 for HIV infection.

3 SECTION 6. (a) As soon as practicable after the effective
4 date of this Act, the attorney general shall adopt the rules
5 required by Article 56.065(h), Code of Criminal Procedure, as added
6 by this Act.

7 (b) As soon as practicable after the effective date of this
8 Act, the Department of Public Safety of the State of Texas shall
9 adopt the rules required by Article 56.065(h), Code of Criminal
10 Procedure, as added by this Act.

11 (c) The change in law made by this Act applies to a forensic
12 medical examination of an alleged sexual assault victim that is
13 conducted on or after the effective date of this Act. An
14 examination that is conducted before the effective date of this Act
15 is covered by the law in effect when the examination was conducted,
16 and the former law is continued in effect for that purpose.

17 SECTION 7. This Act takes effect September 1, 2009.