

1-1 By: Naishtat, et al. (Senate Sponsor - Zaffirini) H.B. No. 2626  
1-2 (In the Senate - Received from the House April 23, 2009;  
1-3 April 23, 2009, read first time and referred to Committee on  
1-4 Criminal Justice; April 28, 2009, reported favorably by the  
1-5 following vote: Yeas 7, Nays 0; April 28, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the forensic medical examination of a sexual assault  
1-9 victim who has not reported the assault to a law enforcement agency.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Article 56.02(a), Code of Criminal Procedure, is  
1-12 amended to read as follows:

1-13 (a) A victim, guardian of a victim, or close relative of a  
1-14 deceased victim is entitled to the following rights within the  
1-15 criminal justice system:

1-16 (1) the right to receive from law enforcement agencies  
1-17 adequate protection from harm and threats of harm arising from  
1-18 cooperation with prosecution efforts;

1-19 (2) the right to have the magistrate take the safety of  
1-20 the victim or his family into consideration as an element in fixing  
1-21 the amount of bail for the accused;

1-22 (3) the right, if requested, to be informed:

1-23 (A) by the attorney representing the state of  
1-24 relevant court proceedings, including appellate proceedings, and  
1-25 to be informed if those proceedings have been canceled or  
1-26 rescheduled prior to the event; and

1-27 (B) by an appellate court of decisions of the  
1-28 court, after the decisions are entered but before the decisions are  
1-29 made public;

1-30 (4) the right to be informed, when requested, by a  
1-31 peace officer concerning the defendant's right to bail and the  
1-32 procedures in criminal investigations and by the district  
1-33 attorney's office concerning the general procedures in the criminal  
1-34 justice system, including general procedures in guilty plea  
1-35 negotiations and arrangements, restitution, and the appeals and  
1-36 parole process;

1-37 (5) the right to provide pertinent information to a  
1-38 probation department conducting a presentencing investigation  
1-39 concerning the impact of the offense on the victim and his family by  
1-40 testimony, written statement, or any other manner prior to any  
1-41 sentencing of the offender;

1-42 (6) the right to receive information regarding  
1-43 compensation to victims of crime as provided by Subchapter B,  
1-44 including information related to the costs that may be compensated  
1-45 under that subchapter and the amount of compensation, eligibility  
1-46 for compensation, and procedures for application for compensation  
1-47 under that subchapter, the payment for a medical examination under  
1-48 Article 56.06 for a victim of a sexual assault, and when requested,  
1-49 to referral to available social service agencies that may offer  
1-50 additional assistance;

1-51 (7) the right to be informed, upon request, of parole  
1-52 procedures, to participate in the parole process, to be notified,  
1-53 if requested, of parole proceedings concerning a defendant in the  
1-54 victim's case, to provide to the Board of Pardons and Paroles for  
1-55 inclusion in the defendant's file information to be considered by  
1-56 the board prior to the parole of any defendant convicted of any  
1-57 crime subject to this subchapter, and to be notified, if requested,  
1-58 of the defendant's release;

1-59 (8) the right to be provided with a waiting area,  
1-60 separate or secure from other witnesses, including the offender and  
1-61 relatives of the offender, before testifying in any proceeding  
1-62 concerning the offender; if a separate waiting area is not  
1-63 available, other safeguards should be taken to minimize the  
1-64 victim's contact with the offender and the offender's relatives and

2-1 witnesses, before and during court proceedings;

2-2 (9) the right to prompt return of any property of the  
 2-3 victim that is held by a law enforcement agency or the attorney for  
 2-4 the state as evidence when the property is no longer required for  
 2-5 that purpose;

2-6 (10) the right to have the attorney for the state  
 2-7 notify the employer of the victim, if requested, of the necessity of  
 2-8 the victim's cooperation and testimony in a proceeding that may  
 2-9 necessitate the absence of the victim from work for good cause;

2-10 (11) the right to counseling, on request, regarding  
 2-11 acquired immune deficiency syndrome (AIDS) and human  
 2-12 immunodeficiency virus (HIV) infection and testing for acquired  
 2-13 immune deficiency syndrome (AIDS), human immunodeficiency virus  
 2-14 (HIV) infection, antibodies to HIV, or infection with any other  
 2-15 probable causative agent of AIDS, if the offense is an offense under  
 2-16 Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

2-17 (12) the right to request victim-offender mediation  
 2-18 coordinated by the victim services division of the Texas Department  
 2-19 of Criminal Justice;

2-20 (13) the right to be informed of the uses of a victim  
 2-21 impact statement and the statement's purpose in the criminal  
 2-22 justice system, to complete the victim impact statement, and to  
 2-23 have the victim impact statement considered:

2-24 (A) by the attorney representing the state and  
 2-25 the judge before sentencing or before a plea bargain agreement is  
 2-26 accepted; and

2-27 (B) by the Board of Pardons and Paroles before an  
 2-28 inmate is released on parole; and

2-29 (14) to the extent [except as] provided by Articles  
 2-30 56.06 and 56.065 [Article 56.06(a)], for a victim of a sexual  
 2-31 assault, the right to a forensic medical examination if, within 96  
 2-32 hours of the sexual assault, the [sexual] assault is reported to a  
 2-33 law enforcement agency or a forensic medical examination is  
 2-34 otherwise conducted at a health care facility [within 96 hours of  
 2-35 the assault].

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

2-38 Art. 56.06. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM  
 2-39 WHO HAS REPORTED ASSAULT; COSTS.

2-40 SECTION 3. Subchapter A, Chapter 56, Code of Criminal  
 2-41 Procedure, is amended by adding Article 56.065 to read as follows:

2-42 Art. 56.065. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM  
 2-43 WHO HAS NOT REPORTED ASSAULT; COSTS. (a) In this article:

2-44 (1) "Crime laboratory" has the meaning assigned by  
 2-45 Article 38.35.

2-46 (2) "Department" means the Department of Public  
 2-47 Safety.

2-48 (3) "Sexual assault examiner" and "sexual assault  
 2-49 nurse examiner" have the meanings assigned by Section 420.003,  
 2-50 Government Code.

2-51 (b) This article applies to the following health care  
 2-52 facilities that provide diagnosis or treatment services to victims  
 2-53 of sexual assault:

2-54 (1) a general or special hospital licensed under  
 2-55 Chapter 241, Health and Safety Code;

2-56 (2) a general or special hospital owned by this state;

2-57 (3) an outpatient clinic; and

2-58 (4) a private physician's office.

2-59 (c) In accordance with Subchapter B, Chapter 420,  
 2-60 Government Code, and except as provided by Subsection (e), a health  
 2-61 care facility shall conduct a forensic medical examination of the  
 2-62 victim of an alleged sexual assault if:

2-63 (1) the victim arrives at the facility within 96 hours  
 2-64 after the assault occurred;

2-65 (2) the victim consents to the examination; and

2-66 (3) at the time of the examination the victim has not  
 2-67 reported the assault to a law enforcement agency.

2-68 (d) The department shall pay the appropriate fees, as set by  
 2-69 attorney general rule, for the forensic portion of the medical

3-1 examination and for the evidence collection kit if a physician,  
 3-2 sexual assault examiner, or sexual assault nurse examiner conducts  
 3-3 the forensic portion of the examination within 96 hours after the  
 3-4 alleged sexual assault occurred. The attorney general shall  
 3-5 reimburse the department for fees paid under this subsection.

3-6 (e) If a health care facility does not provide diagnosis or  
 3-7 treatment services to victims of sexual assault, the facility shall  
 3-8 refer a victim seeking a forensic medical examination under  
 3-9 Subsection (c) to a health care facility that provides services to  
 3-10 those victims.

3-11 (f) The department may develop procedures regarding the  
 3-12 submission or collection of additional evidence of the alleged  
 3-13 sexual assault other than through an examination as described by  
 3-14 this article.

3-15 (g) The department shall develop procedures for the  
 3-16 transfer and preservation of evidence collected under this article  
 3-17 to a crime laboratory or other suitable location designated by the  
 3-18 public safety director of the department. The receiving entity  
 3-19 shall preserve the evidence until the earlier of:

3-20 (1) the second anniversary of the date the evidence  
 3-21 was collected; or

3-22 (2) the date the victim or a legal representative of  
 3-23 the victim signs a written consent to release the evidence.

3-24 (h) The victim may not be required to:

3-25 (1) participate in the investigation or prosecution of  
 3-26 an offense as a condition of receiving a forensic medical  
 3-27 examination under this article; or

3-28 (2) pay for the forensic portion of the medical  
 3-29 examination or for the evidence collection kit.

3-30 (i) The attorney general and the department each shall adopt  
 3-31 rules as necessary to implement this article.

3-32 SECTION 4. Section 323.004(b), Health and Safety Code, is  
 3-33 amended to read as follows:

3-34 (b) A health care facility providing care to a sexual  
 3-35 assault survivor shall provide the survivor with:

3-36 (1) a forensic medical examination in accordance with  
 3-37 Subchapter B, Chapter 420, Government Code, if the examination has  
 3-38 been requested [~~approved~~] by a law enforcement agency under Article  
 3-39 56.06, Code of Criminal Procedure, or is conducted under Article  
 3-40 56.065, Code of Criminal Procedure;

3-41 (2) a private area, if available, to wait or speak with  
 3-42 the appropriate medical, legal, or sexual assault crisis center  
 3-43 staff or volunteer until a physician, nurse, or physician assistant  
 3-44 is able to treat the survivor;

3-45 (3) access to a sexual assault program advocate, if  
 3-46 available, as provided by Article 56.045, Code of Criminal  
 3-47 Procedure;

3-48 (4) the information form required by Section 323.005;

3-49 (5) a private treatment room, if available;

3-50 (6) if indicated by the history of contact, access to  
 3-51 appropriate prophylaxis for exposure to sexually transmitted  
 3-52 infections; and

3-53 (7) the name and telephone number of the nearest  
 3-54 sexual assault crisis center.

3-55 SECTION 5. Section 323.005(a), Health and Safety Code, is  
 3-56 amended to read as follows:

3-57 (a) The department shall develop a standard information  
 3-58 form for sexual assault survivors that must include:

3-59 (1) a detailed explanation of the forensic medical  
 3-60 examination required to be provided by law, including a statement  
 3-61 that photographs may be taken of the genitalia;

3-62 (2) information regarding treatment of sexually  
 3-63 transmitted infections and pregnancy, including:

3-64 (A) generally accepted medical procedures;

3-65 (B) appropriate medications; and

3-66 (C) any contraindications of the medications  
 3-67 prescribed for treating sexually transmitted infections and  
 3-68 preventing pregnancy;

3-69 (3) information regarding drug-facilitated sexual

4-1 assault, including the necessity for an immediate urine test for  
4-2 sexual assault survivors who may have been involuntarily drugged;  
4-3 (4) information regarding crime victims compensation,  
4-4 including:

4-5 (A) a statement that:

4-6 (i) a law enforcement agency will pay for  
4-7 the forensic portion of an [the] examination requested by the  
4-8 agency under Article 56.06, Code of Criminal Procedure, and for the  
4-9 evidence collection kit; or

4-10 (ii) the Department of Public Safety will  
4-11 pay the appropriate fees for the forensic portion of an examination  
4-12 conducted under Article 56.065, Code of Criminal Procedure, and for  
4-13 the evidence collection kit; and

4-14 (B) reimbursement information for the medical  
4-15 portion of the examination;

4-16 (5) an explanation that consent for the forensic  
4-17 medical examination may be withdrawn at any time during the  
4-18 examination;

4-19 (6) the name and telephone number of sexual assault  
4-20 crisis centers statewide; and

4-21 (7) information regarding postexposure prophylaxis  
4-22 for HIV infection.

4-23 SECTION 6. (a) As soon as practicable after the effective  
4-24 date of this Act, the attorney general shall adopt the rules  
4-25 required by Article 56.065(i), Code of Criminal Procedure, as added  
4-26 by this Act.

4-27 (b) As soon as practicable after the effective date of this  
4-28 Act, the Department of Public Safety of the State of Texas shall  
4-29 adopt the rules required by Article 56.065(i), Code of Criminal  
4-30 Procedure, as added by this Act.

4-31 (c) The change in law made by this Act applies to a forensic  
4-32 medical examination of an alleged sexual assault victim that is  
4-33 conducted on or after the effective date of this Act. An  
4-34 examination that is conducted before the effective date of this Act  
4-35 is covered by the law in effect when the examination was conducted,  
4-36 and the former law is continued in effect for that purpose.

4-37 SECTION 7. This Act takes effect immediately if it receives  
4-38 a vote of two-thirds of all the members elected to each house, as  
4-39 provided by Section 39, Article III, Texas Constitution. If this  
4-40 Act does not receive the vote necessary for immediate effect, this  
4-41 Act takes effect September 1, 2009.

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