

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Naishtat, Kent, Rios Ybarra, Leibowitz,  
et al.

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) In accordance with Subchapter B, Chapter 420,  
13 Government Code, and except as provided by Subsection (e), a health  
14 care facility shall conduct a forensic medical examination of the  
15 victim 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 consents to the examination; and

19           (3) at the time of the examination the victim has not  
20 reported the assault to a law enforcement agency.

21           (d) The department shall pay the appropriate fees, as set by  
22 attorney general rule, for the forensic portion of the medical  
23 examination and for the evidence collection kit if a physician,  
24 sexual assault examiner, or sexual assault nurse examiner conducts  
25 the forensic portion of the examination within 96 hours after the  
26 alleged sexual assault occurred. The attorney general shall  
27 reimburse the department for fees paid under this subsection.

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

6       (f) The department may develop procedures regarding the  
7 submission or collection of additional evidence of the alleged  
8 sexual assault other than through an examination as described by  
9 this article.

10       (g) The department shall develop procedures for the  
11 transfer and preservation of evidence collected under this article  
12 to a crime laboratory or other suitable location designated by the  
13 public safety director of the department. The receiving entity  
14 shall preserve the evidence until the earlier of:

15               (1) the second anniversary of the date the evidence  
16 was collected; or

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

19       (h) The victim may not be required to:

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

23               (2) pay for the forensic portion of the medical  
24 examination or for the evidence collection kit.

25       (i) The attorney general and the department each shall adopt  
26 rules as necessary to implement this article.

27       SECTION 4. Section 323.004(b), Health and Safety Code, is

1 amended to read as follows:

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

4 (1) a forensic medical examination in accordance with  
5 Subchapter B, Chapter 420, Government Code, if the examination has  
6 been requested [~~approved~~] by a law enforcement agency under Article  
7 56.06, Code of Criminal Procedure, or is conducted under Article  
8 56.065, Code of Criminal Procedure;

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

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

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

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

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

21 (7) the name and telephone number of the nearest  
22 sexual assault crisis center.

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

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

27 (1) a detailed explanation of the forensic medical

1 examination required to be provided by law, including a statement  
2 that photographs may be taken of the genitalia;

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

5 (A) generally accepted medical procedures;

6 (B) appropriate medications; and

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

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

13 (4) information regarding crime victims compensation,  
14 including:

15 (A) a statement that:

16 (i) a law enforcement agency will pay for  
17 the forensic portion of an [the] examination requested by the  
18 agency under Article 56.06, Code of Criminal Procedure, and for the  
19 evidence collection kit; or

20 (ii) the Department of Public Safety will  
21 pay the appropriate fees for the forensic portion of an examination  
22 conducted under Article 56.065, Code of Criminal Procedure, and for  
23 the evidence collection kit; and

24 (B) reimbursement information for the medical  
25 portion of the examination;

26 (5) an explanation that consent for the forensic  
27 medical examination may be withdrawn at any time during the



1 examination;

2 (6) the name and telephone number of sexual assault  
3 crisis centers statewide; and

4 (7) information regarding postexposure prophylaxis  
5 for HIV infection.

6 SECTION 6. (a) As soon as practicable after the effective  
7 date of this Act, the attorney general shall adopt the rules  
8 required by Article 56.065(i), Code of Criminal Procedure, as added  
9 by this Act.

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

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

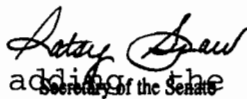
20 SECTION 7. This Act takes effect immediately if it receives  
21 a vote of two-thirds of all the members elected to each house, as  
22 provided by Section 39, Article III, Texas Constitution. If this  
23 Act does not receive the vote necessary for immediate effect, this  
24 Act takes effect September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

# ADOPTED

FLOOR AMENDMENT NO. 1

MAY 05 2009

BY: 

1 Amend HB 2626 by   
2 adding the following appropriately  
3 numbered SECTION to the bill and renumbering subsequent SECTIONS  
4 of the bill appropriately:

5 SECTION \_\_\_\_\_. This Act does not make an appropriation.  
6 A provision in this Act that creates a new governmental program,  
7 creates a new entitlement, or imposes a new duty on a  
8 governmental entity is not mandatory during a fiscal period for  
9 which the legislature has not made a specific appropriation to  
implement the provision.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 6, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2626** by Naishtat (Relating to the forensic medical examination of a sexual assault victim who has not reported the assault to a law enforcement agency.), **As Passed 2nd House**

<b>Estimated Two-year Net Impact to General Revenue Related Funds</b> for HB2626, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2011.
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**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>Crime Victims Comp Acct</i> 469
2010	(\$230,680)
2011	(\$237,790)
2012	(\$244,900)
2013	(\$252,405)
2014	(\$259,910)

**Fiscal Analysis**

The bill would amend the Code of Criminal Procedure and the Health and Safety Code to expand victim rights by providing the right to a forensic medical examination to victims of sexual assault who have not reported the assault to a law enforcement agency, if the forensic exam is otherwise conducted at a health care facility.

**Methodology**

The bill would provide that the Department of Public Safety pay for appropriate fees of a forensic medical exam and evidence collection kits of a sexual assault victim who has not reported the assault to law enforcement. The bill also provides that the Office of the Attorney General reimburse the Department of Public Safety for those aforementioned costs. The Office of the Attorney General estimates that reimbursements of forensic exams and collection kits as a result of the bill would increase by approximately 15 percent and would total approximately 584 new applications. Each new



application would be cost approximately \$395 providing a total cost of \$230,680 in fiscal year 2010 out of the Compensation to Victims of Crime Account No. 469. In fiscal year 2011, the OAG estimates that 602 new applications will be submitted for reimbursement providing a cost of \$237,790 out of the Compensation to Victims of Crime Account No. 469. It is assumed that the number of reimbursements will increase slightly in the remaining years providing a cost out of the Compensation to Victims of Crime Account No. 469 totaling \$244,900 in fiscal year 2012, \$252,405 in fiscal year 2013, and \$259,910 in fiscal year 2014. It is assumed that any administrative costs associated with the implementation of the bill at the Department of Public Safety and the Office of the Attorney General could be absorbed within existing state resources.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 405 Department of Public Safety

**LBB Staff:** JOB, SD, ESi, JM, LG



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 24, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2626** by Naishtat (Relating to the forensic medical examination of a sexual assault victim who has not reported the assault to a law enforcement agency.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2626, As Engrossed: an impact of \$0 through the biennium ending August 31, 2011.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
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2012	\$0
2013	\$0
2014	\$0

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**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 405 Department of Public Safety

**LBB Staff:** JOB, ESi, JM, LG



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 6, 2009**

**TO:** Honorable Tommy Merritt, Chair, House Committee on Public Safety

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2626** by Naishtat (Relating to the forensic medical examination of a sexual assault victim who has not reported the assault to a law enforcement agency. ), **Committee Report 1st House, Substituted**

<b>Estimated Two-year Net Impact to General Revenue Related Funds</b> for HB2626, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2011.
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**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>Crime Victims Comp Acct</i> 469
2010	(\$230,680)
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2012	(\$244,900)
2013	(\$252,405)
2014	(\$259,910)

**Fiscal Analysis**

The bill would amend the Code of Criminal Procedure and the Health and Safety Code to expand victim rights by providing the right to a forensic medical examination to victims of sexual assault who have not reported the assault to a law enforcement agency, if the forensic exam is otherwise conducted at a health care facility.

**Methodology**

The bill would provide that the Department of Public Safety pay for appropriate fees of a forensic medical exam and evidence collection kits of a sexual assault victim who has not reported the assault to law enforcement. The bill also provides that the Office of the Attorney General reimburse the Department of Public Safety for those aforementioned costs. The Office of the Attorney General estimates that reimbursements of forensic exams and collection kits as a result of the bill would



increase by approximately 15 percent and would total approximately 584 new applications. Each new application would be cost approximately \$395 providing a total cost of \$230,680 in fiscal year 2010 out of the Compensation to Victims of Crime Account No. 469. In fiscal year 2011, the OAG estimates that 602 new applications will be submitted for reimbursement providing a cost of \$237,790 out of the Compensation to Victims of Crime Account No. 469. It is assumed that the number of reimbursements will increase slightly in the remaining years providing a cost out of the Compensation to Victims of Crime Account No. 469 totaling \$244,900 in fiscal year 2012, \$252,405 in fiscal year 2013, and \$259,910 in fiscal year 2014. It is assumed that any administrative costs associated with the implementation of the bill at the Department of Public Safety and the Office of the Attorney General could be absorbed within existing state resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 405 Department of Public Safety

**LBB Staff:** JOB, ESi, JM, LG



LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 22, 2009

TO: Honorable Tommy Merritt, Chair, House Committee on Public Safety

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2626** by Naishtat (Relating to the forensic medical examination of a sexual assault victim who has not reported the assault to a law enforcement agency.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2626, As Introduced: an impact of \$0 through the biennium ending August 31, 2011.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>Crime Victims Comp Acct</i> 469
2010	(\$230,680)
2011	(\$237,790)
2012	(\$244,900)
2013	(\$252,405)
2014	(\$259,910)

**Fiscal Analysis**

The bill would amend the Code of Criminal Procedure and the Health and Safety Code to expand victim rights by providing the right to a forensic medical examination to victims of sexual assault who have not reported the assault to a law enforcement agency, if the forensic exam is otherwise conducted at a health care facility within 96 hours of the assault.

**Methodology**

The bill would provide that the Department of Public Safety pay for reasonable costs of a forensic medical exam and evidence collection kits of a sexual assault victim who has not reported the assault to law enforcement. The bill also provides that the Office of the Attorney General reimburse the Department of Public Safety for those aforementioned costs. The Office of the Attorney General estimates that reimbursements of forensic exams and collection kits as a result of the bill would increase by approximately 15 percent and would total approximately 584 new applications. Each new





application would be cost approximately \$395 providing a total cost of \$230,680 in fiscal year 2010 out of the Compensation to Victims of Crime Account No. 469. In fiscal year 2011, the OAG estimates that 602 new applications will be submitted for reimbursement providing a cost of \$237,790 out of the Compensation to Victims of Crime Account No. 469. It is assumed that the number of reimbursements will increase slightly in the remaining years providing a cost out of the Compensation to Victims of Crime Account No. 469 totaling \$244,900 in fiscal year 2012, \$252,405 in fiscal year 2013, and \$259,910 in fiscal year 2014. It is assumed that any administrative costs associated with the implementation of the bill at the Department of Public Safety and the Office of the Attorney General could be absorbed within existing state resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 405 Department of Public Safety

**LBB Staff:** JOB, ESi, JM, LG

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**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**April 24, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2626** by Naishtat (Relating to the forensic medical examination of a sexual assault victim who has not reported the assault to a law enforcement agency.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, TMP

