

House Bill 2626
Senate Amendments
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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 peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5) the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or

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any other manner prior to any sentencing of the offender;

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

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

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

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the

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attorney for the state as evidence when the property is no longer required for that purpose;

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

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

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

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

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

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

(14) to the extent [~~except as~~] provided by Articles 56.06

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and 56.065 [Article 56.06(a)], for a victim of a sexual assault, the right to a forensic medical examination if, within 96 hours of the sexual assault, the [sexual] assault is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care facility [within 96 hours of the assault].

SECTION 2. The heading to Article 56.06, Code of Criminal Procedure, is amended to read as follows:
Art. 56.06. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS REPORTED ASSAULT; COSTS.

Same as House version.

SECTION 3. Subchapter A, Chapter 56, Code of Criminal Procedure, is amended by adding Article 56.065 to read as follows:
Art. 56.065. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS NOT REPORTED ASSAULT; COSTS. (a) In this article:
(1) "Crime laboratory" has the meaning assigned by Article 38.35.
(2) "Department" means the Department of Public Safety.
(3) "Sexual assault examiner" and "sexual assault nurse examiner" have the meanings assigned by Section 420.003, Government Code.
(b) This article applies to the following health care facilities that provide diagnosis or treatment services to

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victims of sexual assault:

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

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

(3) an outpatient clinic; and

(4) a private physician's office.

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

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

(2) the victim consents to the examination; and

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

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

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

(f) The department may develop procedures regarding the submission or collection of additional evidence of the

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alleged sexual assault other than through an examination as described by this article.

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

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

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

(h) The victim may not be required to:

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

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

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

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

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

(1) a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been requested ~~approved~~ by a law enforcement agency under Article 56.06, Code of

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Criminal Procedure, or is conducted under Article 56.065, Code of Criminal Procedure;

- (2) a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;
- (3) access to a sexual assault program advocate, if available, as provided by Article 56.045, Code of Criminal Procedure;
- (4) the information form required by Section 323.005;
- (5) a private treatment room, if available;
- (6) if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections; and
- (7) the name and telephone number of the nearest sexual assault crisis center.

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

- (a) The department shall develop a standard information form for sexual assault survivors that must include:
 - (1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;
 - (2) information regarding treatment of sexually transmitted infections and pregnancy, including:
 - (A) generally accepted medical procedures;
 - (B) appropriate medications; and
 - (C) any contraindications of the medications prescribed

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for treating sexually transmitted infections and preventing pregnancy;

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

(4) information regarding crime victims compensation, including:

(A) a statement that:

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

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

and

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

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

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

(7) information regarding postexposure prophylaxis for HIV infection.

No equivalent provision.

SECTION __. This Act does not make an appropriation.

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A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

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

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

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

Same as House version.

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

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